

Public Participation, Petro-Politics and Indigenous Peoples

*The Contentious Northern Gateway Pipeline
and Joint Review Panel Process*

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On returning to Canada for Christmas, I was surprised by the progress on the Enbridge Pipeline project and impressed by the countermovement that was rising. I then sought to engage more meaningfully with the problem unravelling in my own backyard, spending the month of January 2012 travelling around British Columbia researching. I am grateful to the many people who helped me, and must acknowledge my existing ties to the warm and inspiring NGO communities of western Canada. Without their dedication to advocacy and putting information online, keeping track of the developments from abroad would have been impossible; Dogwood-NoTankers-Leadnow, Forestethics, WCEL, Friends of Wild Salmon, Idle No More, Greenpeace, Sierra Club and many more. Specifically, I'd like to thank Emily McGriffin, Tyler McCreary and Nikki Skuce. I also recognize my debts to the gracious indigenous people along the pipeline path and tar sands region from various communities: in particular, the women of the Saik'uz First Nation and Yinka Dene Alliance -Chief Jackie Thomas, Geraldine Flurer and Jasmine Thomas; John Risdale, Chief Namooks of the Wet'suwet'en; and, Dene Suline and member of the Smith's Landing Treaty 8 First Nation in Alberta, (Chief) Francois Paulette.

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Glossary, Abbreviations and Acronyms

AB	Alberta
BBL	Barrel of oil = 159-200 litres; 44(imperial) - 55 (US) gallons; or between 6-8 bbl per ton – It is challenging as there are different systems of measure based on geography and the density of the type of oil, which can also change with temperature.
BC	British Columbia
CAPLA	Canadian Association of Energy and Pipeline Landowners Associations
CAPP	Canadian Association of Petroleum Producers
CAW	Canadian Auto Workers Union
CEAA	Canadian Environmental Assessment Act
CEP	The Communications, Energy and Paperworkers Union
CEPA	Canadian Environmental Protection Act
CERI	Canadian Energy Research Institute
CIC	Canadian International Council
DilBit	diluted bitumen – Thick unrefined crude oil from the Tar Sands that must be diluted with chemical condensate in order to flow through pipelines.
EIA/ESIA	Environmental (and Social) Impact Assessment
(E)NGO	(Environmental) Non-Governmental Organization
ERCB	Energy Resources Conservation Board (AB)
FPIC	Free Prior Informed Consultation - Consent
GHG	Green House Gas emissions
JRP	Joint Review Panel
MLA	Members of the (Provincial) Legislative Assembly
MP	Members of the Federal Parliament
NEB	National Energy Board
NWT	Northwest Territories
PTP	Pacific Trails Pipeline
NGP	(Enbridge) Northern Gateway Pipeline
SARA	Species at Risk Act
ToR	Terms of Reference- Defined by the World Bank as: “defines all aspects of how a consultant or a team will conduct an evaluation. It defines the objectives and the scope of the evaluation, outlines the responsibilities of the consultant or team, and provides a clear description of the resources available to conduct the study.” World Bank (2011): <i>Writing terms of reference for an evaluation: How-to guide</i> . Accessed 3 March 2012, http://siteresources.worldbank.org/EXTEVACAPDEV/Resources/ecd_writing_TORs.pdf

UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VLCC	Very Large Crude Carriers

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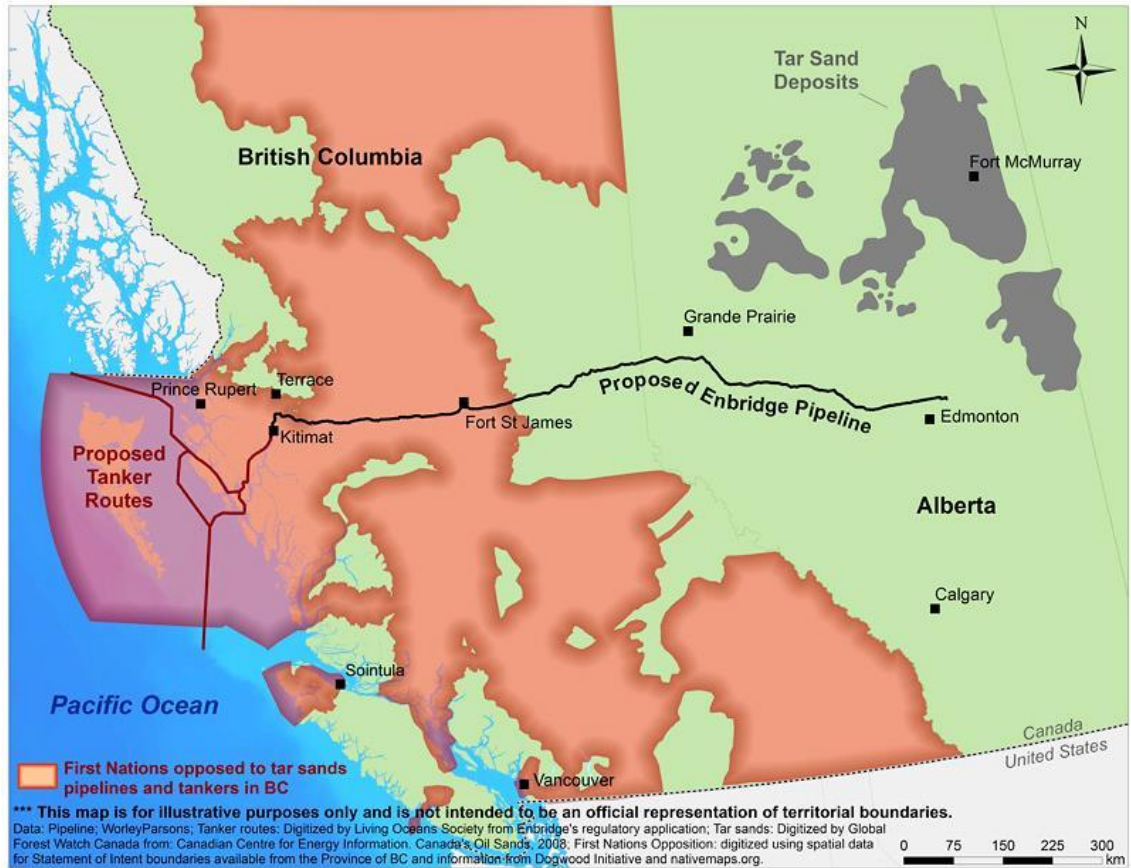
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Map of British Columbia and Alberta

BC First Nations Opposition to Northern Gateway Pipeline, Tankers, and the Alberta Tar Sands



Source: PipeUp Against Enbridge. Accessed 12 April 2013, <http://www.pipeupagainstenbridge.ca/the-project/enbridge-plan#prettyphoto/0/>

1. Introduction

Canada's emergence as a global energy powerhouse—the emerging 'energy superpower' our government intends to build...is an enterprise of epic proportions, akin to the building of the pyramids or China's Great Wall. Only bigger. (Stephen Harper, address to the Canada-U.K. Chamber of Commerce in London, 14 July 2006.-emphasis original)

Our Chiefs have decided, after considering all the information available to them, that this pipeline will not go through Wet'suwet'en land, and it's up to people like myself to try and see that that wish is done, that wish is carried out, that this pipeline will not go through. Our Prime Minister of Canada goes on the television and says, "Oh, I support this and I'm going to do everything I can to push Enbridge through, our pipeline through." How is it that he can pre-decide what his decision is going to be when he hasn't even spoke with us? How is that consulting in good faith with Aboriginal people? The Supreme Court has set out that the Canadian government must consult in good faith but yet our Prime Minister goes ahead and says he supports it and that's all there is to it. So there's no good faith. (Wet'suwet'en First Nations member, Richard Sam's Oral Evidence to JRP, Hearing Order OH-4-2011, 16 January 2012, Smithers, BC: para 5659-5677.)

The conventionally placid political and complacent public spheres in Canada have been stirred into a whirlwind recently; sitting at the eye of the gyre of sweeping regulatory changes, mega resource-extraction projects, and roused indigenous and countermovement struggles, this thesis examines the contention surrounding one of many extractive resource projects in Western Canada: Enbridge¹'s proposed Northern Gateway Pipeline (NGP), intended to facilitate the exportation of bitumen from the Athabasca Tar Sands to Asian markets. Many questions have been raised by pipeline opponents about the project, as well as about the legitimacy of the decision-making methods that will be used to determine whether or not the pipeline's construction will go ahead, so this thesis takes a two-pronged approach. I present overviews of the myriad issues related the pipeline itself, as well as a more detailed examination of the process of public participation and regulatory approval, for which I mobilize theory on deliberative democracy. My analysis draws upon

¹ Enbridge is a 60 year old Calgary-based energy transportation company that employs 6900 people in North America, and are the face of the Northern Gateway Pipelines Limited Partnership, which an international consortium including China's Sinopec, and a number of silent partners who are 'funding its regulatory costs, have made equity investments, or have any other commercial agreements with Enbridge', though they refuse to disclose these interests. <http://www.enbridge.com/AboutEnbridge/CorporateOverview.aspx>, <http://www.financialpost.com/Sinopec+teams+with+Enbridge+Northern+Gateway+pipeline/4128351/story.html>

political ecology approaches, including: the multiple scales present at the processes level rather than a localized ethnography; attention to some relative historical and cultural determinants of current relationships; and the identification of the discourses that seek to frame contesting visions of how growth, culture, citizenship and values are represented in a pluralist post-colonial multicultural nation like Canada.

The Enbridge Northern Gateway Pipeline (NGP) is the \$6 billion proposed link from Bruderheim, Alberta via twinned pipes (91cm and 51 cm respectively) over 1177 km of rugged mountainous terrain in British Columbia concluding at a marine port terminal in the northern coast town of Kitimat. Between 400,000 to 1,000,000 barrels (bbl) per day of diluted heavy crude oil bitumen (dilbit) from the Alberta Tar Sands would be piped to Very Large Crude Containers (VLCCs) with capacities of at least 2 million bbl bound for Asian refineries and markets, while the second pipeline would bring the approximately 200,000 bbl of imported chemical condensate mix required to make the dilbit flow back up to the tar sands' bitumen upgraders (Allan:2012c). While this is only one of several proposals that comprise the Western Canadian 'Energy Corridor,' this thesis' focus is on NGP as it is undergoing the most comprehensive public review process and is the focus of opposition at this point, however the countermovement is directed towards all of the proposed projects.

Pipelines are not necessarily risky endeavours. The NGP project however, presents unique feats of engineering: crossing more than 1000 salmon bearing waterways, tunnelling through two mountains in remote and seismically unstable zones, in areas known for record snowfalls, as well as facing other technical challenges even before reaching the marine terminal. The NGP forces the rejection of a long-standing voluntary Tanker Exclusion Zone on oil tankers along BCs West Coast and the recently protected temperate Great Bear Rainforest, through the 4th most dangerous waterway in the world,² where even small passenger ferries have foundered and sank in the

² Marine Weather Hazards Manual, Environment Canada, 2nd edition, p109

violent storms and record high waves common to the region. The pristine Douglas Channel is notoriously difficult to navigate to Kitimat, requiring 90 degree turns through shallow rocky shoals that at multiple points would allow only a three meter clearance for VLCCs from the ocean floor, and where tanker traffic would increase to one per day into Kitimat.

The Joint Review Panel (JRP) process is an independent public consultation board of three people appointed by the Federal government to act on behalf of both the Canadian Environmental Assessment Agency (CEAA) and the National Energy Board (NEB), and is accountable to Parliament through the Minister of Natural Resources. The panel's task is to review the project in "a careful and precautionary manner," consulting citizens and Aboriginal Groups by various means to determine whether the project is necessary, in the Canadian public interest, and the potential for significant negative impacts on the environment, then producing a recommendations report. Panels such as this can have many benefits, such as being highly public, independent, rigorous (within the limits of their scope), and permitting space for interactions which allow the proponents and regulators to answer questions in real time, as occurred during the Berger Commission in the 1970s. However, recent legislative changes via controversial federal omnibus budget bills mean that decision-making authority ultimately lies with the Federal Cabinet. Critics question whether this does not, in fact, make the process moot, given the cabinet can decide to heed, divide or ignore the report recommendations completely.

