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Editors' Note

In the first four months of 2015, Canada's public policy landscape has been brimming with controversy: from debates surrounding national security and religious rights to when, if ever, a federal budget will be introduced -- all with a national election looming on the horizon. We are proud to release Volume 6, Issue 2 of the Public Policy and Governance Review during this particularly divisive time, and hope that it will spark meaningful discussions and debate among both present and future policy leaders.

The Review aims to inform and engage the policy discourse across a wide range of subject areas, and this issue is no exception. In Volume 6, Issue 2, readers will move from a critical analysis of our justice system's capacity to serve victims of sexual assault, to an assessment of the market failure surrounding privacy self-management, to an article on inequality and intraprovincial disparity in Alberta. An examination of private regulation as an alternative to global governance, a look at Europeanization and political identity in Scotland, and a critique of Ontario's green investment policies are also featured. The issue concludes with a brief commentary that makes the case for the democratization of policy knowledge tools.

As the academic term draws to a close, so too does our tenure as Co-Editors-in-Chief. We have found the experience highly rewarding and are proud of how far the Review has progressed over the past 12 months. We owe a great debt to the School of Public Policy and Governance for supporting our efforts, and to Professors Ian Clark and Janet Mason for their continued support and encouragement. To our Advisory Board, our editorial forbearers, our talented Associate Editors and Editorial Assistants, and to the broader SPPG community, we also offer thanks. We leave the Review in more than capable hands, and are excited to see where Zachary Lewsen and Jennifer Mutton take the publication in the coming year.

Sincerely,
Lindsay Handren and Matteo Pirri
Editors-in-Chief, Public Policy and Governance Review (www.ppgreview.ca)

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Criminal Justice

Moving Past Barriers in Reporting Crime: Considering the Need for a National Policy Framework for Victims of Sexual Assault

Mariana Carrera

Current levels of underreporting of sexual assaults highlight a justice system that is inaccessible for victims due to participation barriers and a system that makes reporting such crimes undesirable. This article analyses existing provisions for victims, highlighting both the justice system's intent to take victims into account and how the inconsistencies in rights and service provision necessitate the creation of a national policy framework. The article concludes by examining the needs that ought to be taken into account in the creation of an effective policy framework, in order to successfully address the crime of sexual assault.

Introduction

In the last 30 years, Canadian sexual assault laws have been reformed with the intent to remove prejudice toward women, eliminate rape myths and biases, and encourage higher levels of reporting in an effort to reduce overall offence rates (Johnson 2012). While these changes have been valuable in improving official language, legal reforms on their own have been insufficient. Current levels of underreporting reveal a justice system that is inaccessible for victims of sexual assault due to participation barriers and one that makes the process of reporting a less desirable option than inaction. In order for the justice system to effectively address the crime of sexual assault, major cultural and policy changes must take effect with consideration of victims' needs to prevent further victimization and increase their engagement. This paper considers the need for a national comprehensive policy framework for victims of sexual assault in order to meet the goals of the Canadian justice

system in addressing and reducing crime.

Background and Challenges in Reporting

Sexual assault places significant and unique challenges upon the victims and the justice system; its impact cannot be understated. The violation is an emotional, psychological, and physical assault and is often the most traumatic experience of victims' lives. These crimes are motivated by power and control, violating the agency and sexual integrity of the individual (Alberta 2013). As a result, victims commonly experience depression, anxiety, PTSD, substance abuse, and suicidal behaviour, among other consequences. These harms are often compounded by prevailing attitudes and social conditions that question, or blame and shame the victim, leading to further victimization and loss of agency.

Other systemic barriers prevent victims from coming forward. Reporting an assault leads to an intrusive investigative process whereby victims, at minimum, are required to relive their experiences by giving detailed accounts that are of an intimate, traumatic, and often shameful nature. Victims also fear the court process, particularly the rigorous cross-examinations, which subject their lives to intense scrutiny. Their behaviour, substance use, mental health, relationships, and responses to trauma, among other issues, can become matters of the court and can be used to paint victims as unreliable witnesses (Garossino 2014). Moreover, because criminal offences are treated as being committed against the state, not individuals, victims often feel that they have no voice in a system that focuses on the offender and leaves them to carry the burden of the crime (Kenney 2009; CRCVC). This is exacerbated through lengthy trials and appeals, a lack of information throughout the process, and being largely excluded from participation in the legal process (ibid.).

Because a majority of victims know their assailants, there is often a reticence in reporting those individuals (British Columbia 2007). The reasons for this reluctance vary, but include a fear of disbelief or alienation from family and friends; unwillingness to exact retribution upon a romantic partner or someone else with whom one has a relationship; and fear of families being separated, particularly when the perpetrator is the primary source of income (EVA BC 2002). Furthermore, victims fear the entrenched prejudices and misogyny within the police and judicial systems, which have historically impacted other sufferers of sexual abuse. For example, many victims have

had their cases unfounded by officers who wrongly believe myths about sexual assault (DuBois 2012; Johnson 2012). These include stereotypical images of "real" victims, false narratives of what constitutes "real" sexual assault, and the belief that it is common for individuals to make up false allegations (Johnson 2012). Victims from minority and marginalized communities face even more challenges, as they have historically been victimized by discriminatory practices, which have limited their access to justice, and entrenched mistrust in authorities and the court process (Garossino 2014; Ruparelia 2012).

This context serves as a reminder that sexual assault victims are, at best, reluctant participants in the criminal justice system. Their participation is essential, as most cases have no other witnesses (METRAC 2007; Nicol 2013). However, statistics indicate that a majority of victims have little to no confidence in the police, the courts, or the criminal justice system. This is reflected directly in the system: less than 10 per cent of offences are reported to authorities, of which less than half result in charges, and of those charges, approximately one quarter result in a guilty verdict (Johnson 2012; Toronto Police). Because victims have overwhelmingly been unwilling to report their experiences, the justice system is not addressing the vast majority of sexual assaults.

Considering Victims in the Canadian Justice System

Under the Canadian justice system, crime is considered a violation against society as a whole. Crown counsel, therefore, represents Canadian society, and not the victim, in any criminal proceedings. Critics of victim advocacy movements argue that increased consideration of victims' interests in the justice system erodes this process, infringing on the rights of defendants (Hall 2010; Wilson 2009). However, victim and defendant rights and needs do not exist in a zero sum game. Many provisions for victims, such as the supply of information, can increase the freedom and agency of victims without reducing the rights of defendants (Hall 2010). Provisions in the Criminal Code and other related statutes addressing victims demonstrate both an intent for the justice system to take into account victim considerations, and that defendant and victim rights can go hand in hand. For example, the Canadian Statement of Basic Principles of Justice for Victims of Crime provides an overview of how victims should be treated, including that "victims should be given information…about the status of the investigation; the scheduling, progress and final outcome of the proceedings"

(Office of the Federal Ombudsman for Victims of Crime).

The basic goals of the Canadian justice system reinforce the importance of addressing the needs of sexual assault victims. Yet an overwhelming majority of sexual assaults are not addressed by the criminal process and as a result key goals are not being met, including the protection of the public, holding perpetrators responsible, and the reduction of crime. While the court system has the power to compel victims to testify, an unwillingness to cooperate can be enough to make cases unviable. Even in situations where victims are cooperative, the psychological impact can make it difficult for victims to muster and maintain the energy, focus, and enthusiasm necessary for the court process. They may recant, refuse to testify, not show up to court, or beg to have the charges dropped (Haskell 2007). Despite the power to compel, the justice system has no ability to pursue cases of sexual assault if the authorities are not aware of them. Government attempts to reduce crime must address both low reporting rates and victims' needs in order to be effective.

Current Provisions for Victims of Sexual Assault

There is currently no national comprehensive policy framework for sexual assault victims. Some provisions and policies have been made to address their specific needs and encourage higher reporting levels, though they vary by province and city. For example, the city of Calgary began offering "the Third Option" in 2011, allowing victims to defer the decision to report to police by storing forensic evidence kits for up to a year after the assault (Alberta 2013).

At the federal level, several important reforms have been made in the last 30 years to the Criminal Code. These include restrictions on the admission of past sexual history as evidence, and publication bans on the identity of victims. Some provisions are specific to victims and witnesses under the age of 18. For example, minors are explicitly protected from being cross-examined by a self-represented accused, though adult victims can face this traumatic possibility should the court not use its discretion to appoint a lawyer for cross-examination (Department of Justice; Pritchard 2009).

There is room in the Criminal Code to afford further protections to victims of sexual assault of all ages without restricting the rights of the accused. Provisions specific to minors indicate a recognition that parts of the court

process can be an undue burden for victims. These are no less of an undue burden for adult victims and can severely hinder their ability to engage in the process at any point or indeed at all (Haskell 2007). Expanding the applicability of the aforementioned provisions for minors to all victims would reduce the secondary victimization caused by the court process and allay some of the fears related to engaging with the justice system.

At the time of writing, Bill C-32, the Canadian Victims Bill of Rights, has passed first reading in the Senate. Aiming to give victims legal rights and a role at the heart of the justice system, the bill entitles them to information, protection, participation, and restitution. What the final legislation will look like and what its impact will be remains to be seen, though critics have flagged several issues in the bill's current form. Despite the rhetoric of empowering victims, these victims are not expressly made parties, interveners, or even observers in any criminal justice proceedings. Furthermore, the bill provides for the enforcement of victims' rights, but only in a minimal way, limiting the associated remedies to mandating a review and making recommendations. These provisions are further watered-down by the courts' ability to restrict their application in a "reasonable manner" so that they do not disrupt the "proper administration of justice." (Canada 2015; Latimer 2014)

Bill C-32 purports to provide groundbreaking changes to the status of victims. However, the aforementioned problems with enforcement mechanisms present a significant threat to the bill accomplishing this goals. Furthermore, many of the rights it establishes are already recognized practices in the provinces, which each have their own form of a victims' bill of rights. It is worth noting, however, that the various provincial victims' bills of rights are not consistent, vary in how they approach needs through administrative or legal support, and range in impact. The Ontario Superior Court, for example, decided that Ontario's bill of victims' rights was a "statement of principle and social policy, beguilingly clothed in the language of legislation… [and] does not establish any statutory rights for the victims of crime" (Ling 2014). There is a lack of consistency and clarity in policy for victims across Canada that must be addressed. These inconsistencies reinforce many of the fears which prevent sexual assault victims from coming forward.

Victims' Services and community-based agencies that provide similar services across Canada are hugely important in helping sexual assault victims access support and services. However, many of these agencies are

too overburdened and underfunded to meet demand, and access to support is often dependent on factors such as gender, age, ability, income, and geographic location (Nova Scotia 2014; Gaudreault et al. 2014). They are also not consistent in their service provision across Canada, leaving victims unsure of whether or not they can get any meaningful help.

Victims' Services in particular are primarily focused on the court process and guilty verdicts. For example, individuals can get assistance in preparing to testify and deliver victim impact statements, applying for restitution, and understanding their court cases. Given that more than 90 per cent of sexual assault victims do not report the crime, much less get a trial and guilty verdict, most victims in reality get little help from Victims' Services (Alberta 2013, 26; Toronto Police). In Nova Scotia, for example, victims can apply for Criminal Injuries Counselling, but the service is contingent on having already reported the crime to the police (Nova Scotia 2013). Victims across Canada also lack centralized and consistent means to obtain all the information they need, advocates to guide them through the process, culturally appropriate services in diverse communities, and assistance in areas of practical concern, such as childcare and basic living necessities. They further lack protection in cases where peace bonds are not applicable, but contact with the perpetrator is probable and may trigger post-traumatic symptoms (Hannem and Leonardi 2014). In essence, Victims' Services fail to address any of the barriers that victims face when making the decision of whether to go to the authorities.

Looking Toward a National Policy Framework

The lack of clarity and consistency across Canada in sexual assault policy is a barrier that can be addressed by a national comprehensive policy framework for victims of sexual assault. Victims are expected to engage and cooperate with the justice system, yet navigating this process alone is difficult and onerous, especially as individuals must simultaneously cope with the impact of the crime. The inconsistencies in how sexual assault cases are handled are wide-ranging, including differing protections and rights for victims, unreliable access to resources and services, and different levels of police and judicial training. This is exacerbated whenever cases are mishandled or victims are mistreated because of entrenched prejudices. Many victims are naturally afraid of the process, and the best mechanism they have to avoid being re-victimized is to opt out of engaging with the criminal justice system altogether.

As victims of sexual assault struggle to develop an understanding of what to expect from the process, they are not able to resolve misperceptions, conflicting information, and genuine barriers. This is aggravated by the challenges victims face in obtaining information about the process and their cases, a task often requiring individuals to seek out multiple sources and sometimes limited by the authorities' liability concerns. Even when they do get the information they need, they receive it at a time of crisis when they are least able to absorb it and act accordingly (Haskell 2007). Given these challenging circumstances, it is unreasonable to expect victims to have to advocate for themselves and also trust that internal accountability systems will ensure that their cases are properly managed. It is therefore unsurprising that victims overwhelmingly choose not to undergo the process.

True victim engagement will require reform of the adversarial justice system, recognizing that the crime, a violation against the state, is also a violation of a relationship between specific people (Department of Justice 2001). These victims have suffered from the limitation and removal of their agency, and their exclusion from the criminal process reinforces that they are not stakeholders in the protection of their own autonomy. A policy framework is needed for such wide-ranging reforms, but it is imperative that such a process, intended to help victims, empower rather than impose further limitations on their agency.

Traditionally, the response to the issue of victim engagement has been to refer to civil prosecution as the mechanism to acknowledge and resolve harms to individuals (Benson and Miller 2009). Tort law, however, is failing in this regard. Few can access civil prosecutions; the significant financial cost of hiring legal counsel serves as a near-complete barrier to justice, though further barriers exist (Butt 2013). Moreover, the criminal justice system has a duty to protect the public and hold perpetrators accountable; as such, the systemic issues leading to its failure in addressing sexual assault should not be offloaded to tort law.

When looking to develop a policy framework for victims of sexual assault, several needs must be considered. Among these, the need for information is one of the most critical (Hannem and Leonardi 2014; British Columbia 2009, 110). This goes beyond a simple entitlement to receiving answers from authorities, and must address its accessibility. Victims should not have to seek out multiple sources; information must be easy to find, and the answers they receive must address the complexity of the sociocultural barriers they

face.

Given the complex nature of criminal investigations, there will always be limitations as to what information can be shared. However, substantial information can be provided, particularly before charges are pressed, to make the process transparent for victims and affirm their rights. Individuals, especially those from marginalized communities, could benefit from clear information on how they should expect to be treated, their rights as victims and as individuals, and the mechanisms that exist to protect them.

Front-line officials must be trained to relay information to individuals in a way that does not re-victimize them or invalidate their experiences. This is particularly relevant in cases involving individuals such as sex trade workers, who face systemic stigma and, in the event that they come forward as victims, are commonly blamed for their own circumstances and dismissed (Alberta 2013). Moreover, there are often intersectional issues which form the context within which many victims must decide whether to report, and resources ought to be developed to address them. For example, victims may be weighing the benefits of reporting an assault against the possibility of being ostracized from their community, and may need information on how to protect themselves from further harm.

Accountability is another critical need that must be addressed (Crew 2012; DuBois 2012). Victims have no way of knowing if investigations are being conducted thoroughly or if their cases are being dismissed despite reasonable grounds for a charge. Hiring legal representation to act as an advocate is prohibitively expensive for many, and only serves as a poor bandage for a system that is not designed to be accountable to victims. Furthermore, hiring legal counsel has backfired on victims in the past, as they have been accused of preparing false testimony, with defence counsels arguing that a true victim testimony would be able to stand alone without legal support (Enright 2014). Accountability does not have to give victims power over due process, but a policy framework would have to consider what can be done so that authorities behave in a transparent way. Victims need an accessible mechanism to hold authorities to account without it being held against them by the defence.

The option of inclusion in decision-making processes has been cited as an important need for victims (British Columbia 2009). Developing such practices presents significant challenges in the protection of the rights of the

the accused, the role of the Crown in representing the state, and the provision meaningful avenues for victim participation. As a result, the current judicial system has extensive limitations on victim inclusion and thus addressing that need is difficult. However, there is the potential to increase the reporting rates of assaults through this type of reform. Many models have been considered, both specifically for sexual assault cases and generally for criminal law. Victim Impact Statements represent early attempts at consultative practices, aiming to give victims a voice and take them into account when making decisions (Department of Justice 2006). However, their use is left at the discretion of judges, and they generally have no discernable effect on the process (Ruparelia 2012). These statements are arguably little more than attempts to appease political pressures and give the impression that something is being done for the victims.

The justice system could also expand the option to pursue cases through restorative justice formats as an alternative to the singular adversarial option currently available. Restorative justice is an umbrella term for a variety of processes through which harm caused by crime is repaired by addressing victims' needs, holding offenders meaningfully accountable, and engaging the community in the justice process (British Columbia). Such a process is voluntary, as it requires the active participation of the victim. Restorative justice would offer the opportunity to include the victim as a stakeholder, recognizing that crime is both a violation committed against both society and the individual (Hall 2010). While the process does not free victims from having to relive their past traumas, it is grounded in basic principles that facilitate the reparation of the harm caused by crime. Such principles speak to a process that focuses on the relationships and context involved, is inclusive and transparent in its communication and decision-making, and finds comprehensive and holistic responses to create better conditions for the future (Llewellyn 2014).