With my focus largely on the structure and functioning of the JRP, I question what the decision-making process implemented by the federal government tells us about the nature of citizenship and democracy in Canada today, and how this model of citizenship accommodates, excludes, or otherwise relates to the sovereignty claims of Aboriginal Peoples as well as other Canadians concerned with the nation's current resource-led trajectory. Thus, as points of departure, I will be considering how well the JPR processes and procedures conform to the criteria of deliberative democracy or principles

of Free Prior Informed Consent-Consultation (FPIC) with local communities and indigenous peoples, as found in a number of international agreements as well as within national provisos.

As a metaphor for connection, Western Canadian ‘Energy Corridor’ pipeline projects have consolidated opposition by creating and reinforcing relationships across diverse segments of Canadian and First Nations societies, whereby citizens are becoming energized in defence of core societal values and reengaged in democratic citizenship against NGP. These conflicts seem likely to prove to be wars of attrition, as Indigenous Peoples, citizens, municipalities, labour unions, scientists, and economists throughout British Columbia and Alberta have explicitly denounced the NGP project and question the legitimacy of the JRP consultation process to deal with numerous issues beyond their scope. Opponents are vowing legal action, and should that fail, elders and community leaders have repeatedly stated that they will allow this project only “over their dead bodies.”

Some scholars describe how deep socio-economic inequity within a given society will reproduce and re-enact structural biases in political settings (even those with a paritipatory bent or formally ascribed to equality), due to the fact that such power asymmetries provide greater access to some interests. These can then more readily promote their perspective, whilst continuing to marginalize or ignore the alternative parites that are less conformist, institutionalized or status quo, simply through constraining agenda development, poor implementation, or limiting participation opportunities (Young 2001: 679, 682). Critical Discourse Analysis will be used throughout this work, as it makes important points related to influence, access and participation in decision-making and communications controlled by hegemonic groups. These manifest in the case via legislative alterations regarding regulatory and public process designs, and industry influence on government. In direct relation to the JRP, former CEO of the Insurance Corporation of British Columbia, respected economist and critic of the NGP, Robyn Allen, has stated in her JRP testimony 6 May 2012 that “the Federal

government has taken legislative steps to dominate the environmental review process, expedite review and exclude public input.” Since our paradigm is shaped by the knowledge we have access to, aspects of this will also be exemplified by public relations materials produced by Enbridge (the Proponent) that were ultimately determined to be misleading, as well as insufficient and questionable data in their proposal. Upon her close scrutiny of the data utilized in Enbridge’s proposal, Allen stated “seems more like propaganda for resource expansion than a reliable independent research report”(2012b:28).

Colette Fluet et al (2009) describe the ways that various extractive resource industries in Canada (particularly Alberta) have a disproportionate level of access and authority when governments are developing policies and consultation procedures, which “contributes to our understanding of the ways in which public consultation processes may be represented as democratic but simultaneously maintain the power relations that produce the current model of economic development”; although more consultations have occurred recently, the limitations of their structuring inhibit citizen’s possibilities to contest privileged industrial interests (ibid: 138). As Iris Young states, “to the extent that implementation must presuppose constrained alternatives that cannot question existing institutional priorities and social structures, deliberation is as likely to reinforce injustice as to undermine it”(2001:684). Such concerns are especially poignant for this case in light of recent analysis by the Polaris Institute of the preferential access of the oil and gas lobby to the federal cabinet.³

Citizens globally are increasingly dissatisfied with the limited nature of their involvement in the decisions made via representative liberal democracies. A national poll conducted in March 2013 found that 45 per cent of Canadians feel the democratic system is more broken than effective.⁴ Since the Conservatives formed a majority government in 2011, Prime Minister (PM)

³ From 2010 and 2011, lobbying activities increased dramatically, addressed further in ‘Canadian Changes’ section. Report at <http://www.polarisinstitute.org/bigoilsoilygrasp>

⁴ Biggar, J. (2013, 4 April): “Canadians support electoral reform, would vote for cooperation candidates – new poll” *leadnow.ca*. Accessed 8 April 2013, <http://cooperate4.ca/national-poll/>

Stephan Harper has embarked on reshaping the Canadian institutional and regulatory landscape according to neoliberal principles. Using theories of Karl Polanyi frames this case within the on-going dynamics of liberal economies, as it is these government activities that have spurred the countermovement into action. Neoliberal regimes largely reduce citizen participation to the marketplace, as citizen-consumers, but as this view constrains agency and undermines the roles and nature of both government and citizens (Weeks 2000:371 and Macias 2010:4). Thus, deliberative or participatory democracy now seems a reasonable means of re-engaging citizen responsibilities, not merely rights, expanding participation beyond jury duty and voting, resulting in community-building and a sense of ownership. As a more mature manifestation of social democracy, participatory practices can operate parallel to representative democracy reinforcing rather than undermining governance by clarifying more widely accepted policy decisions to allow for politicians to reaffirm strategic directions, leading to more robust representation. Meaningful participation includes “early, inclusive, deliberative, transparent, and empowering involvement” (Sinclair et al 2008: 417) and in a project such as the NGP, such inputs are vital to the legitimacy and actualization of the project for corporations to generate the ‘social license to operate’ in resource extraction activities.

Neoliberalism’s preferences for contract freedom and the conflation of due process in lieu of outcome-based discussions in prior consultations for industrial projects clash with necessary aspects of human rights such as indigenous self-determination. However, the very logic of further monetizing and putting compensatory dollar value on nature, livelihood, and cultural loss, does not balance or effectively displace the later concerns (Rodriguez-Garavito in Schilling-Vacaflor 2012: 19). This “projection of the neo-liberal legal subject onto the plane of collective rights’ leads to the assumption that all players are on a level plane for negotiations, ignoring the power asymmetries inherent in these types political ecological struggles” (Rodriguez-Garavito 2010: 276). Legalism and proceduralism can serve to depoliticize situations,

giving the false pretence that the use of legal mechanisms automatically operationalizes into functioning equality, when as recent examples demonstrate, this is not necessarily the case, and procedural elements can in fact facilitate exclusion.

The JRP has been analysed elsewhere regarding the changes to environmental law and could be studied point-by-point by the principles of FPIC and deliberative democracy, but as the process was on-going, I felt such activities would be unsatisfactory. Instead, I have sought a broader analysis regarding the potential for Canadian ecological citizenship and accommodation of Indigenous Rights to consider the changing dynamics and larger societal dialogue taking place at the process level.

This project is structured with Chapter 2 describing the Methodologies, Chapter 3 the Theoretical Frameworks, namely deliberative democracy to address the case, and Karl Polanyi's work to situate the case dynamics in a broader context. Chapter 4 maps the case for the expansion of the Tar Sands and the justification for the NGP, followed by background information regarding Canadian Governance. To attempt to address the complexity of this case, I divide the Analyses into several distinct portions. Chapter 5 addresses the first of my research questions, presenting an overview of salient reasons as to why the Northern Gateway Pipeline proposal is contentious, first with an overview of some of the more disputed technical and environmental considerations, and secondly a brief questioning of the economic justifications. In Chapter 6, I outline processes of JRP, and the earlier Berger Inquiry for a historical comparison. My second and main research question is addressed in Chapter 7, which seeks to answer whether the JRP process is an effective, sufficient, or appropriate fora to address the contentions raised. While sections in 7.1 address some of the Limitations of the Joint Review Panel itself, sections in 7.2 delve more deeply into the JRPs theoretical underpinnings regarding questions of participation. Concluding remarks follow in Chapter 8.

2. Methodology

2.1 Case Study and Participatory Observation

In January 2012, I travelled through British Columbia for fieldwork, as close as was possible via ferry along the proposed oil tankers route up the Inside Passage from Port Hardy to Prince Rupert, and to several of the communities along the path of the pipeline, particularly Smithers and Fort St John. I used participatory observation through attending Joint Review Panel sessions and protests, in addition, several years of relevant participation and education helps me to further triangulate the case (details in Appendix 1). Copious formal interviews would have been redundant, as the official publically available documentation is extensive. I did, however, engage in numerous personal communications and met with relevant parties including Indigenous Peoples (chiefs, representatives, community members from three different communities along the pipeline and one from the Alberta tar sands region), JRP officers, (E)NGOs (Forest Ethics, Friends of Wild Salmon, Greenpeace, Campaign against Ecocide), Civil Society Organizations (Dogwood Initiative), environmental lawyers, relevant academics and the public.

2.2 Literature Review

Largely a literature review, this study is both wide (covering a diverse array of “grey” literature sources including newspapers, NGO reports, web-based resources, newsletters), and deep (official JRP and government documents, in-depth reports, similar cases, and legal, policy, and archival documents). While there are few first-hand personal interviews, there are dense volumes of information within the public record which were accessed in person at various meetings and at the Joint Review Panel, as well as through the internet. After looking extensively into the bodies of literature on International Environmental Law and Indigenous People’s Rights, Environmental Justice, and Social Movement theory, I came to the conclusion that deliberative and participatory democracy offered the most rational, possible to implement, yet potentially profoundly transformative series of concepts, especially in such a case as the NGP-JRP. The conflict was further captured through the literature

of Karl Polanyi and numerous political ecologists (from Canada particularly), as each field, through their particular lens, considered the structures and processes linking exclusion and hegemonic capitalist preferences over open, inclusive, substance- and output-oriented public deliberation and decision-making.

2.3 Critical Discourse Analysis

John Dryzek describes discourse as:

a shared way of apprehending the world. Embedded in language, it enables those who subscribe to it to interpret bits of information and put them together into coherent stories or accounts...Each discourse rests on assumptions, judgements, and contentions that provide the basic terms for analysis, debates, arguments, and disagreements...Discourses are bound up with political power(2005:9).

Similarly according to Iris Young, discourse is the encompassing system:

of stories and expert knowledge diffused through the society, which convey the widely accepted generalizations about how society operated...as well as the social norms and cultural values to which most of the people appeal when discussing their social and political problems and proposed solutions (2001: 685).

Moving beyond and incorporating multiple theories, methods and disciplines, Critical Discourse Analysis (CDA) is an issues-related approach which offers a way to look at the polarization of perspectives while seeking to move beyond the simple dichotomy between ‘domination and emancipation.’ CDA provides another clarifying lens to better understand situations more generally, as well as the “indirect and long-term analyses of fundamental causes, conditions and consequences of such issues” (van Dijk1993: 253, 279). For the NGP-JRP, I mobilize the use of CDA as a method to better understand the power dynamics being employed in the public arena around this proposal. CDA is concerned with how power exerts itself in more subtle ways within dominant discourse, using strategies of “persuasion, dissimulation or manipulation...to change the mind of others in one’s own interests” such that “dominance may be enacted and reproduced by subtle, routine, everyday forms of text and talk that appear natural and quite acceptable,” and so the use of such strategies “legitimate control, or otherwise naturalize the social order, and especially relations of inequality” (Fairclough 1985 in van Dijk 1993:

254). CDA seeks to better understand complex social problems such as dominance, control, and inequality using a multidisciplinary approach which provides insights into the “intricate relationships between text, talk, social cognition, power, society and culture”(van Dijk 1993:253).

Antonio Gramsci used the term *Hegemony* to describe the ways in which dominant discourse is so deeply embedded within the psyche of a population, that those who are dominated not only accept the structures of dominance but act in the interest of the powerful out of their own free will (1971 and Hall et al. 1977 in van Dijk 1993: 255). A relational understanding of hegemony’s structure and agency helps to clarify the development of countermovements (Birchfield 1999: 40).

CDA also makes important points related to determining influence, access and participation in decision-making and communications, which hegemonic groups control, as seen in the relationship between the Canadian government and the oil industry. Edward Herman and Noam Chomsky describe that a “major function of dominant discourse is precisely to manufacture such consensus, acceptance and legitimacy of dominance” (1988 in van Dijk 1993:254). Thus, discourse is constructed and imposed from the top-down and “supported or condoned by other group members, sanctioned by the courts, legitimated by laws, enforced by the police, and ideologically sustained and reproduced by the media or textbooks” (van Dijk 1993:255).