Even without such wide-sweeping reforms, there are many avenues through which victims can be afforded protection and support. For example, victims' advocates could provide guidance, and appointed legal counsel for victims could articulate victims' position better and protect their rights without interfering with the role of the Crown.

Conclusion

Sexual assault as a crime cannot be effectively addressed by the justice

system without considering the needs of victims and addressing the harms that can occur in an adversarial process. A national comprehensive policy framework for victims of sexual assault would go a long way in the development of consistent policy across Canada by providing clarity on the government's position and actions, articulating roles and responsibilities, establishing accountability, and facilitating collaboration with the various actors who play a role in the system. It is through systemic change that the sociocultural and legal conditions that prevent victims from reporting can be overcome.

Mariana Carrera is a Master of Public Administration candidate at Dalhousie University where she was awarded the David MacDonald Memorial Award for the best student paper in the 2015 Atlantic Conference on Public Administration. She holds a Bachelor of Music with a Minor in Political Science from Mount Allison University and has significant experience working in the arts and heritage sector. Her policy interests include culture and heritage, cultural pluralism, and judicial policy.

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Identity

Les Politiques Patrimoniales Écossaises: Le Développement Régional et les Partenariats à la Lumière de l'Européanisation et du Processus d'Affirmation Identitaire

Caroline Cantin

Cet article discute de la question de l'Européanisation et de l'identité à la lumière des politiques patrimoniales écossaises depuis la dévolution. Afin d'opérationnaliser cet objet de recherche, deux variables sont identifiées comme découlant du référentiel européen, soit le développement culturel des régions et l'emphase mise sur les partenariats. Cette analyse révèle que ces variables parcourent les politiques patrimoniales écossaises. Néanmoins, le caractère limité de cette démarche implique qu'il n'est pas possible de conclure catégoriquement qu'elles sont européanisées. Cet article démontre aussi que la présence de ces variables dans les politiques patrimoniales écossaises est un outil efficace d'affirmation identitaire.

Introduction

Le degré d'Européanisation des politiques culturelles est généralement considéré comme étant faible (Radaelli, 2010) du fait des racines historiques de l'Union Européenne (UE). En 1957, la Communauté Économique Européenne (CEE) a été créée par six états membres au nom de considérations économiques. Dans le sillage de la construction politique du projet européen: "l'idée d'un projet culturel commun a souvent été fortement contestée par crainte d'effacer la diversité culturelle et de perdre, ainsi, les références des cultures spécifiques et nationales" (Sticht, 2000). Dans les années 1970, la volonté de construire un espace culturel européen se manifeste. Par exemple, en 1973, la première déclaration sur l'identité

européenne a été signée par la CEE. En vertu de cette déclaration, la notion d'"identité culturelle" cohabite avec celle de "cultures nationales" (Sticht, 2000). Malgré tout, la culture demeure une préoccupation marginale pour la CEE (Autissier, 2005).

La promulgation du Traité de Maastricht en 1992 marque la mise en place de l'UE. L'article 128 de ce traité (article 151 du Traité d'Amsterdam promulgué en 1997) marque l'engagement de l'UE envers la sauvegarde et la promotion du patrimoine culturel européen. Depuis les années 1990, malgré la mise en place de quelques projets culturels, il demeure que l'EU n'a toujours mis en place aucune politique culturelle pour ses membres. Tel que mentionné par Anne-Marie Autissier, "une juxtaposition de programmes ne fait pas une politique" (Autissier, 2005). En effet, l'UE a développé au cours des années des instruments politiques pour intervenir dans le domaine culturel. Par exemple, il suffit de mentionner les programmes de financement tels que Culture, Media et MEDIA Mundus (2007-2013) qui ont ensuite été remplacés par Creative Europe ainsi que la reconnaissance des droits culturels pour les citoyens européens. Cependant, son intervention doit être comprise comme un complément aux politiques des états membres en vertu du principe de subsidiarité. Dans le sillage tracé par l'UE, Creative Scotland, qui est responsable de développer une politique culturelle pour les arts de la scène, s'inscrit dans la logique de la stratégie mise en place par Creative Europe (Scottish Government, 2015). De même, l'Écosse s'est approprié la notion de « droits culturels » afin de permettre à tous les Écossais d'avoir accès à des activités culturelles (Scottish Executive, 2004).

L'Européanisation et l'Écosse

La politique culturelle demeure ainsi principalement une réalité nationale en Europe (Sticht, 2000). Cette position est singulière considérant l'impact grandissant de l'Européanisation sur plusieurs politiques sectorielles des États membres (Radaelli, 2010; Oberdorff, 2008). L'Européanisation, concept qui bien que faisant l'objet d'une foisonnante littérature depuis le début des années 1990, est défini ici en tant que "processus" par lequel des procédures, des paradigmes, des normes, des idées ou des règles formelles ou informelles prenant d'abord forme dans l'espace européen se répandent progressivement dans la sphère nationale (Radaelli 2001). Cette définition présente l'intérêt de prendre en considération la dimension informelle de l'Européanisation. Maarten P. Vink et Paolo Graziano insistent aussi sur l'importance d'aller au-delà des conséquences directes afin de mieux inclure

les conséquences indirectes de l'intégration européenne (Vink & Graziano, 2007). Ainsi, l'absence de politique culturelle européenne ne signifie peut-être pas nécessairement que l'Européanisation ne fait pas ressentir ses effets sur les politiques culturelles adoptées à l'échelle nationale.

À ce titre, l'Écosse apparaît comme un choix tout indiqué pour étudier ce tiraillement entre l'influence européenne et nationale. Avec une population relativement homogène en termes linguistique, une autonomie accentuée par le Scotland Act en 1998 qui fait que la culture est dorénavant du ressort de l'Écosse et un parti nationaliste à la tête du gouvernement depuis 2007, l'Écosse cultive une identité qui lui est propre. Cette identité puise ses racines dans le maintien des institutions écossaises (ex: le système judiciaire, l'église presbytérienne et le système d'éducation) malgré l'union survenue entre l'Angleterre et l'Écosse en 1707 (Nagel, 2004). Évidemment, la notion d'identité n'est pas aisée à saisir sur le plan théorique. La nouvelle dynamique mondiale, qui implique un éclatement des frontières territoriales et conceptuelles, invite à aller au-delà de la notion d'identité nationale (Keating, 2007) pour plutôt se tourner vers la notion d'identité culturelle. Cette notion sous-tend une pluralité dans les identités en acceptant l'existence de minorités contrairement à l'identité nationale qui mise sur l'unité identitaire (Brossat, 2009). Au-delà de cette volonté d'affirmer une identité qui lui est propre, il faut savoir que, depuis la fin des années 1980, les politiciens écossais sont devenus de fervents partisans de l'UE (Roller and Sloat, 2002; Nagel, 2004). L'UE apparaît comme une alternative intéressante permettant à l'Écosse de mieux se distinguer du Royaume-Uni qui est ouvertement eurosceptique (Cassagnau, 2004) et de jouer "the game of a powerful region in Europe" (Nagel, 2004).

Objectifs et Méthodologie

Cet article propose d'étudier les politiques patrimoniales en Écosse depuis la dévolution survenue en 1999 à la lumière du phénomène de l'Européanisation. Plus précisément, le but consiste à déterminer l'influence de ce phénomène dans la formulation des politiques patrimoniales écossaises. Notons que la notion de "patrimoine" prend racine ici dans une définition dynamique qui mise sur le renouvellement des frontières patrimoniales qui défie les balises temporelles (Fairclough, 2009).

Malgré l'affirmation de Radaelli, l'hypothèse principale considère que l'Européanisation a un impact sur les politiques culturelles écossaises depuis

a dévolution. Cette hypothèse s'appuie sur les recherches de Vink et Graziano selon lesquelles l'intégration européenne ne se limite pas aux conséquences directes (Vink & Graziano, 2007), mais aussi sur la notion de référentiel. Selon Henri Oberdorff, "il existe donc bien un référentiel européen distinct du référentiel national qui influence les politiques publiques nationales. Il s'agit de savoir quelle est la nature de ce référentiel pour saisir l'étendue et la profondeur de l'influence de l'UE sur les politiques publiques nationales" (Oberdorff, 2008). Cette notion permet de mieux cerner les ramifications des conséquences dites indirectes de l'intégration européenne. Considérant que la notion de culture est étroitement liée à celle de l'identité (Dolff-Bonekämper, 2009), l'hypothèse secondaire stipule que le domaine patrimonial écossais sert de catalyseur à l'expression de l'identité écossaise. Cette hypothèse sous-entend que la vitalité du domaine patrimonial permet aux Écossais de développer un sentiment d'attachement et de fierté à l'égard de leur patrie (Miller and Ali, 2013).

Au niveau méthodologique, la notion de référentiel invite, dans un premier temps, à identifier les objectifs, les stratégies, les outils théoriques qui sont le propre des politiques publiques européennes (Oberdorff, 2008) de manière à circonscrire le "référentiel" européen. Cette étape est fondamentale avant de poser un regard sur les politiques patrimoniales écossaises depuis 1999. Afin d'étudier cet objet d'étude, les documents publics de trois institutions ont été observées, soit l'Exécutif (1999-2007) ou le Gouvernement écossais (depuis 2007), les Museums Galleries Scotland (organe de développement national pour le secteur muséal écossais) ainsi que les Scottish National Museums (cette institution ne fait pas partie des Museums Galleries Scotland). Il s'agit des principales institutions responsables du développement de la politique patrimoniale en Écosse. La méthode documentaire fut celle privilégiée pour collecter les données. Plusieurs types de document ont été consultés tels que des documents officiels qui concernent la stratégie nationale en culture (ex : des consultations, des rapports de progrès), des documents qui axent sur le patrimoine culturel (ex : le National Performance Framework, des déclarations officielles, des programmes gouvernementaux) ainsi que des documents institutionnels (ex : des rapports annuels, des plans stratégiques, des audits). Les documents ont été analysés en fonction des dimensions identifiées à la lumière de la notion de référentiel. Le but était de déterminer si la dimension était abordée ou non dans le corpus. Si c'était le cas, l'analyse tentait de déterminer comment cette dimension était abordée.

La Notion de Référentiel Appliquée à l'Espace Européen

La démarche privilégiée pour cerner le référentiel européen consistait à analyser des documents secondaires ainsi que publics de manière à identifier des dimensions dans les politiques publiques européennes qui sont récurrentes. L'analyse de contenu a été la méthode choisie pour identifier ces dimensions dans les documents sélectionnés pour circonscrire le référentiel européen. Ces dimensions sont fondamentales suite au fait qu'elles guident ou influencent le processus de l'Européanisation et, par le fait même, déterminent le regard posé sur le corpus de sources. En effet, afin de déterminer l'impact de l'Européanisation sur les politiques patrimoniales écossaises depuis la dévolution, il est essentiel de prendre en considération le cadre de référence auquel les politiques sectorielles se réfèrent. Ce cadre de référence concerne ici des outils théoriques, des tendances, des objectifs ou des stratégies omniprésentes dans les politiques publiques européennes.

Un survol de la littérature a permis d'identifier plusieurs dimensions qui servent de balises à l'agenda public de l'UE. Cependant, cet article s'articule principalement autour de deux de ces dimensions, soit l'importance accordée au développement culturel des régions ainsi que l'emphase mise sur l'établissement de partenariats.

Le développement des régions, mais tout particulièrement le développement culturel des régions, représente une dimension importante des politiques adoptées par l'UE. Afin de respecter les aspirations des collectivités territoriales, l'UE s'est engagée à favoriser leur développement et leur pérennité au nom de leur "spécificité culturelle" (D'Angelo et Vespérini, 2000). Cette notion puise ses racines dans le Traité de Maastricht qui désire maintenir la diversité culturelle tout en faisant la promotion d'une "culture commune". Afin de favoriser le développement régional, l'UE a mis en place un système de financement qui appuie autant les initiatives régionales que les projets régionaux qui s'insèrent dans l'espace européen (Evans and Ford, 1999). Il est important de préciser que le développement culturel en régions est indissociable de la justification économique (Charnoz, 1999).

En ce qui concerne l'établissement de partenariats, l'UE en fait une priorité ou plutôt un principe selon Michael W. Bauer. Pour Bauer, ce principe "organizes actor relationships across administrative arena in EU policy-making" (Bauer, 2002). D'abord définis en tant que collaboration entre la

Commission européenne, un état membre et une autorité compétente (nationale, régionale ou locale), les groupes d'intérêt ont été appelés au cours des années suivantes à prendre part à ces initiatives (Bauer, 2002). De plus, il est intéressant de souligner que plusieurs des partenariats européens ont une dimension transnationale ou interculturelle. Interreg, soit un programme initié en 1990 et qui est maintenant intégré au FEDER, constitue à ce titre un exemple probant, car il mise sur la coopération (transfrontalière, transnationale et interrégionale) afin de promouvoir un développement en harmonie avec l'ensemble du territoire européen.

Le Développement Culturel des Régions

La tendance observée précédemment dans les politiques publiques européennes en matière de développement régional est aussi présente en Écosse. L'Exécutif écossais croit d'ailleurs que l'impulsion pour mettre de l'avant des initiatives culturelles en région doit provenir des autorités locales (Scottish Executive, 2006). L'importance accordée aux autorités locales peut être expliquée par le fait que trois rôles majeurs leur sont réservés : en plus d'être responsables de fournir une offre culturelle adéquate, les autorités locales sont considérées comme des partenaires d'avant-plan pour les activités culturelles proposées dans le domaine communautaire ainsi que des représentants des communautés qu'elles desservent (Scottish Executive, 2003).

Afin de s'assurer que les autorités locales travaillent efficacement, l'Exécutif a mis en place des balises en matière de planification culturelle afin d'encadrer leurs actions. La planification culturelle, laquelle présente l'intérêt d'identifier "the nature of demand by means of inviting, and responding to, local aspirations" (Scottish Executive, 2006), est étroitement liée à la planification communautaire. En d'autres termes, le développement d'une communauté donnée est tributaire de son offre culturelle. C'est d'ailleurs la thèse soutenue dans Implementation of the National Cultural Strategy: Guidance for Scottish Local Authorities (Scottish Executive, 2003). Ce document présente aussi l'intérêt de préciser comment les autorités locales peuvent répondre aux besoins de leurs citoyens. Par exemple, il est recommandé de préparer un seul plan de stratégie culturelle auquel se greffent des plans secondaires selon les besoins spécifiques de certains secteurs clés, mettre en place une infrastructure adéquate pouvant convenir à diverses activités culturelles ou encourager les collaborations entre les départements (la culture peut servir les intérêts des politiques en santé, en

éducation, en justice sociale ou en développement économique). En ce qui concerne la première recommandation, à savoir l'élaboration d'un seul plan de stratégie culturelle, elle réfère à la nécessité d'identifier clairement les objectifs dans le domaine culturel et la meilleure façon de les atteindre. En plus de ces recommandations, le succès d'une planification culturelle est aussi tributaire de la capacité des autorités locales de prendre en considération les enjeux stratégiques dans leur démarche. Par exemple, elles doivent penser leur rôle en matière de leadership en étroite relation avec leur rôle dans la communauté. De même, les objectifs de la stratégie culturelle locale doivent être dans la même logique que la politique de l'Exécutif (Scottish Executive, 2003).

En termes d'activités culturelles, les autorités locales couvrent plusieurs secteurs, dont celui du patrimoine, des musées et des archives. L'Écosse compte près de 400 musées et galeries; de ce nombre, plusieurs sont sous la gouverne des autorités locales. Les musées locaux et régionaux ont un rôle fondamental dans la vie des communautés qui doit être mise de l'avant dans la rhétorique des autorités locales. Ce rôle s'explique d'abord par leur compétence à sauvegarder et promouvoir l'histoire et l'identité locale. De cette compétence implique que les musées locaux et régionaux entretiennent une relation privilégiée avec les écoles. Ces musées jouissent aussi d'un pouvoir d'attraction touristique considérable qui ne doit pas être négligé (Scottish Executive, 2003). Il en résulte que l'Exécutif et le Gouvernement écossais, en collaboration avec les autorités locales, jouissent du pouvoir d'ancrer l'identité écossaise dans les musées qui sont présents sur l'ensemble du territoire.

Depuis la publication de Implementation of the National Cultural Strategy: Guidance for Scottish Local Authorities en 2003, il est devenu évident que les autorités locales ont besoin d'aide pour appliquer la stratégie culturelle nationale. Cet encadrement devrait privilégier une collaboration conjointe entre les autorités locales et les agences gouvernementales afin d'assurer une application structurée de la stratégie nationale. Par le fait même, cet encadrement permettrait que la "culture's contribution is harnessed in all departments of local government" (Scottish Executive, 2006).

L'Importance des Partenariats dans le Développement Culturel des Régions

Puisque la planification culturelle en région est enracinée dans la

planification communautaire, les partenariats sont fondamentaux dans le processus. En effet, l'établissement de partenariats permet à deux ou plusieurs organismes de poursuivre des buts communs. Ces partenariats s'expliquent d'abord par le besoin de maximiser le financement. Les partenariats qui reposent sur le principe du financement partagé rendent possibles des projets qui seraient inaccessibles à une seule autorité locale ou organisme. Par exemple, un partenariat entre le Coatbridge's Summerlee Heritage Park et le Motherwell Heritage Centre a permis la mise en place d'un programme gratuit proposant des ateliers patrimoniaux pour les élèves du primaire (Scottish Executive, 2003). D'autres raisons expliquent l'importance accordée aux partenariats telles que le désir d'assurer un service de qualité, de tirer profit des ressources en planification du partenaire, de créer un espace de discussion, de partager une expertise ou de maximiser le champ de rayonnement (Scottish Government, 2010; Scottish Executive, 2003). Les partenariats régionaux sont dits "individuels" ou "collectifs". En conséquence, les autorités locales ont la possibilité d'établir un partenariat avec plusieurs partenaires : l'Éxécutif, les agences gouvernementales (ex : Historic Scotland), le service public, les organisations locales telles que les musées ou les organismes communautaires (Scottish Executive, 2003).

Dans le document An Action Framework for Museums – Consultation and Response publié en 2003, l'Exécutif exprime son intention de mettre en place un cadre de développement régional afin de favoriser "the capacity and sustainability of the cultural heritage sector through active partnerships" (Scottish Executive, 2003). Afin de donner les moyens au réseau de se développer pleinement, il est proposé d'implanter un réseau d'agent de développement dans les musées régionaux. Le mandat de ces agents serait d'établir des points de jonction entre différentes communautés locales tout en assurant l'efficacité des partenariats. De plus, leur rôle serait de justifier la pertinence des musées locaux d'un point de vue éducatif et touristique et de transmettre aux musées locaux les outils leur permettant de prendre part à la planification communautaire (Scottish Executive, 2003).

Plusieurs partenariats régionaux ont été développés dans le domaine culturel depuis la publication de An Action Framework for Museums et Implementation of the National Cultural Strategy: Guidance for Scottish Local Authorities (Scottish Executive, 2003). Les deux meilleurs exemples sont VOCAL (Voice of Chief Officers for Cultural, Community and Leisure Services in Scotland) et SOLACE (The Society of Local Authority Chief

Executives and Senior Managers), deux initiatives qui planifient de travailler avec CoSLA (Convention of Scottish Local Authorities) afin de promouvoir les activités culturelles locales en jonction avec les priorités locales (Scottish Executive, 2005).

Pour conclure, il semble évident que le développement culturel en région en Écosse est une priorité. À la lumière de la planification culturelle régionale, les autorités ont la possibilité de faire rayonner uniformément la culture sur l'ensemble du territoire écossais. Au centre de ce processus, on retrouve les musées locaux et la mise en place de partenariats, lesquels sont des outils puissants autour de laquelle l'identité écossaise se cristallise. En plaçant la culture au centre du développement régional, l'Exécutif et le gouvernement écossais cherchent à assurer la vitalité de la culture écossaise, mais aussi de l'identité écossaise. Par le fait même, le développement régional en vient à servir la stratégie nationale qui désire promouvoir "a strong, fair and inclusive national identity" (The Scottish Government, 2013 En effet, le gouvernement écossais a compris que le développement culturel des régions représente le levier nécessaire pour assurer le maintien d'une identité écossaise distincte de l'identité britannique et, par extension, favoriser la pérennité de l'identité écossaise. Puisque les Écossais, peu importe leur lieu de résidence, ont la possibilité de participer à des activités culturelles, l'ensemble des citoyens développe un sentiment d'appartenance à l'égard de la culture écossaise, culture qui est porteuse de l'essence identitaire.

Les Partenariats dans le Domaine Patrimonial Ecossais

Il a été question des partenariats régionaux dans la section précédente, mais l'importance des partenariats en Écosse dépasse l'échelle régionale. Afin d'illustrer cette affirmation, il convient de s'attarder sur les partenariats nationaux ainsi que sur les partenariats internationaux.

Suite à la tenue de la Commission culturelle (2005), l'Exécutif prend position en publiant The Scottish Ex**ec**utive Response on the Cultural Review (Scottish Executive, 2006). L'Exécutif déclare dans ce document que le "Government is just one player – where our responsibilities stop, other cultural providers must play their part" (Scottish Executive, 2006). L'Éxécutif poursuit en insistant sur l'importance de miser sur les partenariats dans le domaine culturel: "All those with a role in the provision of culture need to work together – across the public, private and voluntary sectors. There will

be a need to increase the commitment of these sectors to partnership working and joined-up delivery" (Scottish Executive, 2006). En d'autres termes, l'Exécutif désire encourager la collaboration entre les différents acteurs suite au fait qu'il croit fermement que son rôle n'est pas d'être entièrement impliqué dans le domaine culturel.

Dans ce cas, il est légitime de demander en quoi consiste le rôle du gouvernement dans ce domaine. L'Exécutif est formel sur ce point; sa mission est de promouvoir "the best of Scotland's rich cultural treasure-store, maintaining and presenting, as openly and accessibly as possible, Scotland's superb national galleries', museums' and library collections" (Scottish Executive, 2006). En plus de favoriser l'accessibilité à la culture, le devoir de l'Exécutif consiste à promouvoir les trésors nationaux. Bien entendu, la promotion des trésors nationaux représente un moyen efficace pour accentuer la fierté du peuple écossais à l'égard de leur culture et de leur identité (Dolff-Bonekämper, 2009).

L'emphase placée sur les partenariats à l'époque de l'Exécutif est maintenue sous le Gouvernement écossais. En 2010, Fiona Hyslop, ministre de la Culture et des Affaires extérieures, déclare qu'il est primordial pour les musées de travailler davantage en collaboration avec d'autres organisations (Scottish Government, 2010). Dans la National Strategy for Scotland's Museums and Galleries (Museums Galleries Scotland, 2012), laquelle représente la première stratégie implantée pour l'ensemble du secteur au nom de l'unité, il y a un appel évident à promouvoir les partenariats, car "by working together the sector can achieve more than purely the sum of its parts" (Museums Galleries Scotland, 2012). Le développement de partenariats au niveau national et international fait partie de la Stratégie nationale en 6 points et, ainsi, cette inclusion prouve l'importance donnée aux partenariats. Grâce à des relations plus étroites entre les musées (2e objectif de la Stratégie), il serait possible d'augmenter la participation publique, les possibilités d'apprentissage et de bien-être. En plus (5e objectif de la Stratégie), les collaborations sont un moyen efficace de promouvoir les collections et de rendre compétitifs les musées (Museums Galleries Scotland, 2012). Afin d'illustrer la pertinence des partenariats, il convient de se référer au cas du Musselburgh Museum : grâce à la collaboration du East Lothian Council et du Musselburgh Museum & Heritage Group, le Musselburgh Museum a été en mesure d'ouvrir ses portes en 2011 (Museums Galleries Scotland, 2012).

Le National Museums Scotland (NMS) fait partie des “cultural providers (that) must play their part”. Peu après la dévolution, cette institution a exprimé son intention d’accentuer son rôle national en développant des partenariats stratégiques avec les institutions culturelles locales et régionales. Ces partenariats sont perçus par le NMS comme le moyen par excellence pour partager son expertise et donner accès à ses collections (Scottish Executive, 2005). Dans le Draft Culture (Scotland) Bill, il est d’ailleurs précisé que le rôle du NMS est de recueillir, préserver et exposer les artéfacts d’une importance nationale. L’Exécutif désire que le NMS continue son travail tout en s’assurant que “there are no barriers to joint-working between the bodies and to encourage increasing co-ordination of strategy and exhibitions. We also want the Collections to continue and enhance their leadership and support of local collections” (Scottish Executive, 2006). L’importance accordée à l’établissement de partenariats entre les organisations culturelles locales et nationales est clairement illustrée par cette citation. Par extension, du fait du rôle de NMS et du lien entre la notion de patrimoine et d’identité, les collaborations du NMS avec les organisations locales sont un moyen efficace d’élargir le champ de rayonnement des Collections nationales, lesquelles symbolisent l’identité écossaise. Par exemple, le NMS a prêté des artefacts pour l’exposition “Hugh Miller: Local Hero” qui a eu lieu au Groam House Museum à Rosemarkie et ainsi, le NMS a permis à une communauté locale “to access its heritage” (National Museums Scotland, 2002-2003). Il est intéressant de préciser que le NMS a travaillé avec 29 des 32 des autorités locales régionales en 2006-2007, ce nombre augmente à 30 en 2009, puis à 32 en 2012 (National Museums Scotland, 2007, 2009 & 2012). Grâce au NMS, l’exposition itinérante The Lewis Chessmen: Unmasked a voyagé à travers l’Écosse rejoignant plus de 122 000 visiteurs (National Museums Scotland, 2012).

Au même titre que les partenariats nationaux, l’Écosse accorde une grande importance aux partenariats internationaux. Dans le First Annual Report de la Stratégie culturelle nationale écossaise, le deuxième objectif stratégique souligne l’importance de célébrer le patrimoine culturel écossais (Scottish Executive, 2000). Cette célébration est étroitement liée à l’expansion de la présence écossaise sur la scène internationale. Par exemple, entre 2000 et 2004, l’Écosse a pris part à 10 projets conjoints avec d’autres états membres (Scottish Executive, 2005).

L’emphase mise sur les collaborations internationales par l’Exécutif et le Gouvernement écossais est aussi présente dans les documents du NMS.

D'ailleurs, le NMS a travaillé sur un plan international pour orienter son action. Ainsi, on peut lire que "Our intention is to create a framework that encourages deeper engagement, maximizes the productivity of external partnerships and demonstrates the added value which international museum programs can bring to international relations (National Museums Scotland, 2008). Au même titre que le gouvernement écossais, le NMS désire concentrer son action internationale dans certaines régions. Ce plan mise sur des collaborations avec l'Europe et l'UE, la Chine, l'Inde et l'Amérique du Nord, mais le NMS a aussi des projets spécifiques avec l'arc de prospérité (Norvège, Finlande, Islande et Danemark), le Commonwealth (Inde, Pakistan, Canada, Australie et Nouvelle-Zélande), les nations celtiques (Pays de Gales, Ireland et Ireland du Nord) ainsi que les pays en voie de développement (plus particulièrement le Malawi). Ce plan international a probablement eu un impact considérable suite au fait que le NMS précise dans son plan stratégique 2011-2015 que des succès importants ont été réalisés sur la scène internationale (National Museums Scotland, 2013-2014 update).

Ces succès peuvent être mesurés par l'entremise de trois variables, soit les collections du NMS ont voyagé à travers le monde, le NMS a partagé son expertise et le NMS a établi plusieurs partenariats qui ont permis la tenue d'expositions de calibre international en Écosse. Par exemple, en ce qui concerne la première variable, le succès peut être mesuré par l'augmentation du nombre d'artéfacts ayant fait l'objet d'un prêt à une institution culturelle à l'international. Si en 2007, 109 artéfacts ont été prêtés à des institutions réparties sur cinq continents, ce nombre augmente à 130 en 2008 (National Museums Scotland, 2007 & 2008). Dans le même ordre d'idées, le nombre d'expositions de calibre international qui ont eu lieu en Écosse est significatif. Pour la seule année 2004-2005, le NMS a collaboré avec le Museo Nazionale de Florence, le Louvre et l'Hermitage afin de présenter des expositions majeures en Écosse. En 2011, Fascinating Mummies et Catherine the Great, deux expositions exclusives au Royaume-Uni ou en Écosse, ont eu lieu au NMS permettant ainsi à l'institution d'affirmer son calibre international (National Museums Scotland, 2005 & 2011).

Cet article a principalement concentré son attention sur les preuves qui attestent de l'importance des partenariats internationaux dans le domaine culturel écossais. Néanmoins, les prêts internationaux d'artéfacts écossais, le partage de l'expertise écossaise ainsi que la tenue d'expositions

internationales en Écosse sont des moyens efficaces de rendre les Écossais fiers de leurs réalisations et leurs trésors nationaux et, par extension, fiers d'être Écossais. En effet, tel que mentionné par Joachim Blatter, les activités internationales des états européens (ou régions) sont souvent un moyen d'exprimer ou de défendre leur identité culturelle (Blatter et al., 2008).

Pour conclure, il a été question précédemment de l'importance accordée aux partenariats par l'UE (Bauer, 2002). Cette dynamique européenne où la coopération, la collaboration et les échanges sont les mots-clés est aussi présente en Écosse comme en témoignent les résultats obtenus. En effet, les prêts d'artefacts, le partage de l'expertise, la tenue d'exposition grâce à la collaboration d'autres musées s'inscrivent dans la rhétorique européenne sur la place qui doit être accordée aux partenariats. Par le fait même, l'Écosse a compris que l'établissement de partenariats régionaux, nationaux et internationaux représente la voie privilégiée pour faire rayonner les réalisations écossaises; ce rayonnement permet aux Écossais de développer un sentiment de fierté à l'égard de leurs trésors nationaux et leur identité écossaise.

Conclusion

Le but de ce projet consistait à déterminer l'influence de l'Européanisation dans la formulation des politiques patrimoniales écossaises depuis la dévolution survenue en 1999. Selon Radaelli, le degré d'Européanisation des politiques culturelles est faible (Radaelli, 2010), mais dans d'autres secteurs comme les politiques agricoles il en va tout autrement (Versluis, Van Keulen and Stephenson, 2011).

Contrairement à Radaelli, l'hypothèse principale consistait à supposer que l'Européanisation influence les politiques patrimoniales écossaises. À la lumière de la notion de référentiel, des dimensions qui parcourent les politiques publiques européennes ont été identifiées. Cette analyse s'est articulée autour de l'importance accordée au développement culturel des régions ainsi que l'emphase mise sur l'établissement de partenariats.

L'analyse a révélé que ces deux dimensions sont très présentes dans les politiques patrimoniales écossaises. En termes de développement régional, il est important de préciser que l'Exécutif croit fermement que l'impulsion d'implanter des activités culturelles en région doit provenir des autorités locales. Pour ce faire, l'Exécutif désire encadrer leurs actions en faisant la

promotion de la planification culturelle. Les musées locaux s'avèrent être un acteur clé dans cette dynamique régionale. Dans le même ordre d'idées, l'Écosse place une emphase importante sur l'établissement de partenariats au même titre que l'UE. Les partenariats régionaux, mais aussi nationaux et internationaux sont perçus comme des moyens privilégiés pour promouvoir les collections, augmenter la participation du public et stimuler la fierté nationale. L'analyse de ces deux dimensions a permis de révéler que les politiques patrimoniales écossaises servent de catalyseur à l'identité écossaise. En effet, l'Écosse se sert du développement culturel en régions et de l'établissement de partenariats comme un point d'ancrage identitaire.

À la lumière de cette analyse, il est important d'insister sur l'idée que la présence de ces deux dimensions dans les politiques patrimoniales écossaises est significative. Cependant, étant donné que cette démonstration repose sur un nombre limité de dimensions, il est avisé de se demander s'il est possible de conclure catégoriquement que les politiques patrimoniales écossaises sont clairement influencées par l'Européanisation. En effet, la notion de référentiel européen comprend plusieurs dimensions, lesquelles devraient nécessairement être étudiées à la lumière des politiques patrimoniales écossaises avant d'être en mesure de se positionner clairement sur la question de l'Européanisation en Écosse. Quoi qu'il en soit, il est clair que cette analyse invite à poursuivre l'exploration afin de faire la lumière sur le caractère des politiques patrimoniales en Écosse.

Afin d'être en mesure de généraliser la notion d'Européanisation aux politiques patrimoniales écossaises, cette démarche devra ultérieurement prendre en considération davantage de dimensions ancrées dans le référentiel européen. Par exemple, la tendance de justifier les politiques culturelles par les dividendes économiques ou sociaux, l'insistance sur la notion de démocratie culturelle ainsi qu'un processus politique qui mise sur la consultation et la coopération sont des variables qui devraient servir à pousser plus loin la discussion. En s'appuyant sur la valeur de cette recherche qui se trouve dans son analyse qualitative et en maximisant le nombre de dimensions qui découlent du référentiel européen, il sera possible de prendre position sur le degré d'Européanisation des politiques patrimoniales écossaises. Ultimement, les paramètres contextuels de cette étude pourraient être utilisés pour mieux comprendre le cas de la Catalogne, de la Bavière et du Pays de Galles, des régions ancrées dans un processus d'affirmation identitaire au même titre que l'Écosse.

Après avoir complété une maîtrise en histoire (2010) à l'Université du Québec à Montréal, Caroline Cantin a obtenu une maîtrise en science politique de l'Université d'Ottawa en 2014. Sa thèse de maîtrise intitulée Europeanization and Nation-Building Process: The Case of Scottish Cultural Heritage Policies discute de la question de l'Européanisation et de l'affirmation identitaire à la lumière des politiques patrimoniales écossaises depuis la dévolution survenue en 1999. Ses intérêts de recherche concernent les politiques culturelles comparées et internationales, la diplomatie culturelle, et le processus d'affirmation identitaire en Europe.