To challenge the current discourse, progressives had previously attempted to articulate and foster a ‘green’ mentality to help guide changes in the actions and values of individuals, without explicitly addressing the importance of engaging community solidarity and participation; as succinctly expressed by Michel Foucault, “the problem is not ‘changing people’s consciousness’... but the political, economic, [and] institutional regime for production of truth” (1980:133 in L.Adkin 2009:8). Ideological hegemony is a necessary part of a functioning political system, according to Gramsci, but whether it is positive or ethically-oriented depends upon a basis of “widespread popular consent deriving from a philosophical world-view” that

was active rather than passively constructed, free from state coercion (Birchfield 1999:44). An important differentiation for Gramsci was between “‘*good sense*’ [as] a conception of the world with an ethic that conforms to its structure” as opposed to the “ideological hegemony comes into play when there is uncontested *common sense*, despite the internal contradictions of any such single conception of the world which serves the dominant few to the detriment of the marginalized many” (emphasis added, Gramsci 1972:346 in Birchfield 1999: 45). A new ‘radical’ hegemony, manifest for this thesis’ purposes as the consolidated and unified countermovement to the NGP, seeks to “question the legitimacy and naturalness of the ruling order and to replace these with a vision and a program of their own,” effectively updating Gramsci’s class polarized ‘historic bloc’ with an inclusive “social movement for ecological democracy that is capable of articulating diverse struggles for equality, freedom, and recognition without erasing their specific origins or meanings”(Adkin 2009:13).

Specific notes on language:

1) *Aboriginal*, *First Nations*, and *Indigenous Peoples* are used interchangeably here, for reasons of chosen self-identification of particular group and that a singular definition is not agreed upon at the international level (though the latter is preferred). All can be considered relevant within the context with no disrespect intended and an understanding of the distinctions between groups. In Canada, Aboriginal peoples refers to both Status and non-Status Indians, Inuit, and Metis⁵ nations, whereas First Nations came into usage in the 1970s, and refers more narrowly to Status and non-Status Indians, replacing ‘band’ or ‘Indian’. As per CDA, there is an industry and

⁵ Originally the Metis were the children of 18th Century European fur traders and Indigenous women, but the population distinguished themselves, developing their own unique language, communities, and culture, and have sought to act collectively to assert their rights as a distinct nation. This effort was partially affirmed through the Supreme Court Decision of *R.vs.Powley* in 2003 which recognized the Metis as protected under sect.35 of the Canadian Constitution Act, 1982, like other First Nations. The Metis National council’s definition is: “Métis” means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation.” Accessed 15 January 2013, <http://www.metisnation.ca>

governmental preference to use ‘First Nations’ as it can potentially exclude Metispopulations and non-status Indian Groups, thereby reducing their obligations to honour aspects of FPIC.

- 2) While industry and the Harper and Alberta governments have recently been promoting the use of the term *oil sands* over the negative connotations associated with the use of *tar sands*, I prefer the use of *tar sands* as it is a more accurate description of the natural state of crude Athabasca bitumen. Until recent history, when public relations and reputational image became of greater importance to the sector, tar sand was avidly used, exemplifying their conscious reframing of the discourse. Both will be used, as per the source usage.

2.4 Limitations and Challenges

Difficulties inhere in such an undertaking, given the situation was unfolding daily and that the brevity of this analysis barely touches on the numerous complexities, as per the limits of a thesis. Furthermore, the limitations of studying a dynamic process in progress from thousands of miles away were deeply challenging.

Allies of Indigenous People face numerous limitations when attempting to engage in research, however I was widely and warmly welcomed in every instance by different groups in various contexts. This speaks to the positive nature of the coalition and trust-building present in countermovement to the NGP, who are participating with an openness that has fostered and nurtured the broad basis of support.

I humbly acknowledge the ambitious scope of this project, but made a conscious choice to include as much detail as possible to construct a more holistic picture of a complex controversy, though this decision did not make for a straight-forward analysis. I feel confident that the facts and analysis compiled before you speak for themselves, but adopting aspects of Political Ecology and Critical Discourse Analysis, took:

an explicit sociopolitical stance: they spell out their point of view, perspective, principles and aims, both within their discipline and within society at large...their work is admittedly and ultimately political. Their hope,

if occasionally illusory, is change through critical understanding. Their perspective, if possible, that of those who suffer most from dominance and inequality. Their critical targets are the power elites that enact, sustain, legitimate, condone or ignore social inequality and injustice... one of the criteria of their work is solidarity...implies a political critique of those responsible for its perversion in the reproduction of dominance and inequality. In other words, CDA is unabashedly normative: any critique by definition presupposes an applied ethics (van Dijk 1993:252).

I have attempted to clearly present this case without overt bias, but if it is acknowledged that the status quo economy is not of penultimate importance, and other considerations and even other economic analysis enter the scope, it becomes an unbalanced argument; History, prudence, rule of law, international norms, environmental protection, citizens and Aboriginal peoples rights, and the vision of a carbon-free future weigh too mightily.

3. Theoretical Frameworks

3.1 Deliberative Democracy

This chapter strives to address the burgeoning deliberative, discursive and participatory governance literature that proved of relevance. The first part presents an overview of the principle norms, merits, and processes of deliberative democracy. An introduction of the criticisms follows, however in-depth discussions come in the theoretical analysis.

The “traditional polyarchal mechanisms” of liberal democracies which devised participation around elections and political parties, do not sufficiently attend to the diversity of positions in contemporary, multicultural societies (Richardson and Rassaque in Macias 2010:4). Thus, “liberal democratic procedural rights will most likely not defy elites’ power over government decision-making,” as Rebeca Macias explains, for commonly interests are often “judged based on the standards defined by elites and not the people in general” (2010: 4). The most recent wave of global democratization was paralleled by civil society and other progressives seeking to reform representative democracies deficiencies, such as weak accountability regarding “horizontal, electoral, un-sustained societal accountabilities” (Wampler 2012:667) and extending the capacity for citizens to express preferences beyond blunt electoral mechanisms (Fung 2012:613). Gramsci also thought that politics ought to be continually conducted as a transformative, open, process serving to unify and enact the thoughts and will of the population, rather than permitting sedimentation (Birchfield 1999:43).

Deliberative democracy offers a response to these critiques, being essentially a maturation of social democratic norms that explicitly involves the participation of the public (beyond jury duty or voting) in meaningful processes of discursive deliberations to contribute to inclusive decision-making and policy development; for as Amartya Sen describes John Rawls’ theory of Justice, “when citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions” (2009:324).

Institutionalizing civic engagement via deliberative and participatory concepts is described in the following table:

Table 1. Criteria for Institutionalizing Public Involvement

Structure	Process
Public involvement should be a core element of the policy process	Open (not limited to economic stakeholders or 'tiny publics')
Public input is given 'substantive consideration throughout the planning and execution stages' (rather than having only token value)	All participants have equal access to information and there be adequate resources for input from the public and Indigenous peoples
Citizens are expected to participate in respectful, reasoned ways, recognizing others as autonomous equals	Indigenous (or traditional ecological) knowledge be included in the deliberation
That both the public service and elected representatives play a role in the institutionalization of public involvement	Adequate notice be given and the processes be neutrally administered
The commitment to institutionalized public involvement be government-wide rather than only to certain departments	Terms of reference (ToR) not be predetermined

Source: Adapted by L. Stendie from Lori Turnbull and Peter Aucoin 2006 in Adkin 2009: 314

The widely accepted use of lay citizen juries conferring legitimacy in legal decisions is a parallel concept wherein the skills, wisdom, and capacity of equal, autonomous, adult citizens could conceivably be extended into other arenas to express popular values regarding 'common good' public interests without the attendant political (partisan) baggage (Fung 2012:619 and Cohen 1997:69). Archon Fung succinctly describes how the processes of deliberative democracy require: "interaction, exchange, and—hopefully—edification precedes group choice...participants in deliberation aim toward agreement with one another (though frequently they do not reach consensus) based upon reasons, arguments, and principles, [described as] negotiation and consensus building" (2012:617). In an idealized form, deliberative democratic practices allow for opinion change and re-orientation of values based on the strength of presented arguments and thus, paradigm transformation, making it revolutionary whilst being reasonable and achievable.

Relying as it does on re-invigorating the responsibilities as well as rights that inhere in citizenship, deliberation best operates parallel (or 'grafted' on) to existing representative democracies and institutions (Wampler 2012: 669). Rather than undermining representative governance, the process

reinforces the authority of government policy directions since it allows for a more robust representation, clarifying and providing support for politicians to reaffirm their direction and take decisions that are widely acceptable (ibid:667). The harmonization required of participation and representations are elucidated well by David Plotke:

The opposite of representation is not participation. The opposite of representation is exclusion. And the opposite of participation is abstention. Rather than opposing participation to representation, we should try to improve representative practices and forms to make them more open, effective and fair. Representation is not an unfortunate compromise between an ideal of direct democracy and messy modern realities. Representation is crucial in constituting democratic practices (1997:19 in Wampler 2012:672).

Deliberative democracy is important as it “re-embeds” citizens in politics, empowering and enabling them, as Brian Wampler so deftly puts it, “to use a political scalpel rather than a sledgehammer to engage the policy-making process,” and providing means for expressing preferences other than through voting or the economic marketplace (2012:673). Habermas’ ‘ideal speech’ situation incorporates such deliberation and inclusion, in that all those who could be potentially affected must be given the chance to engage, contributing their voice as well as being involved in how to resolve a dispute (Bardati 2009:113).

Several contemporary normative understandings are vital to promoting what Maeve Cooke describes as ‘*whom we are*’ through deliberation which are important to this case:

a) There are no authoritative standards independent of history and cultural context that could adjudicate claims to epistemic validity, particularly in the areas of science, law, politics and morality, and that knowledge in these areas should be construed fallibilistically;

b) Autonomous reasoning is a valuable part of human agency;

c) Publicity is important, especially in the realms of law and politics;

d) Everyone is in principle deserving of equal respect as an autonomous moral agent with a distinct point of view (2000:955).

Young’s evaluation of norms for deliberation concurs with Cooke, requiring unconstrained discussion among equitably treated, affected parties using only

the weight of the better argument to convince each other, while requiring publicity, as well as accountability and inclusiveness for all perspectives (2001: 679).

By allowing society to best represent Cooke's '*whom we are*' in individual and group opinion formation, deliberation has the potential to diffuse rather than escalate tensions by '*enlarging our mentalities*' according to Hannah Arendt. The '*enlarged mentality*' comes of thoughtful and considered deliberation, negotiation, and consultation processes with others which creates a shared understanding and softening of individualized perspectives in order to create just and accurate assessments and compromises that satisfy all parties to some degree (Smith 2003:26). Arendt advanced the concept of developing judgements based on such an enlarged way of thinking was capable of transcending individualized interests in the public sphere to "liberate us from the 'subjective private conditions,'" for an enlarged mentality "cannot function in strict isolation or solitude; it needs the presence of others in whose place it must think, whose perspectives it must take into consideration" (1968:220 in Smith 2003: 26). Such civic-minded debate is inherently moralizing, for publically stating reasons and justifications has the tendency to "eliminate irrational preferences based on false empirical beliefs, morally repugnant preferences that no one is willing to advance in the public arena, and narrowly self-regarding preferences" (Miller 1992:62 in Smith 2003:63).

Fung describes how in the practice of participatory governance, citizens are encouraged to: learn via the available literature and explore the issue; consider the value or consequences of the proposal; discuss, bear witness to the other viewpoints and struggles, and publically express their perspective; and potentially transform their opinion or preferences (2012:615). Procedures for deliberating are important because the communicative process is actually what informs the collective rationality of decision-making beyond any coercion or deceit (as in the Habermasian discourse ideal), which is confirmed by Seyla Benhabib: "Deliberative processes: a) impart new information b)

help individuals to order their preferences coherently and c) impose a certain reflexivity on individual preferences and opinions, forcing participants to adopt an ‘enlarged mentality’”(1996:71 in Cooke 2000, 952). Dryzek summarizes that discursive democracy must “involve collective decision-making through authentic democratic discussion, open to all interests, under which political power, money, and strategizing do not determine outcomes” (2005:233).