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Regulation

Yes I Agree*: Assessing the Failure of Privacy "Self-Management" and its Regulatory Reforms

Robert Scherf

Canadians are inured to the idea that our online lives are being recorded. And yet, Canada has strong privacy laws. This article examines the paradoxical relationship between these facts, focusing on online advertising. The article first argues that Canada's privacy doctrine, in which users are trusted to control the exchange of their personal information, is a market failure that must be corrected by regulation.Two policy responses are then examined: stronger technical standards, and the geopolitical struggle to enact interoperable privacy laws. In both cases, reforms have been defeated because they require total commitment from countless interests at odds with one another.

Introduction

It has become cliché for security experts to declare, as Steve Rambam famously did, that "privacy is dead" (2006). The personal details of our lives—pictures, locations, names, and even telephone numbers and email addresses—are now freely shared on the Internet through social networking. In 2010, when Facebook made these details public by default on the profiles of its then 350 million users, CEO Mark Zuckerberg remarked,

> "When I got started in my dorm room at Harvard, the question a lot of people asked was 'why would I want to put any information on the Internet at all? Why would I want to have a website? And then in the last 5 or 6 years … people have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people. That social norm is just something that has evolved over time" (Kirkpatrick 2010).

Although norms governing the voluntary transmission of Personally Identifiable Information (PII: any information that can, on its own or with other information, be used to identify, locate of contact a single person) have substantially changed since the turn of the twenty-first century, people still generally expect that they should have control over who gets to see their information. Over the same period, the dominant business model for Internet content delivery has come to rely upon the collection of PII as 'payment' for that content. While users are nominally giving their consent to these kinds of transactions, very few Internet users have the technical know-how or pay enough attention to fully understand the value of the PII they are giving away (Ur et al. 2012).

This article will examine the problem of meaningful consent for PII transactions through the lens of Online Behavioral Advertising (OBA), the dominant model of selling ad-space on the Internet, and will make the case that current regulation regimes have led to market failure. It will explore some of the proposed solutions to this problem, and parse out their impediments to implementation. Finally, we will look at a new way of thinking about PII transactions and why it won't bring the reform it promises.

Online Behavioral Advertising and PII

In general, World Wide Web content is free and supported by advertising. Early incarnations of this business model simply placed static advertisements on Web pages, akin to highway billboards. As Internet infrastructure has become more sophisticated and the shift toward professional content production has made site operation more expensive, however, online advertisements have adopted a higher-revenue model where ads aretailored to the interests of individual users based on data collected about those users.

OBA is the dominant approach to tracking user activity across the Web. Although the term encompasses a range of technical implementations, its general form is consistent. Each approach shares the same three sets of economic actors: advertisers produce advertising content and receive payment for the service of those ads from advertising networks. Producers make and publish the content that users consume. Finally, and most importantly, the advertising network is a middleman between advertisers and producers. While advertisers create advertising content, it is the ad network which contracts the placement of those advertisements and decides which

advertisements will be shown (Toubiana 2010).

In the traditional OBA model, an ad network places a small piece of data, or "cookie", in a user's Web browser and queries that data automatically every time the user visits a site within the network's vision. By keeping track of all the sites that cookies report from, ad networks build a sophisticated profile of each user's behavioral Internet history. Users are sorted into categories that range from general (sports fan) to specific (lives in Oshawa, female, earns more than $40,000 per year, may be looking to purchase a new car) (Google AdSense 2014). Networks then sell advertising space based on a user's placement in one or more categories. It is important to note that only the ad network has access to user data. What they sell advertisers is the attention of, for example, "people who like Louis Vuitton." The advertising industry maintains that targeted advertising yields a higher return on investment than untargeted methods — after all, a user who has recently done research on the best winter boots is more likely to click an ad promising great deals on footwear.

Sophisticated user profiling is the most salient issue of concern for privacy advocates. Although ad networks do not specifically collect the names or email addresses of users, OBA methods utilizing simple cookies are able to track extremely revealing information about Internet use. These methods record four essential components (Toubiana 2010): Clickstream, which is the list of websites visited by the user within the ad network's vision; Behavioral Profile, which are the user's preferences and interests as inferred by the clickstream; an Ad Impression History, which is the list of advertisements the user has seen in the past; and an Ad Click History, which is the list of advertisements the user has clicked on in the past.

Given enough time and browsing activity, advertisers can thus collect all the information they would ever need to know about individual users. Imagine how useful – and valuable – it would be to have a detailed list of every article a person has ever read online, every product she has ever viewed, and every search term she has ever entered. OBA is a system designed to collect that information.

The advertising industry claims that OBA does not collect PII because data is fully anonymized; rather than being identified by name or email address, each user is attached to a random string of letter and numbers. While it is true that a fully pseudonymous system would not contain PII because

intimate information could not be linked back to any real-world user, even the best anonymization procedures can be surprisingly easy to defeat. In a 1990 study, it was found that 87.1 per cent of Americans could be "uniquely identified by their combined five-digit ZIP code, birth date (including year), and sex" (Ohm 2009). As OBA databases collect more information about putatively pseudonymous individuals, and as the tools for data analysis become more sophisticated, the risk of deanonymization grows.

Solove calls this a problem of aggregation, and offers a scenario where a person has given out 50,000 'Facts' about herself over a period of time:

> "The person has not been negatively affected by revealing these pieces of data. One day, the person reveals Fact 50,001, a relatively innocuous fact that gets combined with some other facts the person provided many years ago to reveal Fact 50,002. De duced via a newly created algorithm, this fact proves harmful to the person" (Solove 2013).

When advertisers possess complete information about an individual's location, income, interests, and contacts, there is an extremely fine line between pseudonymity and identifiability. Our current privacy regime may therefore cause "significant harm that is difficult to avoid," (Ohm, 2009) and that research into re-identification techniques "sound[s] the death knell for the idea that we protect privacy when we remove PII from databases."

Canada's Privacy Regulation and OBA

Canada has a comprehensive governing law for the protection of personal information in the private sector: the Personal Information Protection and Electronic Documents Act (PIPEDA), under which the Office of the Privacy Commissioner of Canada (OPC) issues rulings on privacy matters. OBA was the subject of both wide-ranging OPC public consultations in 2009 and a policy position paper in 2012. In each, OPC was extremely careful to balance the interests of the online advertising industry with those of privacy advocates. Industry representatives "noted that online advertising helps 'power the Internet' and drives the digital economy, arguing that growth comes from the ability to target online advertisements to Internet users," while at the same time "most participants" ultimately "agreed that there were privacy implications from online tracking (even if not all agreed that the data collected from tracking was personal information)" (OPC 2012).

Indeed, today's Web would not exist without OBA. Users have demonstrated a consistent preference not to pay for Web content, and OBA – which commands more revenue than traditional static advertisements – is perhaps the primary reason that online publications can afford to pay their editorial staff. At the same time, as Canada's privacy regulator, OPC was correct to acknowledge that OBA should not be used as a carte blanche for the unrestricted collection and use of personal data.

With strong arguments on both sides, OPC issued a position that fell in line with the status quo of industry self-regulation, a policy called "privacy self-management" by data protection experts. In this model, advertisers and websites set the terms of use for privacy protection, and users implicitly consent to those terms by accessing content. Users may opt out of data collection if they wish, and OPC mandates that opting out be instant and persistent. Additionally, the collection of certain sensitive information, such as health records, is forbidden.

Even accounting for the dominance of the OBA business model, OPC's position is surprising given that privacy experts widely recognize the potential damage of unchecked PII collection that privacy self-management leads to. The key to understanding OPC's rationale is in its interpretation of PIPEDA section 5(3), which governs the collection and use of personal information. The section reads:

> "An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances" (Parliament of Canada 2011).

In response, OPC wrote in its position that,

> "[S]ome users may be uncomfortable with the notion of being 'followed' around the Web, yet think that advertisements geared to their interests are useful and, given that services are generally free and users ought to expect that some personal information may be needed to access services and information, OBA may be considered an appropriate purpose for the collection, use and/or disclosure of personal information from the perspective of the reasonable person" (OPC 2012).

The position goes on to argue that because a reasonable person

understands the parameters of the PII transactions she participates in online, her actions constitute meaningful consent to data collection. While this would seem to make logical sense, research indicates that people—even reasonable ones—are at a severe disadvantage when it comes to making informed decisions about the collection and use of their data. Using meaningful consent as a yardstick, as the privacy self-management model does, is seriously flawed; and in presenting meaningful consent as a useful test of privacy, OPC is contributing to a persistent market failure when it comes to data protection.

Meaningful Consent: Stacking the Deck Against Users

OBA is, ironically, easy to circumvent with the proper tools. Modern Web browsers now feature a "private browsing" mode that does not allow any cookies to be accepted, and third-party developers have created countless add-ons and plug-ins with configurable settings to thwart tracking. Additionally, users may simply delete their browser cookies on a regular basis. Despite the availability of privacy tools, however, only a fraction of Internet users opt to employ them.

This contradiction indicates a fundamental failure in the privacy self-management model. Solove writes that privacy self-management "takes refuge in consent," no matter why or how consent is being given for data collection (Solove 2013). Consent "legitimizes nearly any form of collection, use or disclosure of personal data." The problem is that consent, in the case of online data collection, is rarely legitimate. For Solove, the complications of meaningful consent come in two categories:

1. *Cognitive disadvantage*

Internet users suffer from a cognitive disadvantage when trying to assess privacy risks. Individual users rarely take the time to read the privacy policies and End User License Agreements of sites they visit (Milne and Culnan (2004) found that only 4.5 per cent of users "always" read privacy notices and 14.1 per cent "frequently" read them), and indeed doing so would take an extraordinary amount of time. McDonald and Cranor (2008) estimated that reading each privacy policy for the 1400 websites the average American visits every year would take 76 workdays. More importantly, users seldom act upon threats to their privacy, even when presented with built-in methods to opt out of data collection. Solove, for example, presents one

survey showing that only 0.5 per cent of online banking customers exercised an opt-out right when given the choice (Solove 2013).

Solove posits that because they tend to skip boilerplate privacy notices, users lack the knowledge to connect their actions with the future consequences of giving up personal data. As a result, most users simply forego options that would offer increased protection, creating a situation where their actions are at odds with their intentions: although users report that they care very much about privacy, they actually know very little about the extent to which their data is being used (Ur, 2012). This is consistent with findings in the field of behavioral economics that state that people are likely to take the easier "default" path if one of two choices presents any cognitive resistance (Acquisti and Grossklags 2008).

2. Structural disadvantage

Users within the self-management model also face a structural disadvantage having to do with how privacy decisions are designed. While users can cope with a handful of entities vying for personal information, in reality there are just too many actors that "collect, use and disclose people's data for the rational person to handle" (Solove 2013). The average user visits dozens of websites per day, and each has differing privacy policies and may be served by different advertising networks. Each combination of actors represents a unique privacy challenge—far too much for any user to process in a meaningful way, even if any individual actor only demands a small cognitive commitment. Additionally, decisions to disclose personal information are made at an early point in time. An insubstantial data point may, due to the aggregation effect, cause an inadvertent information disclosure at some later time. Or, even more troubling, data that seems worthless to a user today may by some circumstance become extremely valuable in the future. After all, due to the ease of its reproduction, users can never trust that digital data will be destroyed.

Asking users to manage their own privacy through the mechanism of meaningful consent is, upon closer inspection, a regulatory regime that is extremely difficult to defend. The deck is stacked against users on both sides of the decision, whether they are assessing the value of a PII transaction or trying to make cost-benefit evaluations about how PII will be used in the future. Under privacy self-management, users lack the tools they need to exercise meaningful control over their data.

OBA as a Market Failure

Stiglitz (2012) demonstrates that market failures may arise from the irrational decisions of consumers; and while he places this argument within the bounds of behavioral economics (where, for example, consumers cannot be counted on to save for retirement), the informational asymmetry we see in privacy regulation is an equally valid explanation for individual irrationality.

If both the cognitive and structural contexts of data collection decisions are designed to suppress rational decision-making on the part of consumers, then the market for PII must be a failure. How else can we explain a system where consumers are happy to part with their data in exchange for a fraction of its true worth? The only conclusion is that the measure of meaningful consent is ill-calibrated for the job. Users consistently undervalue PII when making privacy transactions because a proper valuation is, for most, out of reach. Or, as Stiglitz puts it, "individuals may not be rational and may deviate from rationality in systematic ways. Individuals … have to be saved from themselves" (Stiglitz 2012).

Stiglitz suggests that market failures brought on by consumer irrationality may be remedied by government regulations, based on welfare economics analysis; that is, by examining the extent to which an intervention will impact the expected utility of the actors involved. Stiglitz notes that this can be difficult—and in the case of PII, it is especially true. The valuation of private data is highly contested, given the innumerable ways it may be exchanged and used in both the short and long term. In summarizing the multitude of economic analyses surrounding PII, Alessandro Acquisti wrote that:

> "the only straightforward conclusion about the economics of privacy and personal data is that it would be futile to attempt comparing the aggregate values of personal data and privacy protection, in search of a 'final', definitive, and all-encompassing economic assessment of whether we need more, or less, privacy protections. Privacy means too many things, its associated trade-offs are too diverse, and consumers' valuations of personal data are too nuanced" (Acquisti 2010).

While it may be impossible to put a dollar value on stronger privacy regulations, it is clear that the information deficit suffered by consumers in

their decision-making must be addressed in order to bring the PII market into equilibrium.

Another rationale for regulatory intervention is that PII transactions also have strong distributive impacts. The privacy self-management model addresses each transaction as an isolated incident, but privacy scholars argue that it is much more useful to think about privacy frameworks cumulatively. For example, Richards argues that privacy safeguards intellectual pursuits, and that there is a larger social value to ensuring the robust and uninhibited exploration of ideas (Richards 2013). Similar arguments have been made for protecting privacy as a proxy for protecting innovation (Cohen 2012). Moreover, because privacy regulations have larger protective effects on some individuals than others, the extent to which regulators commit to those protections "fosters a certain kind of society, since people's decisions about their own privacy affect society, not just themselves" (Solove 2013). If privacy self-management is not an effective means of encouraging the protection of PII, and it is clearly not, then it would benefit society to find a more useful model.

Moving Forward: Two Approaches, Two Roadblocks

The failure of privacy self-management has, at least implicitly, been acknowledged for some time. Two strands of thinking have developed in response: regulatory reform by technical standards, and regulatory reform by geopolitical pressure. Each approach faces challenges arising from the entrenched self-regulation of the online advertising industry; examining the manifestations of this entrenchment gives some valuable perspective on the difficulty of improving PII protections.

1. Exercising the right to consent through technical standards

Privacy regulators have begun to frame the issue of meaningful consent as a question about whether users should be granted a "right to consent" to collection, or a "right to refuse" once collection has automatically begun. In essence, this is the difference between opting in and opting out of PII transactions.

In 2009, the EU revised its e-privacy directive to require that users be given a right to consent before ad networks begin the "storing or accessing of information stored in the user's terminal", which manifests itself as a ban on

placing cookies on the user's machine without consent. Before making a decision, users must be given "clear and comprehensive" information about how their data will be used and can give consent using browser options as long as that is "technically possible and effective" (European Parliament 2009). Browsers that accept cookies by default, which is often the status quo, do not pass this test. Similarly, in 2011, the FTC released its proposal for a persistent browser setting to signal that a user does not wish for her data to be tracked and collected. This "Do Not Track" (DNT) concept was quickly added to major Web browsers and won support from President Obama, whose "Consumer Privacy Bill of Rights" included it as a core regulatory proposal (White House 2012).

Efforts to change the default setting of PII transactions are laudable, but using technical standards as a regulatory tool is susceptible to circumvention. Do Not Track, for instance, places a simple HTTP header in the user's Web browser requests to websites. When a DNT-enabled browser "shakes hands" with a site, it also asks that the site not track its activity. The theory behind this system is elegant, but suffers a major flaw in that respecting the request header is entirely voluntary for the website being accessed. This has led to numerous compliance problems. Apache, the software that powers more than half the world's Web servers, issued a patch in September 2012 that ignores DNT headers from Microsoft's Internet Explorer 10 browser. Yahoo, one of the Web's largest content portals, did the same shortly afterward (Gilbertson 2012). The point of contention was that Internet Explorer enabled DNT by default; Yahoo argued that it "does not consider the current Microsoft … install flow to represent explicit user consent with respect to Do Not Track" while reiterating its support for the protocol in general (Gilbertson 212). Privacy-focused digital standards can be useful when all actors follow them, and become meaningless when only a few actors do not. Users who are already at a cognitive disadvantage cannot be asked to additionally keep track of which service providers are following obscure protocols.

Another issue with regulating data collection by technical standards is the strong path dependency of the Web content business model. Online editorial outlets and aggregator websites which serve user-generated content rely upon revenues generated by OBA. Changing a foundational element of the online economy through the technical standards process, which requires the negotiation of hundreds of actors across the globe, is therefore a contentious proposition. Unsurprisingly, when the World Wide Web Consortium—the Web's international standards organization—convened a working group to

hammer out the specifics of the DNT mechanism, the first draft specification was accompanied by a note from the chairman that called it "a compromise proposal" that "reflects extraordinarily painful cuts for privacy-leaning stakeholders, including complete concessions on two of the three central issues" (Mayer 2012). The advertising industry, representing the Web's revenue-generating engine, eventually withdrew from the Consortium working group over differing interpretations of what "tracking" means (Ingraham 2013) and reverted to its own self-regulatory privacy scheme (Digital Advertising Alliance 2012). Reforming PII transactions in favor of more privacy is in direct opposition to the interests of online advertisers, which have enjoyed self-regulation since the inception of Web advertising. Any plan that would require their voluntary compliance (or good-faith participation in the plan's development) cannot result in a high standard for privacy—if the plan is even accomplished at all. The historical legacy of self-regulation is, in this policy area, too powerful.