Fung’s 2005 example from BC describes how such deliberative processes can function in Canada. His research followed the province’s establishment of a Citizens’ Assembly of 160 individuals, selected randomly from voters lists (adjusting for region and gender representation) to meet twice each month for a day and a half (with 94 percent attendance overall) to learn, speak with the public in open forums, and make suggestions about modifications to the electoral system (2012:260). Two alternative systems met the criteria deemed necessary and were voted upon, either mixed member proportional (MMP) system or a type of single transferable vote (STV), with the later winning by 80 per cent in the Assembly. The decision was then brought forward in a provincial referendum, which had to pass via ‘double majority’ (more than 60 per cent in the total ballot, and to pass with that percentage in 60 percent of the provinces’ constituencies). Voters clearly found the deliberation process and information provided by the Assembly as legitimate, for the motion to change narrowly lost with 57.4 percent of the total, and passing in all but two ridings (ibid:260).

While deliberative and participatory processes can present important, and some argue necessary, developments for responsive, accountable democracy, the theory does encounter challenges in praxis, several of which are important to this case study and that I now present.

3.1.1 Problems and Critiques: Rawls argues for public reasoning, “which involves the capacity to draw logical inferences, evaluate evidence, and balance competing claims” but this is not as simply or universally applied in such complex multicultural post-colonial societies as exist in Canada, wherein

pluralistic rationales exist to make the crafting of impartial judgments challenging (Valadez 2001:60). Citizens in such societies embody heterogenic perspectives and consequently there is greater likelihood of “persons whose paths through life have fallen together, united by civility rather than by a common goal, much less by common grounds” (Rorty 1980:318, in Toke 2000:162). Thus, values can be based on variously reasoned and valid, but distinct, and potentially incompatible, or incommensurable, perspectives (Cohen 1997:408).

Incompatible situations in value pluralism occur when it is not possible to simultaneously satisfy multiple values, actions, ‘goods’ or ideals when faced with several possibilities, resulting in a sense of loss through the forced choice of one option over the other(s) (Smith 2003: 21). Political ecology is rife with incompatible situations, as Graham Smith explains, for balancing intergenerational, intercultural, economic, and environmental demands and protections inevitably requires compromises between irreconcilable value standpoints (ibid: 22). With no common, agreed-upon set of knowledge rules (the epistemology), values, or principles, then there are no clear ways to discern the truth between differing discourses and they are non-commensurable, or as relevant to the NGP case, the dominant discourse can be so deeply embedded as to be rendered almost invisible (ibid: 21).

Primary values clashes demonstrate the non-commensurability of participant’s paradigms, which Sen describes as “the irreducible diversity between distinct objects of common value” (2009:395). Different objects are commensurable if common units can be used to calibrate, measure, or evaluate them, at which point a decision on total value of each can be made merely by assessing (‘counting’) the homogenous metric within a singular dimension, such as Sen exemplifies using two glasses of milk (2009:240). Incommensurability occurs when multiple criteria are not reducible to each other, for if we take for example the valuation of a certain undeveloped location: judging it as a landscape requires the use of aesthetics which are best determined by artists; for scientific importance the criteria would be

established by ecologists and geologists; but other perspectives regarding spiritual, cultural or economic worth require other practitioners and experts, though each would provide an incommensurable evaluation (Smith 2003:23).

The values appealed to for the appraisal of the site under the description of habitat, such as species richness and integrity, are distinct from those appealed to for its appraisal as a landscape or place. None seems reducible to others, nor to some other common value. None straightforwardly takes precedence over others: there is no privileged canonical description for the purposes of an overarching evaluation. The different appraisals of the site call upon an irreducible pluralism of values (O'Neill 1997:77 in Smith 2003:23).

It is therefore possible to not only lack a basis for agreement, but even the fundamental divergence of norms, principles and claims on reality, thus even the “shared epistemic procedures for adjudicating between their competing claims” becomes contentious (Valadez 2001:58). Anthropologists have generally applied the term ‘incommensurability’ when measuring differences in cultures or languages (Lowrey 2008:62), such that it is a “discursive clash, in which claims and different kinds of knowledge, based on radically distinct epistemological roots, get crossed” (Rodríguez-Garavito 2010:297), which in the NGP case resonates with the perspectives of Indigenous Peoples.

Capitalist economics have provided the “system *par excellence* of absolute commensurability” (Lowrey 2008, 62) with the market serving as the guide for (as Polanyi described) commodification of land, labour and money by subjugating these to property-based rights, pricing, and trading (Harvey 2005:165). The so-called ‘impartial’ monetary valuation is used as a basis for assessment to decide compensation for resources and situations, though this clearly founders when attempting to evaluate the economic value of a spiritual site, for instance. The supposition that “‘human’, ‘human-made’ or ‘natural’ capital can be substituted for one another” (Smith 2003: 38) and represented by a monetary valuation is closely fixed to this ethic, but fails to resonate with other paradigms where “the values of life are not in the main, reducible to satisfactions obtained from the consumption of exchangeable goods and services” (McNiesh 2012:30). The concept of ‘ecocentrism’ guides many environmentalist-oriented opponents, which Robin Eckersley (1992) and Arne

Næss (1972) characterize as valuing the non-human living world as intrinsically valuable in itself, not merely through the anthropocentric lens of human utility (Toke 2000:87). Similarly, the non-negotiable stance of many First Nations in opposition to the NGP is rooted in the conviction that because of their cultural connections, their territories are not for sale at any price, thus it is not possible to compromise or arrive at some form of ‘reasonable accommodation.’

3.1.2 Seeking Legitimacy through Fair Process: Some scholars argue that with the incommensurability and plurality of values in modern societies, only through fair procedures can a basis of agreement be determined, hence the international focusing on legally recognized, appropriate procedure to provide “a *lingua franca* that allows for contacts between radically different conceptions of development, nature, and human flourishing ...[which] at the very least permits provisional communication between them” (Rodriguez-Garavito 2010:273). The ‘fetishism of the law,’ as per Jean and John Comaroff, is described as the “global faith in ‘the capacity of constitutionalism and contract, rights and legal remedies, to accomplish order, civility, justice and empowerment’” (2001 in Rodríguez-Garavito 2010: 274). Furthermore:

In situations of ruptured hyphen-nation, situations in which the world is constructed out of apparently irreducible difference, the language of the law affords an ostensibly neutral medium for people of difference – different cultural worlds, different social endowments, different material circumstances, differently constructed identifies – to make claims on each other and the polity, to enter into contractual relations, to transact unlike values and to deal with their conflicts. In doing so, it forges the impression of consonance amidst contrast, of the existence of universal standards that, like money, facilitate the negotiation of incommensurables across otherwise intransitive boundaries (Comaroff & Comaroff 2001:39 in Rodriguez-Garavito 2010:293).

Many deliberative democratic theorists also argue that it is within the processes, and not the outcomes, of public deliberation that the locus of political autonomy resides, as this is where citizens can see “justifications for the laws, principles and policies that govern their lives,” which Cooke calls ‘rational accountability’ (2000:952). She goes on to describe that “compromises can be submitted to a fairness test from the point of view of

how they are reached not from the point of view of their content – in other words, only from the point of view of procedural standards of fairness” (ibid:952).

Yet, as per CDA, often within hegemonic discourses participants may defend a status quo against their direct interest because the ideas are so deeply ingrained as to be imperceptible. In Habermas’ concept of ‘distorted communication’, the invisible nature of these structural inequalities and influences become the most insidious and dangerous in public discussion, as they are the least obvious; Such influence “contains the conceptual and imagistic frame for discussion, which often contains falsifications, biases, misunderstandings, and even contradictions that go unnoticed and critiqued largely because they coincide with hegemonic interests or reflect existing social realities as though they are unalterable”(Young 2001:686). These types of structural asymmetries will not be assuaged by the mere application of procedural fairness.

3.1.3 Validity Regardless: Despite the afore-mentioned challenges, I argue that the transformative possibilities presented by deliberative democratic practices hold the potential to actively ‘re-embed’ citizens within politics, not just economics, and that the rise of a comprehensive countermovement in Canada can be viewed as a tangible expression of the public’s desire for greater responsiveness of, and meaningful involvement in, governance.

Various scholars point out that even within communities without shared comprehensive political, moral or religious views, if the society ascribes to some level of autonomous equality, there is room to move beyond a merely procedural approach, towards participation and democratic practices (Cohen 1997, Cooke 2000). In liberal democracies adult members (citizens) are considered to be the best judges and defenders of their own interest since they are autonomous, thereby egalitarian consideration is granted to each person’s interest, but this must be activated through deliberation. To minimize “the gap between legitimacy and justification,” Cooke describes the necessary cognitive process through which politically autonomous citizens develop the

‘enlarged mentality’ (exchanging information, ordering and debating preferences), for engagement in active deliberation is the best means to achieve the most appropriate solution, she describes as being “objectively right in the given context” (2000:967). Habermas recognized the lack of a singular, universal understanding of ‘public reason,’ but maintains that through the reflexive, respectful, expanded understanding and accommodation that occurs via an open and dynamic deliberative dialogue, a broadened range of acceptable reasons will emerge (Valadez 2001:61). Thus theorists argue that only by crafting of citizen’s ‘enlarged mentalities’ through discussion and deliberation can different people engage in a specific discourse, attempting to understand ‘realities’ beyond their own conceptions, with the goal of moving towards a common set of assumptions (Rorty 1980 in Toke 2000:163). Extolling the combinations of “hermeneutic openness and unconstrained critical exchange between mutually opposing comprehensive doctrines,” Cooke views the fostering of “deliberative (in the sense of transformatory) interpretation of the principle of tolerance fits well with ‘whom we are’” and carries the capacity to move arguments beyond merely subjectivist, private interests toward “a context-transcendent, or ‘objective’ moment” (2000:962).

The reasoning and validity of public involvement in legitimizing governmental decisions is demonstrated by the successes of participatory budgeting. Among the most exciting and diffused institutional developments to representative-based democracies in the ‘Global South’ since the 1990s, participatory budgeting greatly expanded the “right to exercise voice and vote beyond the constraints posed by the periodic elections”(Wampler 2012:680). In Wampler’s study, citizen participants provided direction for 10-15% of Porto Alegre, Brazil’s annual city budget, giving the government clear signals about what people desired at the individual and collective levels, whilst also energizing citizens at other access points to “lobby other state agencies as well as engage in party politics, demonstrations, and civil society mobilization to have their interests met” (2012: 670, 676).

Publically engaging in multiple venues and broad mobilizations are essential for guaranteeing “that procedural reforms occur and that their outcomes are implemented,” challenging sedimentation within particular societal arenas, such as between private and public interests, or between the boundaries erected between legal structures and living culture (Adkin 2009: 317). Similarly diverse repertoires of strategies are being applied by citizens and the countermovement opposed to NGP. The demands of such social movements seek convergence in the governance and establishment of institutions for the protection of “individual rights as well as group-based rights that recognize the profound differences of citizens,” in order to rearrange and “redirect state authority and resources” (Wampler 2012: 676).

History reveals that regimes of rule that are not flexible or responsive to the will of the public do not survive, and while no one claims that current manifestations of representative democracy are perfect, they are indeed the best large-scaled governance humanity has yet devised. As John Dewey wrote in 1927, “by its very nature, a state is ever something to be scrutinized, investigated, searched for. Almost as soon as its form is stabilized, it needs to be re-made” (in Fung 2012: 609). Deliberation and wider, meaningful participation help further inform this system, so that rather than replacing or displacing it, the structures are strengthened. As Cooke describes, if governance is “never final and conclusive but always open to challenge and revision in light of new evidence and arguments, unconstrained rational argumentation seems the most appropriate forum for adjudicating rival claims,” which rings especially true when applied to contemporary multicultural pluralities (2000:955).

3.2 Indigenous Rights and Free Prior Informed Consultation-Consent

A useful comparison of the precepts of international human rights standards on meaningful prior consultations and standards of deliberative democracy is provided in the table below by Almut Schilling-Vacaflor (2012) and describes how both help to evade parochial biases. The following chart is referenced

throughout in my analysis as it provides useful criteria by which to evaluate the democratic nature of the JRP process, though it is neither explicitly a deliberative forum nor an example of Free Prior Informed Consultation.

Table 2. Comparison of international human rights standards on meaningful prior consultations and standards of deliberative democracy

	<i>International Human Rights Standards(Free Prior Informed Consultation and Consent)</i>	<i>Standards of Deliberative Democracy</i>
General Characteristics of Consultation/ Deliberation	Genuine and constant dialogue between representatives of state institutions and indigenous communities, carried out previously to a planned legislative or administrative measure, in a climate of confidence, mutual respect and good will	Climate of the deliberations should be respectful, without discrimination; mediators in the negotiation should be accepted by all parties involved
Participants	Representative institutions of the indigenous peoples and legitimate representatives of all affected communities participate in the process; consultations must take into account affected groups' own norms and procedures	Everybody affected or their legitimate representatives should have the right to participate; deliberators should have equal opportunity to present interests and preferences; all significant interests should be represented
Information/ Transparency	Complete information about the planned project must be submitted to the local communities, including information about the expected environmental and sociocultural risks and impacts	Access to broad information contributes to fair deliberations; the deliberative process should be transparent and scrutinized by media and other citizens; informed public debates also in informal arenas
Cultural, Social and Linguistic Adequacy	Consultation should be adapted to the social and cultural models of the indigenous peoples (e.g. values, conceptions, handling of time, reference systems and modes to conceive the consultation)	Arguments should be presented and decisions justified so that they are understood by all participants
Establishment and Binding Character of Agreements	Consultations must have the sincere objective of achieving a common agreement; consultations should help shape the planned measure; agreements obtained as a result of the consultations are binding	Deliberative processes should reach shared understandings of common good; all participants must accept final decisions as binding; principle of revisibility of decisions

Source: Schilling-Vacaflor 2012:9

The rights conferred by Free Prior Informed Consultation-Consent (FPIC) are enshrined in many widely adopted international agreements, and the Indigenous right to self-determination is recognized in some Canadian contexts. The United Nations Declaration on the Rights of Indigenous Peoples was adopted in 2007 after 20 years of negotiations, but the former settler-colonies of Canada, the US, New Zealand, and Australia did not sign until 2011, fearing claims over national territorial sovereignty. By being, albeit reluctant, signatories to UNDRIP, the Canadian government has a duty to adequately consult and engage in meaningful dialogue with First Nations under FPIC. Aboriginal rights are enshrined in section 35(1) of the 1984 Canadian Constitution as well as affirmed in numerous high-level court decisions and the various 19th Century Treaties. Of note, Canada has not signed the ILO Convention 169 on Indigenous and Tribal Peoples (1989).⁶

While the Federal Crown has a duty to adequately consult with Aboriginal Peoples, that responsibility for the NGP has been largely discharged to the Proponent, and many are frustrated by the off-hand way Aboriginal People were initially treated as a sub-set of the general public in Enbridge's original application and the JRP documents, and not as unique rights and title holders. As described by Sen:

Unfortunately much writing and rhetoric on rights heedlessly proclaims universal rights to goods or services... without showing what connects each presumed right-holder to some specified obligation-bearer(s), which leaves the content of these supposed rights wholly obscure....Some advocates of universal economic, social and cultural rights go no further than to emphasise that the right *can* be institutionalized, which is true. But the point of difference is that they *must* be institutionalized: if they are not there is no right. (2009:382)

Likewise, 'neoliberal multiculturalism' is the "legal regime that recognizes cultural rights, but denies, *de facto or de jure*, 'the assertion of control over resources necessary for those rights to be realized,'" so that in this context, Canada has agreed to rights of First Nations, yet they constrain ways for those rights to be meaningfully realized (Hale 2005 in Roderiguez-Garavito 2010:286). Systemic concerns regarding historic and on-going injustices,

⁶ More information can be found at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

(de)colonialization and aboriginal sovereignty were raised in December 2012 by the four indigenous women who started Idle No More, the national, non-violent grassroots indigenous protest movement which quickly spread coast to coast.⁷ Concurrently, Chief Theresa Spence of Attawapiskat First Nation and Elder Raymond Robinson began a 44-day hunger strike regarding the ongoing neglect of their people in a remote region of Northern Ontario to demand a meeting with the Prime Minister and Governor General for all First Nations because, as she asserted, "Our Treaty Rights continue to be violated and ignored."⁸ Most critics fear the JRP will contribute to the systemic marginalization Canadian Indigenous Peoples have faced historically.

Despite multiple Supreme Court decisions,⁹ the Canadian definition of meaningful consultation remains vague and certainly permits no veto power, even when there is no treaty in place, as in much of Northern British Columbia where indigenous peoples have had continuous use of the lands and never sold or relinquished ownership titles, which also confers usufruct rights under common law. As Richard Sam of the Wet'suwet'en Nation told the JRP in his Oral Evidence "Our hereditary system is not destroyed. Our governance system is still in place. Our decision-making system is still in place. Our Hereditary Chiefs hold respect in our communities and hold decision-making powers" (JRP Hearing Order OH-4-2011, 16 January 2012, Smithers BC: para 5659-5677).

3.3 The Wider Context via Polanyi's Great Transformation

Land and labour are no other than the human beings themselves of which every society consists and the natural surroundings in which it exists. To include them in the market mechanism means to subordinate the substance of society itself to the laws of the market (Polanyi 2001:75).

Economic historian and social theorist Karl Polanyi's work *The Great Transformation* is considered one of the classic works of the 'moral economy'

⁷ More information at <http://idlenomore.ca/>

⁸Rickert, L.(2013, January 24): "This Declaration leads Chief Spence to End her Hunger Strike," *Native News Network*. Accessed 3 February 2013, <http://www.nativenewsnetwork.com/declaration-leads-chief-spence-to-end-her-hunger-strike.html>

⁹ Supreme Court Decisions include Taku River Tlingit -2004 and Haida Nation -2004, among others.

approach, and is now being reexamined by scholars of IPE, globalization, environmental policy and sociology (Meyer 2010: 85). Though it detailed the events of the 19th Century, moving from pre-industrial society, to market-oriented industrialization and the subsequent transformations of European society, parallels can be made that resonate to contemporary shifts through a rereading of his most salient concepts: economic ‘embeddedness’ of markets; the ‘fictitious commodification’ of land, labour, and money; debunking the ‘utopianism’ of ‘self-regulating *laissez-faire* economics’; and the rise of countermovements to counteract the excesses of capitalism (Polanyi 1952, Meyer 2010).

Many contemporary scholars argue that we are undergoing a ‘Second Great Transformation’ as politicians and institutions have aggressively been pursuing neoliberal global policies with the “same market utopian vision”, but that this time, the protective thrust of the countermovements are focused also upon environmental considerations rather than solely that of human welfare, seeking to ‘re-embed’ humanity in nature as perhaps a ‘triple movement’ (Block 2001, Bernard 1997, and Mendell 2001 in Meyer 2010:84). Polanyi goes beyond simplistic economic or class-based explanations (like those of liberal capitalists or Marxists, respectively) to offer a more comprehensive orientation of the socio-economic issues, which continues to be of use for situating contemporary contexts. Thus, for the purposes of this thesis the ‘welfare’ state in Polanyian analysis that coalesced due to resistance activities of the multiple sectors of society reacting to the destruction wrought by industrialization of market economics, is here aptly paralleled with the emerging ‘ecological socialism’ countermovement seen in the opposition to the NGP (Low 2002:47-8). Conflicts such as those surrounding the NGP are inherent to capitalist economics, thus Polanyi’s analysis is useful to help understand my case within broader dynamics. But we must recognize that unlike today, in his case people could not turn to democratic institutions, which is what led to violent countermovements.

3.3.1 Economic ‘Embeddedness’: Polanyi’s concept of an ‘embedded economy’ can be understood within the household model whereby use values are set and accumulation used by the terms of the community (Meyer 2010:86). Prior to the market economy, societies satisfied material needs “through subsistence, rather than gain dominated economic activity” and economics were therefore embedded within the social sphere and values (Lacher 1999:316). But within capitalist economics, commodification of land, labour and money imposes rationality to separate social relations, as well as producing scarcity which forces individuals to conform to the rules of the market to protect their livelihoods (ibid:316). When the state withdraws protections, individuals must “sell their labour, [as the state] deregulates the sale of land and the use of money,” thus the politics of this transformation is what brought about the capitalist marketplace (ibid:316). The creation of the self-regulating market separates the economy from the rest of society, rendering the latter subservient, dis-embedded (ibid:318).

The role of the environmental ‘commons’ is important especially as it relates to indigenous peoples that have never ‘dis-embedded’ from their land-base, as many groups involved in the resistance to NGP continue to live. Garret Hardin’s classic essay on ‘The Tragedy of the Commons’ advocates for private property or state based regulation to stall the destruction that otherwise results from free-for-all abuses, and is what the Harper government is proposing in the privatization of First Nations Traditional Territories in Bill C-428.¹⁰ Elinor Ostrom and many others contest this narrow analysis of the management of common resources as being culturally-bias, whereby other cultures have “the source of their livelihood embedded within a set of norms

¹⁰ The debated neo-liberal concept of dividing communal indigenous territories into private property in order to access the credit system is the innovation of Hernando de Soto, though many feel this serves to further marginalize such communities. More information can be found at his Institute for Liberty and Democracy site: <http://www.ild.org.pe/> and a concise critique: Bunting, M (2000, Monday 11): “Fine Words, Flawed Ideas,” *The Guardian*. Accessed 20 June 2012, <http://www.guardian.co.uk/business/2000/sep/11/imf.comment>

or institutions that limited their use based on a communal conception of the good” (Meyers 2010:87).¹¹

3.3.2 ‘Fictitious Commodifications’ of Land, Labour and Money:

Land, labour and money are essential elements of industry; they must be organized into markets. But labour, land and money are obviously not commodities; the postulate that anything that is bought and sold must have been produced for sale is emphatically untrue in regard to them...Labour is only another name for a human activity which goes with life itself, which in turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored, or mobilized; land is only another name for nature, which is not produced by man; actual money, finally, is merely a token of purchasing power which, as a rule is not produced at all, but comes into being through the mechanism of banking or state finance. None of them is produced for sale. The commodity description of labour, land and money is entirely fictitious (Polanyi 1957:75).

Polanyi viewed the concept of such reductionist commodifications as a “bizarre fiction that furthers the unrealizable end of liberal economics” (Polanyi 1957 in Meyers 2010:89). Although the drive to commodify has accelerated since the 19th Century, Polanyi described how traditionally human lives were indivisible from the land-base that sustained them, and that creating such markets remains “perhaps the weirdest of all the undertakings of our ancestors...Land is tied up with the organizations of kinship, neighborhood, craft, and creed”(Polanyi 2001:187). As society and more areas of human life are subordinated to market mechanisms under neoliberal globalization, the risks are heightened for becoming further alienated from the elements which sustain us in reality (Birchfield 1999:31). In our case, both the material dimension of the livelihoods of those who depend on the natural environment of BCs intact wilderness, as well as the non-material values-based dimensions which grounds the affected First Nations people’s spirituality, culture, and history are threatened, bringing together a broad array of people resisting the process of the commodification of nature (Meyers 2010:89-90).

3.3.3 Debunking the ‘utopianism’ of self-regulating *laissez-faire* economics:

Polanyi described how the liberal ideology of an open free marketplace,

¹¹ The desire to re-embed humanity in nature is discussed in detail by proponents of *ecosocialism* (e.i.Kovel, 2000; Lipietz, 2000; and Low 2002:49), as well as the transition of *eco-modernization* through adaptations via the development of technocratic solutions (Hajer 1995, Beck 1999).

completely removed from the social and political context where it is based (i.e. ‘self-adjusting’), is a utopian “economistic fallacy” that can never be realized in practice without continual, intensive state interventionism (2001:3,146 and Meyers 2010:88). “There was nothing natural about *laissez-faire*; free markets could never have come into being merely by allowing things to take their course...[they were] the product of deliberate state action...*Laissez-faire* was planned, planning was not”(Polanyi 2001:145,147).