2. Stricter data protection in a geopolitical context

Greenleaf notes that "it is important to recognize that there is no global organization 'governing' data privacy which is in any way equivalent to, say ICANN in the field of domain names and numbers" (Greenleaf 2012), and there are no international treaties binding the data protection practices of signatory nations. This is in spite of the globalized nature of the Internet: software development, advertising sales and Web traffic are each highly decentralized around the world. Personal data originating in one country may be captured and stored within another country that has different rules for PII transactions. A truly comprehensive regulatory framework would, therefore, require total interoperability across borders.

The closest that the international community has come to interoperable privacy regulations is the European Union's (EU) aggressive promotion of its own Data Protection Directive (DPD) as a benchmark for new privacy frameworks in other jurisdictions. In 2010, the European Commission wrote that the EU must "remain a driving force behind the development and promotion of international legal and technical standards for the protection of personal data, based on relevant EU and other European instruments on data privacy" (European Commission 2010). In addition to political promotion, the EU has "successfully influenced other regional privacy laws by restricting the transfer of personal data from member states to countries without adequate privacy protection" (Brown and Marsden 2013). Greenleaf

reports that this has resulted in “European Standard” privacy laws increasingly becoming popular in Latin America, West and North Africa, Columbia, Uruguay, Taiwan and South Korea (Greenleaf 2012).

The DPD springs from the German doctrine of “informational self-determination.” This concept protects individuals against “unlimited collection, storage, use and disclosure of his/her personal data,” which “warrants in this respect the capacity of the individual to determine in principle the disclosure and use of his/her personal data” (German Federal Constitutional Court 1983). This has been endorsed by privacy experts and legal scholars as one of the strongest possible approaches to privacy protection (Ontario Information and Privacy Commissioner 2013).

American officials have expressed concern with the “European Standard” and what they see as a potential curtailing of technology industry interests. In a confidential cable, members of a 2009 US trade mission to the EU wrote that:

> “European privacy and data protection concerns continue to jeopardize our commercial, law enforcement, intelligence and foreign policy objectives. Data privacy is an area of growing complexity and touches ever more US interests, from the visa waiver program to e-commerce … [Our approach] should aim to ensure that data privacy rules will not hinder economic growth, endanger global economic recovery, or discourage greater enforcement cooperation” (US State Department 2009).

Were the European model to become the sole international standard, businesses that rely upon the unchecked collection of PII would face a threat to their existence. In response, the United States has played a key role in developing a competing standard for internal privacy regulation, the APEC Privacy Framework (2005), which focuses on accountability for harm caused by privacy breaches rather than protecting PII ex-ante. While initially embraced by APEC members and in North America, Greenleaf found that by 2012 the Framework had “comprehensively failed to establish an alternative paradigm for data protection” with “almost no evidence of adoption of its principles in legislation” among APEC countries (Greenleaf 2012).

The creation of the APEC Framework as a tool to stop the spread of the DPD demonstrates that privacy, like trade, climate change, and military control, is

an internationally contested space. Although the United Nations (2012) now recognizes freedom from the arbitrary collection of personal data as a basic human right, the exact regulation of that collection is subject to the interpretations and interests of economic and political actors. Any privacy regulation that aims for total interoperability will therefore have to contend with resistance at the international scale. For now, while many countries enjoy DPD-style protections, we are still a long way from a global standard.

"Big Privacy": Ambitious, Elegant, and Impossible

If the two strands of regulation aimed at solving the failure of privacy self-management have both failed to create change, how do privacy experts hope to resolve the conundrum of PII collection?

Regulators now realize that achieving change is too difficult within the current economic structure of data collection. As a result, many new proposals seek to radically alter the underlying architecture of Web advertising and PII collection. These approaches are appealing to privacy advocates, but they do not offer meaningful tools for escaping the privacy self-regulation regime identified in this article.

Perhaps the most well known of these new proposals is "Big Privacy". In 2013, Ontario's Information and Privacy Commissioner released a proposal for Big Privacy (2013), an entirely new system for organizing users' decisions concerning PII transactions. The approach is an offshoot of former Commissioner Ann Cavoukian's Privacy by Design approach, wherein privacy protections are built into the entire lifecycle of a product or process. Similarly, under Big Privacy, users place all of their PII in a library, called a "personal cloud," and may "lend" all, some or none of that information to advertising networks and other entities on a (perhaps) temporary basis. When a user revokes access to her data, it leaves the other party's servers without a trace. This allows users to engage in Internet activity (including participation in OBA) without risking unforeseen future effects of that activity; and if anything goes wrong, users can reclaim their privacy.

The Big Privacy proposal is technically sound, and represents a vision of the future where users are offered unprecedented control over PII without necessitating a high level of technological proficiency. On a practical level, however, one can hardly imagine how the proposal could be implemented if comparatively gentler methods have been brushed aside by the advertising

industry. Such a model would face both the challenge of mediating effects of regulation by technical standard, and the difficulties of getting international actors to agree on it. In either case, unscrupulous, inept or uncooperative actions from even one key stakeholder would doom the entire proposal.

In its far-reaching optimism, the Commissioner's proposal is reminiscent of Evgeny Morozov's "technological solutionism" critique—the farcical idea that with the right code, technology can solve all of mankind's problems, making life completely frictionless. Rather, privacy regulators must acknowledge that they are operating inside a space contested by extremely powerful and well-organized opposing forces. Any solution to the unchecked collection of PII must be implementable within the context of a business model completely, fundamentally, recalcitrant to regulation. Or, perhaps more realistically, privacy advocates might abandon the idea of a regulatory solution and seek to offer a more attractive business model that does not depend upon PII.

Conclusion

This article has explored the regulatory problems associated with seemingly innocuous data collection in online advertising. It has demonstrated that OBA collects information which is, or which could become, personally identifiable through combinatorial and analytical methods, meaning that PII collection represents a threat to privacy. Because users face strong cognitive and structural disadvantages in the decision-making process surrounding data collection, they cannot by any reckoning be demonstrating meaningful consent to that collection. Further, because our privacy regulation is predicated on meaningful consent to PII transactions, this situation represents a market failure that requires regulatory action. The solutions that have been pursued so far, however, have been thwarted by the political and economic strength of the self-regulated online advertising industry. For now, what to do about PII collection remains an open question.

The online content enjoyed by billions of people today is funded by the collection of their personal information on an incredible scale. While they may not realize it now, that information is of an intimate nature and is, in a sense, being used against them by marketers. This is a clear call to action for regulators, who must work quickly to find solutions that will protect personal privacy; the problem of unchecked PII collection is growing larger and more out of control with every passing day.

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Regulation

Private Regulation: A Viable Alternative for Global Governance?

Steven Lampert

Free-riding and coordination issues have largely impeded traditional forms of global governance from enforcing standards and engendering change across policy areas. This paper assesses whether private regulation is viable alternative for reversing this trend. Using a theoretical framework, the paper examines the effectiveness and accountability of divergent private regulators — the International Accounting Standards Board (IASB) and the Forest Stewardship Council (FSC). While the multiple-principles issue may jeopardize the efficacy of private regulation, the IASB and FSC have successfully mitigated its effects. Ultimately, the paper demonstrates that private regulation is a viable global governance model, and one that can have transformative impacts across policy areas.

Introduction

Global financial and environmental issues have gained prominence on the agendas of national governments in the past decade. However, traditional public governance forms and international institutions are failing to generate substantial progress across these issue-areas. Free-riding risks and coordination problems have plagued various international agreements, such as the Copenhagen Accords and the Doha Development Round. New forms of global governance are being trialed in response (Hale and Held 2011). Private regulators outside state enforcement constitute one of these innovative forms. This paper will examine the effectiveness and accountability of two such private regulators — the International Accounting Standards Board (IASB) and the Forest Stewardship Council (FSC) — each of which employs a voluntary-based compliance model at the core of its structure. By analyzing case studies from different global policy areas, we are better positioned to determine the viability of private regulators in global governance. The paper concludes that while the multiple-principles issue and

its potential to marginalize certain interests may undermine the efficacy of private regulators, this new form of global governance has succeeded in addressing issues and leveraging progress across policy areas. Private regulation is thus a viable and effective alternative to providing the global public goods essential to our livelihoods.

Theoretical Framework: Effectiveness and Accountability

Measuring the effectiveness of private agents in global financial and environmental regulation requires its own framework. This paper will focus on two considerations under which to complete this assessment. The first is effectiveness: whether private regulators meet their objectives and create progress in their issue-areas. Measuring progress can pose its own challenges, especially if results cannot be quantified or measured. Nonetheless, evaluating the structure and accessibility of standards can permit some understanding of how regulators may meet their goals. The second consideration is accountability: the extent to which private regulators represent a wide range of public and private interests. This too can be difficult to measure because certain regulators may be less transparent than others. However, Buthe and Mattli's (2011) analysis can assist in this regard. The authors argue that we can "investigate organization capacity and structure" in order to evaluate how different groups may influence regulators and their standard-setting processes. This enables us to make inferences aboutwhether private regulators appeal to certain interests over others — also known as the "multiple-principles issue" (Mattli and Buthe 2005.

IASB Effectiveness: Voluntary-Based Success

Assessing IASB's effectiveness in meeting its objectives requires an understanding of the problems the body confronts. IASB was founded in 2001 as the successor to the International Accounting Standards Committee. According to Buthe and Mattli (2011), the board aims to outline "a single set of high-quality global accounting standards, known as the International Financial Report Standards (IFRS), "to bring greater stability to global financial markets." IASB seeks to harmonize standards for two reasons: first, harmonization reduces transaction costs and enhances market stability for firms; and second, it improves the transparency and comparability of financial statements for investors and shareholders. A number of states have recognized the importance of IASB's efforts. As of 2011, the United States (US), the European Union (EU), and at least 90

other nations had adopted the IFRS (Nolke 2011).

The effectiveness of IASB can be largely attributed to its voluntary compliance structure. Vogel (2008) contends that such structures are successful because they incentivize countries to abide by standards depending on whether they match the countries' interests. This model differs from the traditional command and control approach often employed to resolve on global issues. This approach involves passing legislation, which directly regulates an industry or activity. Voluntary compliance structures operate differently; instead, endorsements play particularly significant roles. As Buthe and Mattli suggest, the US adoption of the IFRS triggered other states to follow since it ensured easier access to the country's large capital market. The EU's adoption of the IFRS prompted a similar effect (Buthe and Mattli 2011). These powerful endorsements have ultimately increased the pace, breadth and effectiveness of IASB's standards production.

FSC Effectiveness: A Limited Reach

FSC's success in meeting its objectives is not as clear. The council is an international membership based organization that regulates standards for sustainable forestry practices in areas of global forest management, production chains, and accreditation (Pattberg 2005:182). The final area, accreditation, is arguably FSC's most effective mechanism for generating progress. It accredits certifiers on the basis of its standards, and issue certificates to forest management units or producers that conform to those standards (Pattberg 2005). The certification system motivates firms to adopt FSC's voluntary standards in order to protect their reputations and brands (Vogel 2008). In this sense, FSC functions as a "non-state market driven form of environmental governance" (Vogel 2008) in which private firms and nongovernmental organizations (NGOs) compromise on an acceptable set of standards. The system's monitoring framework also contributes to its effectiveness. An independent body reviews accredited units every five years at which point the FSC reserves the right to strip accreditation if standards are no longer met (Pattberg 2005).

While FSC's certification system has been quite effective, its reach is limited. The distribution of FSC standards is concentrated in industrialized countries (Auld et al. 2008). While industrialized countries contain relatively more institutionalized forest sectors, this reality nonetheless poses a significant problem. FSC certification does not occur in regions in which large masses

of sensitive forests are under pressure (Auld et al. 2008). FSC then fails to fulfill its primary objective. The council should address these issues to prevent them from undermining the board's accountability moving forward.

IASB Accountability: U.S. Bias?

The second consideration in evaluating the validity of private regulators is accountability. Mattli and Buthe's analysis of the multiple-principles issue illustrates this consideration more clearly. The theory states that private agents have both public and private principles — or stakeholders — to which they are accountable. Private agent actions are largely determined by the "relative tightness of competing principle-agent relationships." This tightness increases proportionally with the extent to which the agent is dependent upon the principle for financial viability (Mattli and Buthe 2005). This point is critical, considering that private agents could pursue interests of private principles at the expense of public interest.

We can partly determine whether IASB represents a wide spectrum of global interests. On the surface, the board seemingly succeeds. Though IASB is a private group, its organizational structure lends itself to incorporating a wealth of different perspectives and interests. The board consists of 15 full-time members of various backgrounds and countries in different regions of the world (Nolke 2011). IASB's standard-setting process also theoretically functions to provide room for various perspectives. The formalized draft review stage allows different members of the board to review proposals and offer feedback and amendments (Buthe and Mattli 2011).

In theory, this built-in accountability measure is crucial for IASB's success. In practice, however, it may be subject to the multiple-principles issue. The IASB is modeled after the US Financial Accounting Standards Board (FASB). Certain states, particularly members of the EU, have questioned this relationship, arguing that American firms are better positioned to exert their views and regulatory preferences on the IASB's standard-setting process. There is proof to substantiate this claim. For instance, IASB uses the fair value accounting approach, which is preferred in the US and values assets at current market prices. Nolke (2011) argues that this approach favours a short-term investor perspective toward corporations -- a view shared by many EU member states. IASB largely ignores other approaches in the process. For example, the historical cost accounting method used prominently in Western Europe is considered to be more prudent in

preserving the long-term perspective of lenders and management (Nolke 2011). Yet the IASB has made few concessions to appropriate the use of historical cost accounting (Buthe and Mattli 2011). By adhering closer to their US principle at the expense of other interests, the IASB risks challenging its own accountability to a large segment of its membership.

FSC Accountability: Multi-Sector Representation

In contrast, the FSC works more effectively to consolidate the interest of its principles. FSC's membership consists of environmental NGOs, industry associations, and social groups (Auld et al. 2008). This representation reflects a mandate to ensure that "stakeholders whose interests are often marginalized are empowered to take a full and active part in the development of standards" (Pattberg 2005). FSC's technical committees also furthers its accountability, as both the expertise of forest managers and producers as well as non-profit actors are involved in the process.

Beyond its diverse membership, however, FSC faces some criticism that its structure offers greater influence to civil society as opposed to business actors (Pattberg 2005). This claim has prompted some industry associations to abandon FSC standards and move towards other competing schemes, such as the Pan-European Forest Certification, whose standards are more consistent with their own interests (Auld et. al 2008). The threat, however, seems hollow. FSC remains the dominant regulator in sustainable forestry practices. There is little reason to believe that change is imminent.

However, if FSC hopes to secure a long-term position as a global regulator, it must seek ways to modify its model to gain the support of forestry industries in the developing world. This progress would enable the council to appeal to an even wider range of global public and private interests and avoid the multiple-principles issue moving forward.

Lessons Learned

To reiterate, by analyzing case studies from different global policy areas, we are better positioned to make credible conclusions about the effectiveness of private regulators in global governance. With that said, there are a few general trends we can discern from this exercise. For one, it is clear that the effectiveness of private regulators relies heavily on voluntary-based compliance structures. These structures have been more effective in

engendering progress than the command and control approach of traditional global governance forms, which often face free-riding and coordination issues. However, private regulators should be wary of the multiple-principles issue—arguably the largest threat to their continued effectiveness. IASB and FSC have prevented the issue from undermining their operations to this point. The issue has potential to evolve and to create a similar stagnant environment which has plagued various international institutions and negotiations. Maintaining a neutral position in enacting regulation and ensuring membership is fully represented is a difficult task. However, if private regulators can limit this accountability concern and succeed in meeting their primary objectives, they could have a profound impact in global governance. More importantly, the models and strategies employed can be successfully applied across international issues currently in impasse.

Conclusion

Traditional forms of global governance have not been completely effective in generating sustainable solutions to global issues. Certain innovative forms of governance are emerging in response. This paper uses two case studies — the IASB and FSC — to shed some insight into whether private regulators can operate as viable global governance actors across various policy issues. Two considerations are evaluated to determine this validity. The first is effectiveness—whether the private regulator meets its basic objectives and engenders progress within its issue-areas. The second is accountability—whether the private regulator represents a wide range of global public and private interests.

IASB fulfills its goals by employing a voluntary-based compliance scheme to harmonize financial reports and standards across a wide set of countries (Buthe and Mattli 2011). Though the influence it lends to US firms limits the board's accountability, this issue ultimately has not rendered the IASB ineffective. In contrast, FSC's fulfillment of its objectives is not as clear. This reservation largely stems from an inability to extend its certification scheme to much of the developing world (Auld et al. 2008). Nonetheless, its voluntary certification scheme has provided effective regulation and the council represents a wide range of both public and private interests. We can discern from this exercise that the voluntary-based compliance structure is significantly responsible for private regulators success in global governance. The multiple-principles issue, however, may jeopardize success and create a

similarly stagnant environment to that which currently plagues many international institutions and negotiations. The IASB and FSC have successfully prevented the issue from undermining their operations to this point. If this issue continues to be mitigated, the private regulation model can have transformative impacts for global governance across policy areas.