Considering the widely practiced governance perspective that “the market functions according to inexorable laws (which incidentally effectively subordinates politics to less consequential areas of social relations),” it becomes quite easy to draw the conclusion that under the current dominance of neoliberal discourse, “the market ethos is ascending to hegemonic status” (Birchfield 1999:33-34). Had the ‘invisible hand’ of the market been permitted in recent history, the damages to the international banking and finance system would have laid bare the excesses of capital and the fallacy of the ‘natural’ order of capitalism. However, as instead seen in the subsequent government bail-outs, austerity measures, and the intensified concentration of ownership, “it requires statecraft and repression to impose the logic of the market and its attendant risks on ordinary people” (Block in Polanyi 2001:xxvii).

3.3.4 Rise of Countermovements :

For a century the dynamics of modern society was governed by a double movement: the market expanded continuously but this movement was met by a countermovement checking the expansion in definite directions (Polanyi 1957:130).

The ‘double movement’ characterized the dynamism of the modern market society for Polanyi. By 1914, the industrialized marketplace of capitalism had spread globally with a novel set of principles of societal organization, but was met by resistance “against a dislocation which attacked the fabric of society” because the “commodity fiction disregarded the fact that leaving the fate of the soil and people to the market would be tantamount to annihilating them” (Polanyi 2001:136). Polanyi believed the rise of popular resistance countermovements that emerge to safeguard the societal interests against

deleterious commodification was people's natural reaction, going beyond class movements to encompass the "defense of man, nature, and productive organization'... rooted in *democratic* impulses" (in Meyer 2010:92). Contemporary global neoliberal market forces face growing movements which move beyond the welfare state of social securities and into the protection of the environment, leading scholars re-examining Polanyi to describe this as the emergence of the 'triple movement.' In the same ways that diverse political and economic segments of society worked together to fight for social protections in the 19th Century, so today do we see the strength of coalitions.

Social Movement Theories have evolved since globalization took hold, utilizing the technical innovations such as the internet, cell phones and social media, as well as the internationalization of civil society both in a vertical integration (infiltrating and filling the vacuum created by the retreating neoliberal state) as well as creating horizontal coalitions between traditionally constrained and wary camps such as labour, environmentalists, Indigenous Peoples, and development aid. Millions of people around the world are now publically protesting their dissatisfactions with the status quo.

The period in which the neoliberal state has become hegemonic has also been the period in which the concept of civil society – often cast as an entity in opposition to state power – has become central to the formulation of oppositional politics. The Gramscian idea of the state as a unity of political and civil society gives way to the idea of civil society as a centre of opposition, if not an alternative, to the state (Harvey 2005:78).

The resistance to the NGP-JRP is proving to be no exception. While in this case the different perspectives are clear and that resistance of the countermovement has become generally harmonized among labour, indigenous and environmental advocates, as is often the case in global political ecology conflicts over resources, livelihoods, economic development and dislocation, it must still be recognized that collaborative understanding between parties is not always possible. Such 'value pluralism' rests on the concepts of *incompatibility* and *incommensurability*, and can only be potentially assuaged through deliberations and development Arendt's 'enlarged mentality'. Yet, as the definition of individual interests were not a

single-pointed economic motivation but differed as much across the society of 19th Century communities as they do today's, the class strata was never the sole determinant of who "joined forces to meet the danger"(Polanyi 2001:162).

This is the very first time in my lifetime and in the history of Canada that you ever see so many First Nations and non-First Nations working together. It's never happened. I've never seen it, not to the extent it is now. [The] amount of people — it's just unbelievable. Doors are being opened; a lot of stereotypes, misinformation about our people is being replaced. It's a good feeling — you don't feel like you are alone (Geraldine Fluener, Saik'uz Nation, Yinka Dene Alliance)¹²

3.4 Overlapping Disciplinary Frameworks and Political Ecology

A political ecology underpinning was an obvious choice for this project for several reasons, the first being that it is a "normative understanding that there are very likely better, less coercive, less exploitative, and more sustainable ways of doing things" (Robbins 2004:12). Political ecology is primed towards understanding struggles inherent in contestations between extractive resources developments and affected communities, looking beyond mere policy and governance to the more structural dimensions of power and agency, which these issues encompass (Adkin 2009: 310). Political ecologist Arturo Escobar describes how these contentious processes are "enacted when sets of social actors shaped by, and embodying, different cultural meanings and practices come into conflict with each other...culture is political because meanings are constitutive of processes that, implicitly or explicitly, seek to redefine social power" (1998 in Paulson and Gezon 2005:148).

Secondly, I attempted to capture the political ecology preference for examining inter-linkages at multiple levels. The NGP case itself is not situated in a singular location, but directly links the people of two provinces, many ethnicities, and hundreds of kilometres of space, as well as the multi-scalar ripples outward. Rather than looking closely at one (or several) community cases, or too broadly at the international law level, this project seeks to look at the mezzo-level in Western Canada, connecting linkages between Federal, Provincial, and regional situations that are reflective of situations

¹² (2012, October 17)"Activist Spotlight – Meet the Saik'uz women!" *Nobel Women's Initiative*. Accessed 15 March 2012, <http://nobelwomensinitiative.org/2012/10/activist-spotlight-meet-the-saikuz-women/>

internationally and locally to contemplate “the interconnections between ecological degradation, socio-economic disparity, systemic injustice, and the uneven relationships of power that operate within modern social, political and economic intuitions” (Mulkewich and Oddie 2009: 257). The roots of political ecology are deeply enmeshed with other critical post-structural analytical approaches such as ecocentrism, feminism and Marxism, so that while I have questioned the evidence and do my best to provide an objective scholarly analysis, the deliberate choice to utilize this perspective is not one of normative neutrality.

Given the importance of the economic justifications for NGP, using theories from Karl Polanyi, a strong (though not Marxist¹³) critic of liberal capitalist economics, provided a view of the general dynamics of capitalist conflicts which reflect the context of the NGP-JRP. As the major focus of my analysis is on the processes and structure of the JRP, I draw upon political science (governance issues, deliberative democracy) to inter-disciplinarily utilize and bridge concepts in a comprehensive and conscious manner appropriate to providing a holistic picture of the case at hand. Finally, aspects of ‘environmental history’ are employed to compare the NGP-JRP with the Berger Commission in the 1970s for the proposed McKenzie Valley Pipeline, for looking to this inquiry demonstrates how current policies differ from previous practices and conduct in the Canadian context.

¹³ As per Bowles & Gintis 1986, 19 (in Birchfield 1999 notes), neither liberalism nor Marxism are adequate traditions for democratic theories; the former viewing social actions as only means to ends and focused on liberty via the marketplace; the latter denying the role of individual choice and the relevance of instrumentality, seeking classlessness. Bowles and Gintis seek to understand how “individual action and social structure are mutually determining.”

4. Surveying the Case Terrain

4.1 Mapping the Western Canadian Energy Corridor

The wider context of the Western Canadian “Energy Corridor” consists of four pipeline projects being currently proposed for construction or expansion across British Columbia to support unconventional energy sources:¹⁴ Three for tar sands dilbit (with twined secondary pipes for bringing condensate back to Alberta) owned by Kinder Morgan, Pembina Pipelines, and Enbridge; as well as the Pacific Trails Pipeline (PTP) for shale gas extracted through controversial hydraulic fracturing.¹⁵ These projects would facilitate the expansion of hydrocarbon extractions for export to Asian markets via tankers.

4.1.1 The Athabasca Tar Sands

In North-Eastern Alberta, the 4.3 million hectares of the Athabasca Oil Sands contain the largest proven oil reserves outside Saudi Arabia, an estimated 175-300 billion bbl. The rationale and impetus for the NGP is rooted in the pressure to develop the oil sands, with the Federal government promoting a tripling of production by 2020, as their economy-building plan for “Canada’s emergence as a global energy powerhouse.”¹⁶ The Harper government has repeatedly expressed that oil sands will be the singular driver for Canadian jobs and growth, telling the World Economic Forum in Davos, Switzerland:

We will make it a national priority to ensure we have the capacity to export our energy products beyond the United States and specifically to Asia. In this regard, we will soon take action to ensure that major energy and mining projects are not subject to unnecessary regulatory delays—that is, delay merely for the sake of delay. -PM Harper, January 2012.¹⁷

¹⁴ Gillis, D (2012, September 26): “Canada’s Carbon Corridor Part 1: Connecting the Dots across Northern BC,” *The Common Sense Canadian*. Accessed 28 September 2012, <http://thecanadian.org/item/1728-canada-carbon-corridor-north-bc-fracking-gas-pipeline-site-c-Ing-damien-gillis>

¹⁵ ‘Fracking’ is up to 80 per cent more carbon intensive to extract than conventional natural gas and is detrimental to groundwater quality. Unistotencamp(2012): “No Pipelines.” Unist’ot’en and Likhts’amisyu clans and Grassroots Wet’suwet’en. Accessed 22 November 2012, <http://unistotencamp.wordpress.com/no-pipelines/>

¹⁶ Wells, P (2012, March 23): “How Ottawa Runs on Oil”, *McLean’s*. Accessed 31 March 2012 <http://www2.macleans.ca/2012/03/23/oil-power/>

¹⁷ January 2012, PM Harper’s speech at the World Economic Forum in Davos, Switzerland. Wells, P (2012, March 23): “How Ottawa Runs on Oil”, *McLean’s*. Accessed 31 March 2012 <http://www2.macleans.ca/2012/03/23/oil-power>

Table 3. Oil Sands Statistics 2010

Capital Spending:	In situ, Mining and Upgrading:	\$17.2 billion
Payments to Alberta:	Provincial Royalties:	\$3.7 billion
Reserves (2010 Year-end):	Mining:	34 billion bbl
	Insitu Bitumen:	135 billion bbl
Production:	Mining:	756,000 bbl per day
	Bitumen:	704,000 bbl per day
	Upgrader Capacity:	1,193,000 bbl per day
Industry Revenues:		\$36.7 billion

Source: Canadian Association of Petroleum Producers (CAPP)
<http://www.capp.ca/library/statistics/basic/Pages/default.aspx>

Minister of Natural Resources Joe Oliver has stated repeatedly “Oil sands development alone could inject as much as \$3.3 trillion into the Canadian economy and support an average of 700,000 jobs per year over the next 25 years.”¹⁸ In her independent examination, economist and critic Robyn Allen believes Joe Oliver is misrepresenting the findings he cites of Canadian Energy Research Institute’s Study No.125, and that were the oil industry to simply continue operating the current projects and those now in development, then even without the building of new pipelines, “fully 69 per cent of the benefits Oliver talks about—according to CERI—would occur anyway” (2012b:19).

4.1.2 The Northern Gateway Pipeline

Table 4. Estimated Economic Impact of Northern Gateway

Gross Domestic Product (GDP) for first 30 years	\$270 billion
Additional Labour Income for first 30 years	\$48 billion
Employment (person years) for first 30 years	558000
Government Revenue (federal and provincial) first 30 years	\$81 billion
Oil Industry Net Incremental Revenue first 10 years	\$28 billion

Source: Enbridge Application 52, Volume 2, page 1-14 Table 1-5.

Enbridge’s application states the necessity of the project is “to give Canadian oil producers full value for their oil by diversifying market access, providing increased competition, and preventing shortages of condensate,” while the project’s purpose is “providing new pipeline transportation services between Alberta and the west coast for oil exports and condensate imports” (JRP 2011:10). The Federal government supports Enbridge’s claims that the NGP is

¹⁸ Oliver, (Honorable) Joe (2012, May 4): Minister of Natural Resources Official Statement on the Keystone XL Pipeline. Accessed 4 December 2012, <http://www.nrcan.gc.ca/media-room/news-release/2012/51/6182>

strategically necessary to reduce Canadian dependency on the US market by enabling resource export expansion to Asia, and as a way to reduce the supply glut that analysts claim causes Canadian oil to trade at a discount in the storage centre at Cushing, Oklahoma (which creates the WTI benchmark trading standard). For Enbridge's projections on the basis for supply, the 2009 CAPP forecast was used, which speculated that in the decade after start-up, "synthetic crude pricing would rise \$2.04/bbl and Athabasca Dilbit would increase \$3.00/bbl," resulting in "producer revenues increasing by \$2.39 billion in the first full year growing to \$4.47 billion by 2025."¹⁹ CERI projected in August 2011 that "if the Northern Gateway is cancelled . . . Canada would lose \$40 billion over the next 10 years and \$400 billion in additional GDP over the next quarter century – 95 percent of it lost within Alberta" (CERI 2011:25).