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Inequality

Why Inequality Still Matters in a "Boom": A Portrait of Intraprovincial Disparity in Alberta

Scarlett Jones

The development of a comprehensive profile of inequality in Alberta further informs theories of economic growth and inequality and provides an excellent opportunity to examine the interplay between inequality, labour market outcomes and fiscal and social provincial policies. This paper will first provide an overview of Alberta's economy and labour market and then establish a profile of inequality in the province using data on poverty, income, wealth, debt, gender, immigration and Aboriginal status and families. Next, the effect of the recession on inequality will be explored in an attempt to determine the resilience of the Albertan economy when faced with economic downturn in the province as well as the impact of the recession on inequality. Finally, a series of considerations and recommendations will be put forward and the greatest challenges to their implementation will be explored.

Introduction

Since 2008's economic recession and the subsequent Occupy Movements, the rise of socioeconomic inequality in developed nations has become a fixture of political and public discourse. This trend towards increasingly disparate wealth accumulation and income inequality has been tracked across countries (OECD, 2008; 2011) as well as in Canada (Fortin et al., 2012; Frenette et al., 2009; Heisz, 2007; Kerstetter, 2002). Despite the prevalence of inequality as a discussion topic, there remains little consensus as to the mechanisms at work. Economic theories and empirical studies on the relationship between economic growth and inequality are contradictory on the detriments of growing inequality, which has been portrayed as simultaneously cyclical (Connard, 2012; Turchin, 2013), a cause for concern (Wilkinson and Picketty, 2009), and a new reality (Krugman, 2014). The United States' 2008 decline in fortunes, however, inextricably linked

socioeconomic inequality with hard times and much of the discourse therefore applies a recession lens to incidences of inequality. Consequently, recommendations overwhelmingly focus on improving labour market outcomes through increased education, job creation and productivity, and reduced unemployment (Luce, 2012; Nelson & Stephens, 2012). While the labour market undoubtedly plays an integral role in shaping economic outcomes, this paper seeks to establish whether or not inequality is more than a symptom of an ailing labour market or a side effect of economic growth and the role that policy plays in shaping inequality.

According to a new OECD report (2014), regional disparity in Canada is the third widest in the developed world. Diverse populations, economies, industries, and natural resources account for interprovincial inequality, which is addressed at a federal level through constitutionalized equalization payments; namely, the Canada Health Transfer, and the Canada Social Transfer. In contrast, intraprovincial inequality -- socioeconomic inequities within a province's population -- is primarily the domain of provincial governments who administer important portfolios such as healthcare, student loans, social assistance, natural resources, and provincial taxes thus providing an excellent opportunity to study inequality in the context of provincial policies and realities.

Alberta is a particularly interesting case as it is a province where job creation is high, taxes are low, capitalism is booming -- and so too is inequality. A recently released Statistics Canada report reveals that the top ten percent of income earners in Alberta in 2012 took home 50.4 per cent of total income in 2012, making it the only province to be more unequal than the United States, where the top ten per cent of earners take home 48.2 per cent of the total income. Nor is this the first time inequality in Alberta has been noted. Previous reports by the Parkland Institute and a research brief to the House of Commons Standing Committee on finance (2012; 2013; 2014; Corbett and Greselin 2013) identify Alberta's Gini coefficient as the highest in the country. The coexisitance of high levels of inequality with competitive economic growth, high labour market participation and median wage, and low unemployment and poverty rates poses a seeming contradiction and highlights the question: why is Alberta so unequal? Is income inequality in Alberta driven primarily by gains in the top deciles or have the gains of Alberta's richest come at the expense of the lower and middle class?

Economic Profile

Alberta's labour market benefited greatly from massive economic gains over the past decade. Unemployment is currently at 5.3 per cent and labour market participation is 73.0 per cent – both well above national averages of 6.8 per cent and 61.3 per cent, respectively (Statistics Canada, 2015). These gains can be attributed to the province's energy sector: while non-renewable resource sectors (mining, oil, gas and forestry) were responsible for 7.8 per cent of total employment in 2013 (Government of Alberta, 2014), they accounted for 22.1 per cent of total GDP (Government of Alberta, 2013). Moreover, a spillover effect has increased wages and the demand for labours in other sectors. Fortin et al. (2012) found that rapid wage growth in Newfoundland, Saskatchewan, and Alberta is a result of growth in the extractive resource sector, which also tended to benefit less-educated workers in these resource-rich provinces.

Alberta's fiscal policies and tax structure are meant to be extremely competitive and conducive to economic growth. Not only does the province have no sales, payroll or capital tax, or health premiums, it is also the only province with a flat-rate income tax of 10 per cent. Indeed, "if Alberta employed the tax system of any other province, Albertans and Alberta businesses would pay at least $11.6 billion more in taxes each year" (Alberta Treasury Board, 2014). A comparison with US corporate tax rates estimates that taxes are 14 per cent lower in Alberta and resource royalties are likewise lower than in other oil-producing jurisdictions (Government of Alberta, 2013). The government has consistently cited economic growth as a main incentive for keeping tax rates low.

A Portrait of Inequality

A closer look at Alberta's high median income reveals staggering inequalities between top and bottom deciles as income gains appear to have disproportionately, or even exclusively, benefited the top one per cent:

> "The inflation-adjusted average income for the bottom 99% of income earners in the province increased a modest 13% between 1982 and 2011, from $41,749 to $48,800. Meanwhile, the average incomes of the top 1% and top 0.1% grew 93% and 149%, respectively. This growth in reported income for the richest Albertans translates into real income gains of $313,871 and

> $1,476,206, respectively. These figures do not include capital gains, a key source of income for the wealthy" (Parkland Institute, 2014).

Extreme growth in the upper deciles alone, however, is not automatically cause for concern. Indeed, the very purpose of Alberta's tax system is to ensure investment in industry and business, which is in turn assured by the personal success of investors. However, the extreme income disparity in Alberta cannot be accounted for by gains in the top decile alone; it is also a factor of decreasing wealth, stagnating incomes, and increasing financial instability in the lower deciles. Chawla et al. (2004) found that families in the lowest decile had negative wealth and those in the lowest two deciles had virtually no wealth. Predictably, the share of a family's wealth rose as income increased, however a surprising factor was that wealth was a larger determinant of inequality than income, which is particularly worrisome due to family wealth's implications for social and intergenerational mobility (Krugar 2012; Piketty, 2014).

This widening gap in accumulated wealth or capital income is also particularly precarious as "poor people are least able to withstand any kind of financial crisis because they have so few assets and often have outstanding debts" (Kerstetter, 2002). Indeed, a recent Bank of Montreal report found that average household debt in Alberta is $124,838, up from $89,026 in 2013. British Columbia, with an average household debt of $99,900, is the only other province to exceed the national average ($76,100) (2014). While much of this debt may be attributed to first time homeowners in the province's booming housing market, as in British Columbia, this debt is not risk free. Unlike Vancouver, for example, the Fort McMurray real-estate market is entirely dependent on industry and economic fortunes. Moreover, both housing and rental prices in Alberta are increasingly prohibitive. In urban centres vacancy rates hover around 1.6 per cent and rental prices have increased by 5.4-9.7 per cent (CMHC, 2013).

Rent increases not only raise expenditures, but also exacerbate the financial insecurity of low-income Albertans. For instance, according to the Calgary Homelessness Foundation, half of Calgary's homeless population are working, but are unable to find affordable housing. Similarly, the Canadian Association of Food Banks (CAFB) noted that food bank use increased from 2008 (pre-recession) by 59 per cent and that 1 in 3 households helped were receiving income from current or recent employment (CAFB, 2012). Strong labour market outcomes alone have been unable to prevent the emergence

of a working poor in Alberta who are faced with high levels of debt, rising costs of living, and a lack of affordable housing.

Poverty rates are relatively low in Alberta compared with other provinces: 12 per cent of Albertans and 11.3 per cent of Albertan children live in poverty (Hudson, 2013). However, poverty intensity is high and Alberta's poor are Canada's poorest (Gibson, 2012). A demographic profile of Albertans in poverty is depressingly predictable: Aboriginals, recent immigrants, single-parent families, and women are overwhelmingly represented below the poverty line. Despite having the highest median income in the country prior to the recession ($19.67 per hour), 18.5 per cent of working Albertans were earning less than $12 per hour (Statistics Canada, 2008; Briosbois and Saunders, 2007).

Single parents in Alberta also experience the highest poverty rates in Canada across single-parent households (Gibbons, 2012). Moreover, divorce rates are highest in Alberta and the number of single-parent families has increased dramatically, from 4.5 per cent in 2006 to 14.5 per cent in 2011. Nor has the energy resource boom affected women proportionately: in 2009, women working full year, full time only made 68 per cent of what men made and the outlook was still worse for university-educated women working full time, full year, who only made 63 per cent of their male counterparts' earnings – the largest gender wage gap in Canada (Statistics Canada, 2011). Not only are labour market outcomes unequal across vulnerable groups, but the effects of economic marginalization are also felt more intensely than anywhere else in Canada.

Policy makers, particularly in the United States, have argued that poverty and not inequality is the real cause for concern; however, inequality does not only impact poverty, it also impacts opportunity, mobility, and security. Policies that support wealth accumulation, such as a flat tax rate, low royalties, and low corporate taxes, also reduce the government's revenue and thus its capacity to provide comprehensive social programs that mitigate the effects of inequality. A fiscal structure that allows for extreme collection of wealth is also more prone to failing the most vulnerable. As Alberta lacks a source of reliable revenue to fund social investment, Albertans who are unable to take advantage of their region's economic potential, may in fact be made worse off by economic growth that causes the housing prices and the cost of living to rise beyond their means.

Impact of Social and Fiscal Policies

It can be argued that inequality in Alberta is attributable to regressive tax policies, pro-austerity fiscal policies, diminished investment in public services, the erosion of social safety nets, and the shift from labour to capital incomes among the most. Other contributing factors not within the scope of this paper include deregulated financial markets, and a lack of rules restricting campaign financing and donations. Alberta's natural resources have endowed it with great wealth, and government policies are directed towards stimulating and enhancing economic growth. They have also been said to "prioritize corporate profit over public good" (Studen-Bower, 2014) and the benefits of these growth-enhancing measures are not enjoyed by all Albertans, especially those in the bottom deciles, as growth is not accompanied by social investment or redistributive policies.

In a nationwide study of provincial transfer systems, which account for almost 70 per cent of total income redistribution, Sharpe and Capeluck (2012) found that in 2010 Albertan redistributive policies were the least effective in countering income inequality (0.060 points) and that Newfoundland and Labrador policies were the most effective (0.138 points). Likewise, the 2012 Canadian Income Survey found that Albertans had the lowest median government transfers -- $2,400 for families and $400 for unattached individuals (Statistics Canada, 2014). In 2012, social assistance payments for single, employable recipients were $7,649 per year, down from $11,246 in 1986 and well below the Low Income Cut Off. The welfare incomes of single parents with one child and two-parent families likewise decreased from $18,292 and $28,600 in 1986 to $16,333 and $22,856 in 2012, respectively. These benefits are the lowest in the country. Moreover, an individual working forty hours a week at $9.95 per hour (minimum wage) in Alberta would earn $20,696 -- $2,602 less than the 2011 LICO for one person living in Edmonton or Calgary, and below the LICO for a three person family living anywhere in Alberta (Statistics Canada: Table 2 Low Income Cut Offs). Therefore, not only do individuals who fail to succeed in the labour market have little by way of a social safety net to fall back on, even when they enter the labour market the minimum wage and tax and transfer system are often not enough to keep individuals and families above the LICO.

Alberta's fiscal policies have been justified as being good for economic growth, with the implication being that raising taxes to fund redistributive policies would somehow be anti-growth. But, are redistributive policies in

effect anti-growth policies? The link between economic growth, redistributive policies, and inequality has not been extensively studied and is worthy of closer attention, especially in the Alberta context. Ostrsy, Berg, and Tsangardies (2014) found no evidence of a trade-off between growth and redistribution in OECD countries, but rather that redistribution was associated with a reduction in inequality and higher, more durable growth.

The 2008 Recession and the Albertan Economy

A strong economy and high employment have been portrayed as the rising tide that will lift all boats. However, economic resilience and industry volatility must also be taken into account. Up until oil prices dramatically plummeted in early 2015, the 2008 recession provided the best opportunity to examine the Albertan economy's response to economic downturn. During the recession, from August 2008 to September 2009, the number of EI recipients increased by 242 per cent (Emter, 2010). While by 2010, leading macroeconomic indicators - such as sectoral output, money supply growth, and wholesale inventories - were already showing signs of a positive recovery, labour force indicators lagged behind significantly. Employment growth was particularly slow post-recession and the impact on Alberta's unemployment rate, which increased by 4 per cent reaching a high of 7.7 per cent in August 2009, was long lasting and in January 2010 was still 6.8 per cent (Emter, 2010).

Poverty rates in the province were also hit particularly hard: between 2007 and 2009, the largest jump in the low-income rate (using the Market Basket Measure of low income) occurred in Alberta – where it went from 6.6 per cent to 9.9 percent (Conference Board of Canada). In contrast, low income rates for Saskatchewan decreased by 0.8 per cent over the same time period. Moreover, the effects of the recession were felt unevenly as the top three deciles' after tax income decreased by less than one percent, whereas the bottom three deciles' after tax income decreased by 10.0-19.1 per cent (Briggs and Lee, 2012).

To evaluate the effect of the recession across provinces, Osberg and Sharpe (2011) measured the Index of Economic Wellbeing (IEWB). They found that Alberta was the hardest hit, experiencing a 9.1% decline in the IEWB and a complete collapse of the equality measure from 0.734 in 2007 to 0.563 in 2010. In contrast, Newfoundland, Prince Edward Island, New Brunswick, and Quebec did not experience any decline, which the authors attributed to strong performances in the equality domain.

Only in Alberta and Manitoba did the IEWB recover slower than real GDP. In Manitoba, this was explained by a strong GDP performance, which by 2010 exceeded 2008 levels. In Alberta, however, this was due to the poor recovery of the IEWB, which in 2010 was 91.7 per cent of its 2008 values (Osberg and Sharpe, 2011). In terms of labour market recovery, poverty, and overall economic wellbeing, Alberta appears to have suffered more than other provinces post-recession and also had a slower recovery. While this lagging response is undeniably due in part to Alberta's dependence on the global economy, links have been made between inequality and financial instability. The International Monetary Fund, for instance, has shown that higher income inequality is associated with greater market volatility and dampened economic growth, and Piketty and Saez (2012) have likewise stated that it is "highly plausible the rising top incomes did contribute to exacerbate financial fragility" in the United States. While causation cannot be asserted here, it is an interesting consideration that should be explored.

Recent developments in response to the dramatic fall in oil prices suggest that Alberta's economic resilience remains fragile. Prior to oil prices falling from $149 in June, 2014 to $49 in January, 2015, Alberta's economy was the quickest growing in the country. A Conference Board of Canada report released in August 2014 predicted that Alberta's real GDP would rise 6.6 per cent by the end of 2015 -- growth that in turn was expected to drive still higher wages and higher rates of employment. Now, however, economic outlooks have dimmed: the unemployment rate is expected to rise to a recession high of 6.8 per cent by the end of 2015 and the province's real GDP is predicted to shrink by 0.3 per cent (CIBC: Provincial Forecast Update, 2015).

Looking Forward: Recommendations

A 2012 OECD report entitled *Reducing Income Inequality while Boosting Economic Growth, Can it be Done?* cited education, labour market policies, integration, and tax and transfer systems as the best tools with which to reduce inequality. It also identified "household income as being the most relevant for the build-up of inequality and the most responsive to structural reforms". A strong labour market alone, in the absence of sound fiscal and social policy, cannot prevent inequality. Alberta's provincial government presently relies heavily on non-renewable resource royalties, which are among the lowest in oil-producing jurisdictions. Consequently, the province has no steady source of revenue and is entirely dependent on the global

commodity market.

A steady source of income would make Alberta less vulnerable to boom and bust cycles and reduce financial instability in the lower and middle classes. It would also allow the provincial government to take a long-term perspective when implementing social investment programs to ensure that they make a difference, rather than spend money on projects like Alberta's five year plan to end child poverty, which had little effect. Current spending should be funded by taxes, while royalties should be invested into a provincial fund following the recommendations made by the Premier's Council for Economic Strategy in 2011: a five to 10-year transition period over which the province should move towards financing 100 per cent of operational spending with current revenues, with all oil and gas royalties flowing into savings (Government of Alberta, 2011). Unfortunately, Alberta's government failed to take any such measures to increase and stabilize revenue post recession. Now, lightning has struck twice, and with global oil prices at an all time low, the consequences of failing to act on inequality during a boom will be exacerbated in the pending bust.