Pursuant to Section 52 of the NEB Act, Enbridge has spent millions of dollars since applying for the NGP in 2005, producing thousands of pages on the requisite Environmental and Socio-Economic assessments looking into the impacts which occur due to routine activities of the project, which they have deemed to not be significant, more localized, impermanent and possible to mitigate (Enbridge 2010:11-24). Enbridge was asked by the JRP on 19 January 2011 to provide more details for the Environmental Assessments which had not sufficiently addressed regarding the project's unique engineering and risks. These included:

Mountainous terrain along more than half the route; Pipeline route through risky terrain (avalanches, slides, earthquakes), through unique environmental habitat (fish habitat), and through communities dependent on the land (eg: for subsistence and culture); Tunnels through potential acid-generating rock; high oil transportation volumes risks for large potential spills; Far-reaching consequences of spills in populated and environmentally-sensitive areas; Difficult [emergency] access in all seasons.²⁰

¹⁹ Enbridge (2012): "Benefits for Canadians" Northern Gateway Pipeline Project (online). Accessed 20 November 2012, <http://www.northerngateway.ca/economic-opportunity/benefits-for-canadians/>

²⁰ "JRP Panel Session Results and Decisions -Question and Answers" Enbridge Northern Gateway Project Joint Review Panel (Online). Accessed August 28, 2012, <http://gatewaypanel.review-examen.gc.ca/clf-nsi/fq/pnlssnrsltq-eng.html>

The Proponent had to prove the project design surpasses industry standards by providing maps and charts detailing the potential spill hazards, worst-case scenarios, and response capacity along every kilometre and so Enbridge has committed an additional \$5 billion dollars to increase safety measures (JRP 2011:18).²¹

Since 2005, Enbridge's public engagement activities have included community presentations, open-houses and technical meetings, regional and provincial conferences, community advisory boards (CABs), as well as outreach via multiple media (mail-outs, mass media, etc).²² Enbridge has also provided approximately \$12 million in funding to First Nations intervenors.²³ As Janet Holder, leader of the Northern Gateway project team for Enbridge, told the JRP in cross-examination:

It's a very complex project. And we had a whole process, how we have managed all the interests of all the many stakeholders along this project. We've gone well beyond what we think is required of us in a project of this type and we take great pride in that...it's a very challenging project to try to incorporate everybody's interests and there's some interests that is impossible for us to incorporate and we get that. We understand there's perceived risks that are very difficult for us to mitigate or dealt with. There is spiritual risk. But there's also a large amount of benefits to this project. This project brings to communities along the right-of-way, it brings to First Nations also, resources that will help them with, you know, putting beds in hospitals, doctors in the communities. So we are looking at this from a very broad perspective and trying to balance everything (Hearing Order OH-4-2011-Vol 150, 12 March 2013, Prince Rupert, BC. Para 23022-23025).

The duty to consult and accommodate First Nations is the responsibility of the Crown through federal agencies, however much of the contention around NGP is due to the government discharging most of this activity to Enbridge, who claims to have been 'relationship-building' with potentially

²¹ New safety measures include: safety control valves at major water crossings; 24/7 monitoring and immediate response to pressure changes; immediately to any changes in pressure; Pipeline Emergency Response equipment and personnel stationed at numerous locations along the system. Enbridge Northern Gateway pipeline website. Accessed 2 January 2012, <http://www.northerngateway.ca/environmental-responsibility/enbridge-improvements-and-initiatives-in-integrity-safety-and-operations/>

²² Enbridge (2001, March 217): "Commitment to Public Engagement Facts sheet," Document No. NGP-FS-04-001. Accessed 15 February 2013, http://www.northerngateway.ca/assets/pdf/Public%20Consultation/NGP-FS-04-001_Commitment%20to%20Public%20Engagement.pdf

²³ Hamilton, G.(2013, February 4): "First nations group quits Enbridge hearings, citing lack of cash," *The Vancouver Sun*. Accessed 10 February 2013, <http://www.vancouversun.com/business/resources/First+Nations+group+quits+Enbridge+hearings+citing/7917488/story.html>.

impacted communities since 2002.²⁴ Some of the outlines and structure of these consultations with individual Aboriginal Groups are outlined in Volume 5a of Enbridge's Regulatory Application,²⁵ though detailed content is not publically disclosed. Enbridge states that 60 per cent of First Nations have entered into equity partnerships (10 per cent ownership stakes), Community Trust and Stewardship agreements, and provisions to ensure local procurement, employment and training,²⁶ though many of these negotiated decisions have not been publically disclosed and are the subject of multiple internal disputes in First Nations communities. Some First Nations communities also contest the claims made by Enbridge that they have been consulted at all.

4.2 Canadian Context

4.2.1 Brief History of Canadian Governance

As enshrined in the Canadian Constitution Act 1867, Canada's government is a federal parliamentary democracy modeled after the British Westminster tradition, though many of Canada's guiding rules for governing are based in conventions and not in constitutional law. At the national federal level the parliamentary legislature is bicameral; the lower chamber is the House of Commons, which consists of members who represent ridings across the country elected through single-member, simple-plurality ("first past the post"), party-oriented system (301 Members of Parliament-MPs); and the upper chamber of the Senate, whose membership (105 senators) are appointed by the Queen's representative, the Governor General as 'the Crown' at the behest of the governing party. Because Canada is also a constitutional monarchy, officially the executive power rests with the Crown, though the position of Governor General is largely symbolic, for power is exercised by governing majority party within the House of Commons through the Prime Minister and selected Cabinet. All three parts (Crown, House of Commons and Senate) must give their assent for legislation to pass into law. The Constitution

²⁴ Enbridge NGP(2011, February 9): "Aboriginal Benefits Fact Sheet," Document No. NGP-FS-05-002. Accessed 15 February 2013, <http://www.northerngateway.ca/aboriginal-engagement/benefits-for-aboriginals/>

²⁵ Enbridge NGP(2010, May): "Volume 5A:Aboriginal Engagement" Sect.52 Application. Accessed 2 March 2013, http://www.northerngateway.ca/assets/pdf/application/Master_Vol%205A_Final_13May10.pdf

²⁶ Enbridge NGP(2011, February 9): "Aboriginal Benefits Fact Sheet," Document No. NGP-FS-05-002. Accessed 15 February 2013, <http://www.northerngateway.ca/aboriginal-engagement/benefits-for-aboriginals/>

determined and limited the exercise of the three main branches of the state apparatus – the executive, the legislative, and the judicial – as well as delimiting the jurisdictional preview of federal and provincial. Amendments and repatriation of the constitution occurred in 1982, and included the Charter of Rights and Freedoms which informs legislation development.

Elections Canada defines political parties "an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election".²⁷ The spectrum of federal Canadian political parties has traditionally been centrist-oriented: on the left are the New Democratic (social-democratic), then Bloc Quebecois (more centrist, more libertarian, more representative of Quebec's special interests), to the centrist Liberal Party, followed by the more authoritarian and center-right Progressive Conservatives (CPC), which merged in 2000 with the Western Canada-based right-wing Reform Party lead by Stephen Harper, to form the Conservative Party. The merger allowed the Conservatives to come to power in a minority government in 2006, which was maintained in 2008 elections, though Harper prorogued parliament for two months to prevent a non-confidence vote that polls indicated would have brought a Liberal-NDP coalition to power.²⁸ Harper unprecedentedly prorogued a second time for 4 months during the 2010 Vancouver Olympics to avoid a parliamentary controversy over Afghani Detainee mistreatments.²⁹ In 2011, the Conservatives won with 37% of the popular vote.

Accountability in the House of Commons is exercised through the responsibility accorded to Cabinet Ministers, both as individuals over the actions of their departments and bureaucracy, as well as to the Parliament (and Canadian people) as a whole, which holds them to account via elections. The

²⁷ Elections Canada website under Registration of Federal Political Parties. Accessed 13 March 2013, <http://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>

²⁸(2010, January 24):"Thousands turn out at rallies to protest proroguing of Parliament." *The Montreal Gazette*. Accessed 25 February 2012, <http://www.montrealgazette.com/technology/Thousands+turn+rallies+protest+proroguing+Parliament/2477360/story.html>

²⁹ Naumetz, T. (2010, March 22):"Opposition parties push for a showdown over Afghan documents, PM's power to prorogue." *Hill Times*. Accessed 25 February 2012, <http://www.hilltimes.com/news/2010/03/22/opposition-parties-push-for-a-showdown-over-afghan-documents-pms-power-to-prorogue/23526>

deliberative aspects of this structure are initiated in the House of Commons via Routine Proceedings that are mainly conducted during ‘Question Period’, Statements, and the debate of bills (Marleau and Montpetit 2000). The Senate is considered the Chamber of ‘sober second thought’. Using a procedural-based analysis of deliberative democracy, public hearings, commissions, and consultations are also triggered in a variety of situations across the Canadian institutional landscape at multiple levels. While deliberation through institutions and processes already exists as an inherent feature within Canadian governance, there are, as described in CDA, elements of elite capture in the debates. Thus while there existed a sound space for deliberation, as exemplified by the Berger Commission, the Harper Government has altered the various manifestations considerably, therefore reducing opportunities for public participation.

4.2.2 Jurisdiction and the Legacy of the NEP

Canada’s division of powers is often described as being highly decentralized, even as a federal structure, with the Provinces having jurisdiction over a large portion of public goods (see table in Appendix 2). Historical tensions involving jurisdictions exist between the federal and provincial levels and have resulted in a less coherent, somewhat patchwork framework of policies, reflected in Canada’s natural resources and environmental regulations, as well as with the management and fiduciary responsibilities for ‘Indian Affairs.’

Natural resources such as oil and gas are under provincial control according to the constitution, except in inter-provincial transactions such as pipelines. In response to substantial global increases in oil prices between 1979-1980, in 1980 the Federal Government attempted to create a National Energy Program (NEP) to increase their proportion of provincial energy revenue-sharing (for redistribution across the provinces) and to exert more control over the industry by boosting state ownership, with the aim of national

oil self-sufficiency.³⁰ Though the intentions had the nations interests at heart, with many citizens today calling for a similar sort of plan, at the time the move initiated a heated political battle between Federal Liberals in Ottawa and Alberta's Provincial Conservatives that ended in a stalemate over negotiations. Eventually the conflict culminated in a Supreme Court decision in 1982 that ruled Ottawa had overstepped jurisdiction and could not tax provincially owned resources, but they also found compromise in "much higher prices than the federal government could have accepted earlier and much higher federal taxes than the Alberta government could have accepted earlier" (Helliwell and McRae 1982:22). While there were other factors such as the international glut in oil supply and lower prices by 1982, many Albertans were personally affected with job loss due to the oil industry slowdown and foreign disinvestment while fears of nationalization circulated, and thus the NEP is still bitterly resented in Alberta to this day.³¹ As was summarized at the time, when the governing factions of a wealthy state engage in this sort of entrenched, drawn-out struggle over "vast petro-rents...costs may be expressed in terms of weakened sense of national identity, a loss of international respect, and a diminished stock of goodwill on which to draw during constitutional reform, renegotiation of fiscal arrangements, and other processes that require a high degree of consensus"(Helliwell and McRae 1982:22). Echoes of these resentments were even present the Alberta's 2012 elections, with the popular far-right, Wildrose Alliance Party even running a website in conjunction with the oil sector called "Protect the Patch" to support 13 "Wildrose Party Oil & Gas Industry Candidates," each with direct ties to the industry with the open intent to directly represent the sector within the provincial government.³²

³⁰ Bregha, F.(2012): "The National Energy Program" in *The Canadian Encyclopedia[online]*. Toronto:Historica-Domion. Accessed 15 June 2012, <http://www.thecanadianencyclopedia.com/articles/national-energy-program>

³¹ (no date): "Alberta and the National Energy Program" in *CBC-Radio-Canada Digital Archives*. Accessed 15 June 2012, <http://www.cbc.ca/alberta/features/tories40/nep.html>

³² (2012):"Protect the Patch," Wildrose Party of Alberta. Accessed 15 September 2012, <http://www.protectthepatch.ca/>