Save resource royalties

Alberta's uncontrolled spending of the resource royalties it does collect is the provincial equivalent of spending the entirety of a windfall inheritance on sports cars. It is far from the approach that other resource-dependent jurisdictions have taken. Norway, for instance, places 100 per cent of non-renewable resource royalties into an investment fund, which is now worth $905 billion dollars (Norges Bank Investment Management, 2014). In contrast, Alberta has not added new royalty revenue to the Heritage Trust Fund since 1987 – its current value is only $17.5 billion (Government of Alberta, 2014). Nor is a conservative state-socialist state comparison misguided here as Norway is not alone in its approach to resource royalty management: United Arab Emirates' funds are valued at more than $800 billion, Kuwait's funds are around $400 billion, Russia and Kazakhstan have accumulated about $180 billion each. Even Alaska, the most comparable jurisdiction, now deposits 25% of non-renewable oil and gas revenues in a fund that is now worth $64 billion (Sovereign Wealth Fund Rankings, 2014).

Increase taxation

Alberta must establish a progressive, scaled income tax system, increase

corporate taxes and royalties, and consider a harmonized sales tax. Despite arguments that higher taxes would dampen the economy, a slight tax increase would be unlikely to affect investment. Dahbly and Ferede (2013) found that, taking into consideration top income distribution and elasticity, that the optimal top marginal tax rate on wage and salary income in Canada is less than or equal to 50 per cent, in Alberta it is presently 39 per cent (49.5 per cent in Ontario). Alberta is presently the only province in Canada to not have a provincial sales tax. In the United States, two of the three most oil-rich states, Texas (6.5 per cent) and North Dakota (5 per percent), have a state sales tax, However, as previously mentioned, Alaska does save and invest 25% of resource extraction revenue. Alberta's current financial situation is the result of years of short-sightedness and complacency: in July 2014, provincial debt surpassed $10 billion and the Canadian Taxpayer's Foundation predicts that this figure will reach $21 billion by 2016-2017. Aggressive and joint taxation, and investment and savings policies should be implemented immediately in order to optimize future outcomes.

Considerations

The greatest challenges to fiscal and social reform in Alberta are mentality and industry sway. Unfortunately, when times are good, memories are short. In the 1980's, Alberta experienced two consecutive oil busts, first in 1982 and again in 1986. A popular bumper sticker in the 1980s read, "Please God, let there be another oil boom. I promise not to piss it all away next time." Today, however, the above mentioned taxation policies, would find little popular support. Likewise, the oil industry is a powerful stakeholder in Alberta and has had previous success forcing royalty rates down. In 2007, the Alberta Royalty Review found that "Albertans do not receive their fair share from energy development and they have not, in fact, been receiving their fair share for some time." It recommended a 20 per cent increase ($2 billion per year). The government partially implemented the recommendations, but then rolled them back in 2010 following pressure from the oil and gas sector, who were also instrumental in establishing the Wild Rose party as the official opposition.

Despite years of economic boom, Alberta is in no position to respond to disaster. Now, recent projections state that the fall in oil prices could cost the provincial government up to $11 billion in lost revenue, which will further aggravate existing inequalities and poverty (Government of Alberta Budget, 2015). Fiscal responsibility is twofold and must take into account sensible

saving and spending, employing a paradigm in which "progressive taxes finance public investment…social insurance spending enhances the welfare of the poor and risk taking… [and] higher health and education spending benefits the poor, helping to offset labour and capital market imperfections" (Ostry et al., 2014). From a short-term perspective and in the best of economic times Alberta's current fiscal and social policies serve to further marginalize the most vulnerable and intensify poverty. With economic outlooks now worsening, however, the effects will be more widespread: falling oil prices will lead to lost jobs that families with large levels of debt will be unable to sustain, and in a province with a week social safety net and no reliable source of income, this could be disastrous.

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Energy

Ontario Green Public Investment Policies: A Valiant Effort Falling Short

Colin Drysdale

The essay reviews Ontario's green public financial investment policies. Specifically, the paper critically analyses Ontario's recently intiated Green Bond program and the Ontario Feed in Tariff program. An assessment of each program's success and flaws are presented, with subsequent policy recommendations on how to address the apparent flaws.

Introduction

Governments and the private sector are investing enormous sums of money in the global economy, with institutional investors such as pension funds, sovereign wealth funds and insurance companies investing in the order of $71 trillion annually (The Green Investment Report 2013). The overwhelming majority of these investments, however, are made with no consideration or due diligence with regard to the natural environment in which they have an effect (Green Bonds 2012). This is occurring because conventional technologies – which in financial terms represent long-term, low-risk, fixed-income and often polluting assets – are more attractive to institutional investors on a macro level and to business investors on a micro level. Conventional technologies have low costs and established markets of scale that provide a profitable return on investment. Conversely, new cleaner (or "green") technologies have high costs with less established markets of scale, providing a return on investment that cannot compete. Likewise, managing green financial investments is more expensive because it requires additional due diligence and continuous assessment, making it less competitive than investing without environmental considerations (Reichelt, Heike 2010).

Determined by these free market forces alone, the direction of investments will not change for quite some time – at least not until green technology costs come down to a level at which new markets of scale may develop and

compete against conventional markets. This would not be such a problem if it were not for global warming, which poses threats to the health, economic strength and political stability of most, if not all countries. With the continuous growth of worldwide investments in non-renewable resources and hydrocarbon industries, carbon dioxide (CO2) emissions are growing and it is thought that global average temperatures are rising as a result. It is estimated that hundreds of billions of dollars will need to be invested in green sectors, especially within energy and transportation technologies, over the next quarter century to curb the rise in global temperatures. Thus, a global shift in the way that the world invests must occur to take environmental impacts into account (Fine et al. 2008).

It is argued that governments can play an important role in counteracting market forces which slow the growth of green investment. A government can catalyze the development of green sectors by itself making significant investments that develop green, or environmentally less harmful products, services and industries into large economies of scale. For at least the last few decades, countries around the world have been following this practice by increasingly adopting green investment policies. Green public investment policies can vary drastically; fundamentally, however, they all strive to lower the financial risk to the private sector of pursuing green endeavours (Reichelt, Heike 2010; Fine et al. 2008; The Green Investment Report 2013; and Inderst, G. et al. 2012).

With this in mind, scanning the Canadian public finance landscape reveals very few instances of green public investment policies. Indeed, at the federal level, there are no green investment policies. It is only at the provincial level — and even then only in Ontario — that green public investment policies exist. In Ontario, green public investments come in the form of debt financing through Ontario Green Bonds and premium payments for renewable energy through the Feed-in Tariff (FIT) program. These separate policies constitute substantial investments by the Ontario government, which has committed to investing $500 million through Ontario Green Bonds; and though its investment in the FIT program has not been disclosed, it is likely to be a substantial amount as well (Ontario Financing Authority Green Bonds Website 2014). These large sums of government funds would seem to imply that the programs represent relatively high priorities within the provincial government.

However, after a closer analysis of each program's design and management,

it is apparent that these programs have problems that reflect a lacklustre, or at least uncommitted, approach on the part of government. In comparison with the total estimated amount of investment needed for the development of the green economy, Ontario's investments may still be falling short. More importantly, the design and management of each program may not be producing the respective desired outcomes. In this sense, the results of the FIT program, as well as the Ontario Green Bond program, are still not well understood. This is no surprise for the bond program considering the inaugural issuance was only completed in 2014, but it is an issue for the FIT program considering that it is going into its sixth year. With no performance indicators yet available for Green Bonds due to the infancy of the program, and a very limited amount of statistical data to measure the impacts of the FIT program, any evaluation of these programs must rely heavily on the environmental, economic and political principles underpinning each program.

Green Bond Program

In terms of Ontario's Green Bond program, the economic underpinnings of green bonds are actually no different from regular bonds in their function as a debt-financing instrument. An actor (the issuer), which may be a government, bank or company, sells its own debt in the form of a bond to another party (the bondholder), which may include individuals, financial institutions or private enterprises. The issuer sells the bond with the understanding that it will make periodic payments to the bondholder and, after a fixed period of time, it will buy back the bond from the bondholder (Fine et al. 2008).

The terms and conditions of payments vary from one bond to the next, but there are three fundamental elements that are present in every bond. There is always an issuer, and this paper is concerned with those cases when the government is the issuer. There is always a coupon rate, which is the amount the issuer periodically pays to the bondholder, calculated as a percentage of the value of the bond, that is, the interest rate. Finally, there is always a securitization, which is an underlying asset or a means by which the issuer will buy back the bond from the bondholder (Green Bonds 2012).

It is this competitive edge that makes governments particularly well positioned to catalyze the development of emerging sectors, such as green sectors. Governments can lower the cost of capital, which is precisely the "in" emerging sectors often need. By investing bond proceeds into green sectors,

governments can make them cost competitive with established but environmentally harmful sectors. Bonds do not need to be "green," however, to make green investments; a regular bond can just as easily make green investments as it can non-green investments. What distinguishes a green bond from all other bonds is that it can only make green investments. What constitutes a green investment, on the other hand, varies from one bond to the next, there being no consensus on a definition in literature or in practice.

This is the context in which Ontario's Green Bond program is situated. The idea for the bond was first announced in the 2013 Ontario Economic Statement and Fiscal Review. Echoing the general argument for green bonds, the government said it planned to issue them the following year to help finance environmentally friendly projects by taking advantage of Ontario's ability to raise funds at low interest rates (Creating Jobs and Growing the Economy 2013). The vision statement of the program also reinforces the generally accepted purpose of green bonds, stating that "Ontario green bonds are used to finance projects that promote environmentally friendly projects (mainly infrastructure) across the province and mitigate or adapt to the effects of climate change" (Ontario Green Bond Framework 2014).

The Ontario Financing Authority (OFA) is responsible for the overall management of the Green Bond program. The program has been designed so that proceeds from the green bonds are placed directly into the province's Consolidated Revenue Fund. This means that green funds are not distinguished from any other funds within the government's coffers. However, a designated account in the province's financial records has been created to track their use and allocation. The account balance is supposed to reflect the proceeds and investments of the Green Bond program, but the money in the account is technically derived from general government revenues (Ontario Green Bond Framework 2014; Ontario Green Bond Q&A's 2014; and Ontario Financing Authority Green Bonds Website 2014).

In terms of managing green investments, and for that matter deciding how to define a green investment, the province created a Green Bond Advisory Panel. The panel is comprised of staff from relevant ministries, such as the Ministry of Transportation and the Ministry of the Environment and Climate Change. Members of the panel screen and evaluate eligible green projects, and advise the Ontario Financing Authority on the selection of projects. The definition of an eligible "green project", however, is vague. Instead of

providing a specific definition of green investment, the province considers projects that fall under five general, all-encompassing environmental sectors, including: clean transportation; energy efficiency and conservation; clean energy and technology; forest, agriculture and land management; and climate adaptation resilience. Starting in 2015, the first project in which green bond proceeds will be invested – falling under the clean transportation category – is the Eglinton Crosstown Light Rail Transit project in Toronto (Ontario Green Bond Framework 2014; Ontario Green Bond Q&A's 2014; Ontario Financing Authority Green Bonds Website 2014).

As already noted, green bonds generally require additional due diligence to assess the eligibility of investments and to monitor environmental effects. To address these issues, the province has used three approaches. Firstly, it received a second opinion on the framework of the Green Bond program from the Center for International Climate and Environmental Research. This independent, not-for-profit research institute provides second opinions on an institution's framework for selecting eligible projects for green bond investments, and assesses its effectiveness for meeting environmental objectives. The Institute did provide a positive second opinion on Ontario's program; however, because Ontario voluntarily sought the opinion, its credibility could be questioned ('Second Opinion' on Ontario's Green Bond Framework 2014). Secondly, an assurance audit will be provided by the Office of the Auditor General of Ontario to verify amounts allocated to selected projects and proper management of the Green Bond account. This assurance audit is expected within a year after the issue date of the bonds. Thirdly, an annual newsletter on the OFA website will present allocations of funds to projects, project updates and status reports, as well as performance indicators on green bond projects (Ontario Financing Authority Green Bonds Website 2014, Independent Verification).

The first issuance of green bonds by the Ontario government -- and the only one so far -- took place on October 2, 2014 and may be considered successful based on several factors. Most importantly, the province achieved its goal of raising $500 million in capital, or bond proceeds. Also, institutional investors, a crucially important purchasing block for bonds, bought the single largest proportion of the Ontario green bonds, indicating that the bond's structure was aligned well with their investment interests. Finally, as a result of the bonds' high demand, Ontario was able to lower the rate at which it would buy back the bond from the bondholder, effectively lowering the rate at which the province borrows money through green bonds.

On the other hand, the issuance was actually oversubscribed, meaning there were more investors placing orders to buy the bonds than there were bonds – and therefore demand outstripped supply (Ontario Financing Authority Green Bonds Website 2014, Bond Issue).

As illustrated by this discussion of Ontario's Green Bond program, there are several elements of the program's design, governance structure and implementation that are not strongly aligned with the general concept of a green bond. However, it is also apparent that Ontario green bonds are in high demand and that there is potentially a large market for low-cost green capital for the government to use.

The provincial government's design for managing proceeds from green bonds could be seen as somewhat problematic, as it arguably blurs the line between green and non-green financial instruments. By not strictly separating green bond proceeds within a separate fund from all other revenue sources, it is as though the government only considers it important to procure the revenue in a green manner and to invest it in a green manner. However, in between green procurement and green investment, the government does not manage the bonds' proceeds in a green manner.

From the government's perspective this makes sense; it is much easier for accounting purposes and minimizes the perceived risk of Ontario's green bonds by securitizing them with broader revenue. From the green investors' point of view, however, or from the perspective that financial system processes themselves are meant to be green, Ontario's approach reduces the "greenness" of the investment. For instance, at some point the green bond account will have a surplus while the cash waits to be invested in a green project; and instead of having the cash just sit there until such time that it can be appropriately invested, the government could conceivably use it to make a return on short-term investments, which may not be green at all. More importantly, this would not break any rules and would indeed be considered a legitimate action. This hypothetical example is only meant to illustrate that without separating green bond revenues from general revenues, those green proceeds could be easily managed with no consideration for the environment or green financial processes. The risk is that govenrment inadvertently manages green bond revenues in a hypocritical manner, which could serve to deligitimize the program and deter potential investors.

The governance structure of the Green Bonds program is also somewhat problematic. The Green Bond Advisory Panel, as already explained, is not independent of the Ontario government, which many would argue renders the program's governance less effective and efficient. In response, it is often argued that an independent, arm's-length investment board or advisory panel would result in a more efficient balance between public and private expertise and interests (Fine et al. 2008). The private sector is more apt at assessing risk as its implicit business is to pick successful investments, and it provides a degree of market objectivity that the government alone cannot. From another perspective, the government can take on an abnormal amount of investment risk, having vast capital resources, and provides a level of socio-environmental objectivity. In addition, if the advisory panel had responsibility for managing the proceeds, the risks associated with mixing green revenues with general revenues, as noted above, would be eliminated. Moreover, such an independent panel would reinforce the legitimacy of Ontario's Green Bond program, thus keeping up demand from green investors (Fine et al. 2008).

In terms of implementation of the Green Bond program, an independent advisory panel could possibly solve the main problem that occurred in the inaugural offering – that is, oversubscription of the green bond issuance. As noted above, it is believed that a particular strength of the private sector over the public sector is its ability to assess risk. When a bond is oversubscribed, it is because the issuer overestimated how risky the private sector would perceive the bond. In this case, the coupon, or interest rate, was set higher than it should have been and consequently the government borrowed money at a higher rate than it should have. When dealing with large sums of money, a small miscalculation of risk can often be costly. An independent Green Bond Advisory Panel, composed of private sector members tasked with control of the bonds' proceeds, would add the objectivity, expertise and legitimacy needed to improve Ontario's Green Bond program.

Feed-In Tariff Program

The discussion now turns to the economic, environmental and social underpinnings of another of Ontario's green investment policies: the Feed-in Tariff (FIT) program. The FIT program was introduced as an integral part of Ontario's *Green Energy* and *Green Economy* Act in 2009. It operates within the targets and parameters set out in the province's Long-Term Energy Plan, which targets 13 per cent energy production by wind, solar and bio-energy

by 2018 (*Green Energy and Green Economy Act 2009*; *Financing Renewable Energy* 2010).

The FIT program guarantees that the Ontario government will purchase renewable energy – such as solar and wind energy – at a set price and for a specified period of time from any person, company or organisation willing to produce it. Effectively, the government pays a premium for renewable energy, as it pays more for renewable energy than it does for energy produced by conventional means. For instance, the government buys one kilowatt hour of solar energy for 39 cents, whereas the average consumer pays around 10 cents for one kilowatt hour of electricity. The FIT program's rate is set high enough to allow renewable energy projects to pay for themselves and to make a profit. In doing so, it creates an artificial demand for renewable energy, which in turn encourages individuals and companies to develop ways to meet this demand. Its goal is to have a renewable energy market develop, which eventually reaches an economy of scale that lowers the cost of renewable energy production and that makes it cost-competitive with electricity produced with traditional fossil fuels (Ontario Power Authority Feed-in Tariff Program Website 2014; *Financing Renewable Energy* 2010).

In a practical sense, the program operates as follows Parties interested in producing renewable energy enter into a FIT contract with the Ontario Power Authority (OPA). Under this contract, the OPA agrees to pay the renewable energy generator a fixed rate per kilowatt hour of energy produced for 20 years. Finally, the renewable energy generator connects their energy system to the grid, and the OPA pays the generator the agreed upon rate.

To encourage the development of local businesses and energy production, the FIT program defines three groups that receive preferential treatment: community, Aboriginal and farm-based developers. The government then pays these groups a premium for their renewable energy. The purpose of preferring these three groups is to provide a way in which localities can self-finance renewable energy projects, which are usually too expensive for these groups or municipal governments to develop on their own (*Green Energy and Green Economy Act* 2009). As such, the FIT program pays them more to compensate for their small scale and relatively low capitalisation.

Therefore, an important goal of this program is to have local money invested in local infrastructure, and to in turn provide a profitable return for local investors. The hope is that when renewable energy sectors become highly

developed, the FIT program will have encouraged a decentralised, locally-owned energy industry – contrasting starkly with today's energy industry (Ontario Power Authority Feed-in Tariff Program Website 2014).

In keeping with its emphasis on local development, the FIT program originally stipulated that a certain proportion of the materials used for renewable energy projects must be manufactured within Ontario. It was hoped that as renewable energy production increased, a demand would be created for local renewable energy products that would stimulate the growth of Ontario's renewable energy sector. In an ideal future, Ontario's renewable energy industry would have grown to such a size that it would be able to compete against international markets, which currently offer less-expensive products due to economies of scale (*Green Energy and Green Economy Act 2009*; *Financing Renewable Energy 2010).*

Almost six years after the creation of the FIT program, it is very difficult to assess its performance. There are almost no economic indicators, such as jobs directly related to the manufacturing of renewable energy products or a classification for renewable manufacturers, which could describe the composition of Ontario's renewable energy industry. Furthermore, energy data generally do not describe the type of businesses producing the energy, which leaves no way of knowing if the FIT program's local development strategy is working. Environmentally, there are also very few indicators that provide any sort of correlation between the program and reduced CO2 emissions from energy production (Statistics Canada CANSIM website; and Winfield, Mark 2013). For instance, Ontario's greenhouse gas emissions have indeed gone down in the years since the program started in 2009; however, this could just as easily be a result of a provincial government decision to close all coal-fired power plants. Information about performance of FIT has been scarce even on the part of the Ontario Power Authority and the government, which publishes very limited reports on financial management of the program and how much it costs.

That being said, there are a few inferences that can be made based on periodic publications by the OPA and the Ontario government. The OPA reported that less than half of all FIT program applications in 2013 were submitted by the preferred groups, 798 out of 1779 applications (*FIT 3.0 Application Summary* 2014). The Ontario Energy Board has also stated that only 5.8 per cent of Ontario's energy mix is derived from renewable sources, which is well below the target of 13 per cent renewable energy production

by 2018, as set out by the government (Ontario's System-Wide Electricity Supply Mix: 2013 Data).

In addition to a dearth of data, political economic events are also plaguing the program. Particularly harmful was the World Trade Organization (WTO) ruling in 2012 dictating that Ontario had to dismantle the FIT program's condition that a certain proportion of project materials be manufactured in Ontario. The WTO ruled that this breached Canada's obligations under the *General Agreement on Tariffs and Trade 1994* and the *International Agreement on Trade-Related Investment Measures*, by treating imported renewable energy products differently from domestic products. Though there is no data to show the effect of the WTO's ruling on Ontario's renewable energy industry, it would seem fair to assume that it had a negative impact on any potential development (Murphy, Peter 2012).

Furthermore, the political atmosphere has not encouraged investors to perceive the renewable energy industry as low risk. In the last two years, the government has actually limited the FIT program from its original scope: it has eliminated large renewable energy projects from the program entirely, and has not committed to any further increases in renewable energy production past 2018. From the perspective of an investor, these two changes alone call into question the government's commitment to the renewable energy industry, as well as its commitments to the FIT contracts upon which investments are based. Moreover, this is all taking place in the midst of strong demand from renewable energy producers, given there has always been more FIT program applications to commence renewable projects than the OPA has been able to allot in actual contracts (Gipe, Paul 2013; *Strong Demand Continues for Feed-In Tariff Program* 2014; Wheeland, Matthew 2013).

Interestingly, it would not require much effort on the part of the government to instil a sense of private sector confidence in renewable energy investments. A simple commitment to the program past 2018 and assurance that the scope of the program will not be limited any further would be sufficient. This is not a tall order for a government that has already committed so much to the development of the FIT program.

Conclusion

Upon examining Canada's only two green public investment policies, it is

clear that the Ontario government has invested a lot of time, money and resources into both its Green Bond and Feed-in Tariff programs. As stated at the beginning of this paper, however, the fundamental point of green public investment is to lower the perceived risk to the private sector of investing in green initiatives. In this sense, Ontario's programs have fallen short.

In regard to the Green Bond program, the Ontario government has exhibited a half-hearted approach that lacks a commitment to "greening" not only procurement and investment processes, but also financial management processes. Furthermore, it has not made the necessary commitment to relinquish the responsibilities of investing and managing green bond proceeds to an independent advisory panel, preferably composed of both public and private sector representatives. Private sector expertise and the government's securitization of the bonds would ultimately lower the perceived risk of green bonds by the private sector, and therefore encourage growth in green investments. It would also assist the government in more accurately assessing the risk of its green bonds, which would in turn lower its cost of borrowing.

The Ontario government has not made the necessary commitment to alleviate private sector concerns about the risk associated with making green investments with respect to the Feed-in Tariff program, in this case in renewable energy. The fact that the province has not committed to the program past 2018 cripples the development of domestic environmental services and products – there is no incentive to start a business that services the renewable energy sector when there may be no market in three years' time. Furthermore, with the elimination of large renewable energy projects from the program – exactly the scale of project required to compete against conventional energy sectors – there is no longer any link between it and the development of a competitive renewable energy industry. On the one hand, the government may assume that the WTO decision, which undermined the local content rule, has rendered the development of a domestic renewable energy industry impossible through the use of the FIT program and is slowly eliminating the program as a result. On the other hand, Ontario was accused of putting up a lacklustre defence against the WTO's claim, so perhaps it was the government's desire to limit the program all along.

Since 2009, the Ontario government has made a valiant effort to initiate green public investment strategies when no other government in Canada was doing so. Unfortunately, its efforts have not been consistent. This will

leave the private sector wary of the government's true commitment to its investment policies, and in turn lend to a perception of green investments as higher risk – the exact opposite of what the policies were intended to do.

Moreover, these are expensive public programs. The Ontario government must fully commit to them, or not at all, as it will not achieve their goals otherwise. The creation of an independent green bond advisory panel, composed of private and public sector members tasked with managing Ontario green bonds' proceeds, as well as a commitment to the FIT program past 2018 and assurance that its scope will not be limited any further, would go a long way to instil private sector confidence in these areas of green investment. It is up to the government to climb fully on board, or not at all; there is no middle ground.

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Commentary

Policy Knowledge and the Democratic Ideal: A New Conversation

Benjamin Miller

In this brief commentary, I propose to take the issue of low political knowledge in Canada as a starting point to frame the related and less studied issue of policy knowledge. I begin by grounding the discussion in democratic theory, and move on to explore the meanings of political knowledge and its observed impact on political behaviours. I then argue for the need to conceive of policy knowledge as a distinct issue from both political knowledge and issue-specific awareness, and for the democratization of policy knowledge tools through the use of community radio. I conclude by offering some practical advice and resources for how individuals could implement such a democratizing project.

The Democratic Need for an Informed Citizenry

According to contemporary arguments in democratic theory, citizen "competence" is a prerequisite of democracy for two reasons: equality and accountability. Since scholars agree that democracy involves some kind of self-governance, it must be presupposed that citizens are equal in the sense that each adult equally knows better than anyone else what is best for him or her (Rapeli, 2013). Second, at least a basic amount of relevant knowledge is required to hold political decision-makers to account through elections (Rapeli, 2013). This includes knowledge of institutions, actors, and positions. While there are critics who allege in light of the empirical evidence of "mass ignorance" (see Page and Shapiro, 1992; Popkin, 1991; Lupia McCubbins, 1998) that a knowledgeable citizenry is not necessary for democracy, these arguments tend to focus on citizens solely as voters and knowledge primarily as that relevant during an election period. Indeed, the entire literature and dialogue around political knowledge focuses more or less exclusively on citizens as voters. This narrow framing will prove an important reason to seek a new and distinct conversation around "policy knowledge" as necessary for democracy.

The Political Knowledge Gap

It has become a sad truism in Canadian politics that political knowledge among the general population is low, and that this has a negative impact on political participatory behaviours, such as voting. This truism has been confirmed by both academic and government research. Low political knowledge is an oft-cited reason for declining voter turnout and is correlated with other examples of non-participatory political behaviour, such as not reading newspapers and other current affairs materials (Howe, 2006; Milner, 2007; O'Neil, 2007; Elections Canada, 2014).

This would seem to suggest that democratic theorists are right that a politically-informed citizenry is required to hold politicians to account at election time, since, presumably, citizens cannot do this if they do not participate in elections in the first place. Indeed, Elections Canada (2014) writes that the one of the explanations most often given for why someone did not vote was that they "did not know enough." That is not to say that lack of knowledge is the only or even the primary reason that citizens do not vote; indeed, inaccessible polling stations, work and family needs, lack of transport, or just general disenchantment also play important roles (Elections Canada 2014). Treating political knowledge as a requirement of accountability is not the same as treating it as a sufficient condition of accountability. The importance of these other factors therefore in no way prevent us from drawing the above conclusion.

Rather than treat the policy issue of low political knowledge directly, I would like to argue that the conception of political knowledge used in these studies, due to its focus on elections, largely excludes "policy knowledge." The political knowledge gap nonetheless offers us a useful model for conceptualizing the possible policy knowledge gap and its impact on corresponding participatory behaviours.

What is Political Knowledge?

According to Lindsay Hoffman (2012), political knowledge is generally defined as "holding correct information—whether that is civic, issue, or candidate information, or the structural relationships among cognitions." This requires some unpacking. The five commonly accepted points of civic knowledge come out of the work of American researchers, Delli Carpini and Scott Keeter. These information points include: political parties, i.e. which

party controls the house; political procedure, i.e. voting percentage in Congress to override presidential veto; party ideology, i.e. where various parties stand on issues; judicial powers; and political persons, i.e. identifying the vice-president (Carpini & Keeter, 1993). These questions have been adapted to numerous contexts including Canada. Although issue knowledge sounds as if it might be focused on policy, in fact, it only relates to the various positions held by political actors. Finally, structural knowledge pertains to the theoretical and ideological schemes that citizens use to organize political information (Hoffman, 2012).

The above conception of political knowledge is not unchallenged. Some social scientists conceive of political knowledge as a kind of responsiveness to news (Hoffman, 2012). There are also more philosophical challenges to the above conceptions of political knowledge; for example, from Michael Oakeshott (1991), who conceives of political knowledge as consisting in both technical elements (i.e. articulatable information) and practical knowledge (i.e. judgment and situational/contextual sensitivity). Unfortunately, both challenges are outside the scope of this commentary, as the first is subject to issues surrounding the adequacy of policy coverage in mainstream Canadian media (a huge topic in its own right), and the second is more theoretical than the space of this article allows. Still, both positions are worth consideration.

Where is the Policy Knowledge?

We may ask whether the above notions of political knowledge adequately capture Canadians' level of policy knowledge. I tentatively define policy knowledge as that knowledge relevant to effective policy-making. This may include, but is not exclusive to: understanding the history of an issue; decision-making process; stakeholder impact; what solutions have been attempted elsewhere; and consultation processes. While political knowledge — as social scientists and policy makers currently understand it — may include some policy knowledge (e.g. decision-making jurisdiction at the legislative level), it is undeniable that political knowledge fails to include much of the knowledge listed in my stipulative definition.

In my search for a distinct literature on policy knowledge, I was unable to find any analogous studies to political knowledge. Yet, prima facie, there seems to be good reason to think that in the same way political knowledge is required for holding politicians to account at election time, policy knowledge

would be required to hold diverse decision-makers to account between elections. This may seem like a logical jump, but it stems from a simple idea. In order to hold someone to account, be it a politician, a lawyer, or a mechanic, one must have some understanding of what it is they are doing, because such an understanding is required to distinguish between work of good and bad quality. Without this understanding, one can only evaluate the work based on its final product, and even then it may be difficult without proper understanding to lay blame for any faults in the outcome.

What's more, if we recall our democratic theory, democracy presupposes that citizens know what is best for them. How could citizens know what is best for them if they lack knowledge, for example, of policy solutions attempted elsewhere in the world? Finally, in the same way that political knowledge affects citizens' choices to participate in elections, it stands to reason, that policy knowledge may have a similar impact on citizens' choices to participate in various policy processes. While the simple arguments above are just conjectures requiring empirical verification, I think it is fair to conclude that the policy knowledge of citizens is important in a similar way to political knowledge.

The question then becomes this: why has there been no analogous discussion of policy knowledge? Perhaps the most obvious explanation for this is that policy knowledge is currently conceived of not so much as its own sovereign body of knowledge, but instead as dispersed among many separate issues which are themselves adequately or inadequately treated. So, for instance, there are "awareness weeks" throughout the year on various policy issues (e.g. hunger, mental health, poverty, etc.) that implicitly challenge Canadians to improve their policy knowledge on these specific issues. One will also be able to find studies of issue-specific knowledge or "literacy" pertaining to fields of policy, for example in energy (Turcotte et al., 2012). With all these efforts, it might be tempting to say that it is simply not necessary (or feasible) to treat policy knowledge as an issue in its own right analogous to political knowledge. I would, however, like to suggest the contrary.

Policy knowledge deserves to be studied in its own right for two reasons, one descriptive and one normative. The first reason is that just as political knowledge involves possessing certain information about institutions and processes, so does policy knowledge. For instance, effective policy-making requires understanding how public consultations, royal commissions,

parliamentary committees, and other similar administrative and decision-making bodies function. From the perspective of the average citizen, it is important to have the information of how to get involved in these processes, and what to expect from them. But this kind of information is not captured in issue-specific awareness, which tend to focus more on facts and statistics specific to the given issue (which, of course, is also important).

The normative reason to conceive of policy knowledge as its own independent field of knowledge held by the general citizenry and worthy of study is that this conceptualization implicitly treats citizens as decision-makers. That is, my stipulative definition of policy knowledge is defined according to decision-making. By conceiving of the issue of the citizenry's awareness/literacy through the lens of policy knowledge, we are pushed to include not only bare facts, but an informed choice between solutions. From the perspective of the democratic theories presented in this paper, this (self-governing) decision-maker position is exactly the way we ought to conceive of citizens (Rapeli, 2013).

To summarize, what I hope to have done above is: first, to flesh out the issue of political knowledge in Canada; second, show that the current conception of political knowledge does not include what I have called "policy knowledge"; and third, argued that policy knowledge ought to be treated as an issue in its own right independent of any one policy area. I would now like to recommend how a current policy knowledge tool, the policy brief, could be made available to the citizenry to improve the general level of policy knowledge in Canada.

Democratizing the Policy Brief

Those who work in policy will no doubt be familiar with the format of the policy brief (sometimes called an issue brief). This short document is meant to summarize the current knowledge on a particular issue, including already attempted and suggested courses of action, in order to support a policymaking process (CBMS Network Coordinating Team, 2011). There are two features of the policy brief that, above all, make it a perfect vehicle for the wider dissemination of policy knowledge among Canadians.

Firstly, the policy brief is written with time-constraints in mind. That is, as decision-makers tend to be busy people, they do not have time to navigate the entire issue that the brief is meant to distill. Time constraints are,

however, not a unique problem to decision-makers. No citizen has time to extensively research every policy issue that might have an impact on them. As such, use of the policy brief format — which is both concise and informative — overcomes this barrier not only for professional decision-makers, but for all citizens.

Secondly, the policy brief is action-oriented; that is, it puts readers in the driver's seat, offering them various solutions they might pursue. This is more engaging than simple news and less ideologically constraining than, for instance, awareness weeks, which already advocate a specific course of action. One may be concerned that such a function is inappropriate for the general citizenry, since most are not in positions of power to decide policy issues. I contend that framing policy knowledge in this way is both respectful and empowering for citizens who do have the right to participate in policy processes that will affect them. Nonetheless, if the policy brief is to be used more democratically, it is recommended that the policy recommendations section include consideration of what actions average citizens can take in their capacity as citizens (e.g. consultations they can submit to, or how they can appear before a parliamentary committee). In addition, a modified policy brief could convey process knowledge (that professional decision makers do not need), which is an important part of political knowledge and is equally important in policy knowledge.

Assuming one is convinced that the format is compelling, the question still remains how to effectively disseminate policy briefs. Government, think tanks, and policy institutes could take on the task of more public policy briefs as part of greater outreach and educational efforts. There are many other mainstream avenues, and I would like to suggest that campus and community radio stations across Canada offer a unique opportunity to democratize the policy brief format both because of their governance model and who they reach. According to the National Campus and Community Radio Association (2015), their 82 member stations are community-owned and democratically governed, and are capable of reaching 23.5 million people in over 63 languages. This last point is significant because one of the unique strengths of campus and community radio stations is their ability to serve communities who are underserved by mainstream media sources. In my experience, community stations across Canada are ready and willing to accept policy content and are eager and interested in training their own volunteers to produce such content.

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