In 1976, Premier Peter Lougheed established Alberta's Heritage Savings Trust Fund to collect the surplus of non-renewable resources revenue accruing from royalties for future generations. Almost nothing has gone into the fund since the 1980s, so as of June 2012 it was only \$15.9 billion, though the government website claims that the fund has contributed \$34 billion to fund such things as health care and education;³³ Notably, a very similar fund in Norway had \$600 billion by invested 2012.³⁴ Between 1995 and 2002, tar sands production increased 74 percent, yet due to what many describe as an outdated regime rule, royalties have actually dropped 30 percent, making Alberta's rates lower than Nigeria, India and South Africa.³⁵ Designed to entice investment, the "1 plus 25" rule allows companies to pay only 1% royalties until all capital costs are recovered, at which time it jumps to 25% of net revenues, but project expansions permit deferral of the higher rates indefinitely. Recently at the request of a number of unions, Alberta's Auditor General investigated the royalty regime and discovered that "the government is now far more concerned with attracting investment with bargain-basement royalties than it is about collecting a fair amount of royalties on behalf of the Alberta public...billions of dollars to slip through their fingers while they say we can't afford to keep schools open."³⁶ Though being debt-free, enjoying low unemployment, and oil prices remaining high, 2012 will be the fifth year in a row that Alberta runs a budget deficit, prompting the Provincial opposition Wildrose Alliance leader to state "if there is one jurisdiction on the planet that should be able to balance its books, it should be Alberta."³⁷

³³ (no date): "Heritage Fund – Frequently Asked Questions". Alberta Finance and Treasury Board. Accessed 15 September 2012, <http://www.finance.alberta.ca/business/ahstf/faqs.html>
<http://www.finance.alberta.ca/business/ahstf/faqs.html>

³⁴ Anderson, M (2012, August 22): "Rolf Wiborg's Tough Love for Canada." *The Tyee*. Accessed 15 September 2012, <http://thetyee.ca/News/2012/08/22/Rolf-Wiborg/>

³⁵ Gilmore, D (2005, April): "Shifting Sands" *The Walrus*. Accessed 28 February 2012, <http://walrusmagazine.com/articles/2005.04-alberta-tar-sands/>

³⁶ (2011, April 15): "Government failure on oil-sands royalties shameful, says AFL." *Canadian Newswire*. Accessed 22 January 2013, <http://www.newswire.ca/en/story/795251/government-failure-on-oil-sands-royalties-shameful-says-afl>

³⁷ Wingrove, J. (2012, November 15): "Redford won't balance Alberta's books, citing costs of rapid growth." *The Globe and Mail*. Accessed 22 January 2013, <http://www.theglobeandmail.com/news/politics/redford-wont-balance-albertas-books-citing-costs-of-rapid-growth/article5360101/>

Some claim Canada lacks a coherent National Policy Strategy for energy, environment or security, but has brought these issues through parliament in a largely piece-meal and partisan fashion. As journalist Madeline Drohan states “saving resource wealth is not - and should not become - a matter of partisan politics in Canada” (2012:21). The results are the net importation of 50% of Eastern Canada’s oil supplies from overseas sources, with Eastern provinces paying more than Alberta gets currently selling to the US. Robyn Allen adds that “if Eastern Canadian energy needs were met, there would be a positive impact on Canada's economic growth ... development of environmental standards that reflect the public interest concern for the environment and would create value added and meaningful jobs” (2012b: 33).

Issues of jurisdiction have also come to the fore due to recent legislation changes that have affected both indigenous peoples and environmental regulations and oversight. While the provinces and territories are responsible for much of their environmental and natural-resources management, in Federal jurisdictional departments such as Fisheries, policies pursued recently have led to increasing enclosure of the commons and consolidation of private ownership(Adkin 2009:302).

‘Indian Affairs’ have always been under federal jurisdiction, but the concerns of Indigenous Peoples in Canada have repeatedly ‘fallen through the cracks.’ The provinces regulate natural resources and land use upon which much of Indigenous traditions and livelihoods depend, as well as being the primary service deliverers for healthcare and education for the general citizenry. However, Aboriginal peoples rely on federal provision of such services and for the negotiation of territorial rights (Fluet et al 2009: 126). Thus, issues of unsettled land and treaty claims are exacerbated by the weak responsibility exercised by the federal government related to protecting and ensuring Indigenous rights, as well as the sub-standard federal provision of

housing, education, and opportunities equivalent to other citizens, which numerous UN assessments detail.³⁸ Amnesty International reports that:

By every measure, be it respect for treaty and land rights, levels of poverty, average lifespans, violence against women and girls, dramatically disproportionate levels of arrest and incarceration, or access to government services such as housing, healthcare, education, water and child protection, Indigenous peoples across Canada continue to face a grave human rights crisis (2012:9).

The history and case law exists to demonstrate what is considered adequate, honourable consultation and accommodation by the federal government when dealing with First Nations, whether they be treaty-title holders or have ancestral claim.³⁹ The contentions around these on-going situations have direct associations to the case of the NGP. Canadian First Nations are weary of the historical legacy of differential treatment, marginalization, and paternalistic discretionary control experienced through their relations with the state, which is part of a much wider discussion on (de)colonialization that is beyond my scope to address in this thesis.

4.2.3 Neoliberalism and The Harper Government

“The markets make a good servant but a poor master, and an even worse religion” (Amory Lovins).⁴⁰

While conservatism is generally characterized by an attachment to maintaining the status quo and traditions rather than altering established norms or principles of the state apparatus, as the leader of the Conservative Party, Stephen Harper is alienating many supporters across the nation with a distinctly neoliberal shift in governance. “They announce new policies all over the place before they even introduce them in the House of Commons, let alone

³⁸ The Amnesty International report “Matching International Commitments with National Action; a Human Rights Agenda for Canada” December 2012, compiled the various comments, observations and recommendations of UN organization reports including the Office of the High Commission for Human Rights(Special Rapporteurs on Indigenous Peoples and the Right to Food); Observations of the Committee on the Rights of the Child: Canada, CRC/C/CAN/CO/3-4, 5 October 2012, para. 33(d); the Committee against Torture: Canada, CAT/C/CAN/CO/6, 25 June 2012, para. 20; and the Committee on the Elimination of Racial Discrimination: Canada, CERD/C/CAN/CO/19-20, 9 March 2012, para. 20(a); and ECOSOC(2006). Accessed 25 January 2013, <http://www.amnesty.ca/sites/default/files/canadaaihra19december12.pdf>

³⁹ - *Gitksan First Nation v. BC (Minister of Forests)*, 2004 BCSC 1734 at para. 113; -*Huu-Ay-Aht First Nation v. BC (Minister of Forests)* 2005 BCSC 697 at para. 123.

⁴⁰ Siegle, L. (2008, March 23): “This Much I know: Amory Lovins” *The Guardian*. Accessed 13 February 2013, <http://www.guardian.co.uk/environment/2008/mar/23/ethicalliving.lifeandhealth4>

the Senate,” stated Senator Romeo Dallaire. “[Harper] holds more power than the President of the United States in his country, and because we’ve been strong on convention, and not on written decrees or documents, it permits someone who doesn’t want to play by those rules to have all kinds of room to maneuver. And this is what we are seeing now.”⁴¹ Leading the opposition for a number of years allowed Harper to develop a tactical understanding of how to use the conventions and norms which are less stringently constrained by rules. First, this section takes a closer look at neoliberalism itself to clarify the impetus behind these changes. Secondly, I intend to profile the changes initiated that both relate to the NGP-JRP and fit explicitly with Polanyi’s description of an approach to governance that reduces state protections (both social and environmental) in favor of market-driven practices.

The Doctrine and Tools of Neoliberalism: Characterized as a free-market based discourse, neoliberalism synthesizes the principles of classical “political liberalism (individual freedoms, civil rights, pluralism) to economic liberalism (private-property rights, minimal regulation of market, atomistic view of human nature),” with the market viewed as the primary system of organization, and therefore, as Professor Laurie Adkin describes, “all social and environmental demands are measured against [the economy’s] needs” (2009:2,3). Dryzek describes how the capitalist market system currently operates in all liberal democracies, which greatly constrains governments in what policies can be pursued, because any “policies that damage business profitability – or are even perceived as likely to damage that profitability – are automatically punished by the recoil of the market” (1995:112 in Adkin 2009:15, n8). Consequently, neoliberalism is often a combination of adjustments made by the state to transfer power and control to the private sector (which also includes non-state actors like NGOs), widely privatizing formerly public goods, and implementing budgetary austerity measures that

⁴¹ Ostroff, J. (2012, October 12) “Romeo Dallaire slams Harper’s Foreign Policy.” *Huffington Post*. Accessed 20 October 2012, http://www.huffingtonpost.ca/2012/10/12/romeo-dallaire-harper-foreign-policy_n_1961046.html?view=screen

effectively abdicate states' responsibility for social or environmental protections (Birchfield 1999:32).

Classical liberal economic theory considers itself neutral in terms of 'the good' which leads to Polanyi's allegation of 'utopianism' due to the realities of resistance against market liberalism's full realization in practice; advocates however, blame failures as "not the result of design but a lack of political will in its implementation" (Block in Polanyi:xxvii, and Meyers 2010:94). Exemplifying this chasm between *laissez-faire* theory of government non-intervention and the practices which require it, Naomi Klein's book "Shock Doctrine"(2007) describes how neoliberal economic 'shock therapy' was applied in the former USSR and Argentina. These extremes of intervention into national economies to create a "utopia of unlimited exploitation" (Bourdieu 1998) by followers of Milton Friedman's Chicago School, were failures which resulted in national economic collapses in Argentina, Chile, and the Asian 'Tigers'. Harvey describes how the "advent of neoliberalism has celebrated the role of the rentier, cut taxes on the rich, privileged dividends and speculative gains over wages and salaries, and unleashed untold though geographically contained financial crises, with devastating effects on employment and life chances in country after country" (2005:187). The widespread acceptance of modern *homo economicus* existing solely as atomized, self-interested, utility-maximizing beings, subsuming our nature and behaviour to the market, becomes hegemonic such that, as Viki Birchfield suggests, "the basic rules of the game, i.e. privilege and protection of private property and capital above all else, are not seriously contested" (1999: 31,33). Stephen Gill also points out that the political project behind the rhetoric constitutes an attempt to "make transnational liberalism, and if possible liberal democratic capitalism, the sole model for future development" (1995:412 in Birchfield 1999:30). Critical scholar David Harvey describes:

To live under neoliberalism also means to accept or submit to that bundle of rights necessary for capital accumulation. We live, therefore, in a society in which the inalienable rights of individuals (and recall, corporations are defined as individuals before the law) to private

property and the profit rate trump any other conception of inalienable rights you can think of...to accept it is to accept that we have no alternative except to live under a regime of endless capital accumulation and economic growth no matter what the social, ecological, or political consequences (2005:181).

Deregulation and privatization are preferred tools of neoliberals, as these mechanisms allow the state to decouple their responsibility for public welfare in order to provide a milieu conducive for market-based actors, wherein private actors gain the profits but the state still bears much of the risk (Overton 2009:162). James Overton describes deregulation as the “removing, weakening, or failing to enforce some of the regulations that have been developed to protect what is defined as the public good,” while regulations implemented by the state are viewed as “mere obstacle to the efficient functioning of markets, entrepreneurship, and economic growth,” seen in this case through industry lobby rhetoric encouraging the Federal government to drop regulations (2009:161- 162). Because under neoliberalism the state is subject to the competition of international economics, by “surrendering the principle of ordering social relations and distributing resources to the market,” governments may relinquish their duties regarding regulations and the “provision of social welfare by claiming global competition and market forces dictate such action” (Birchfield 1999:33,46). In some senses, as described by Polanyi, deregulation is a misnomer, as changes to state based regulations for market-actors often require a whole new set of rules, but ones which favour activities of capital accumulation rather than state protections, leaving each individual *homo economis* to fend for him or her-self.

William Gaff states that the ideology of neoliberalism is at “its core profoundly and restlessly anti-state,” for government privatizations mean commodifying services and goods that were based in the public sphere, handing control to private firms, or responsibility to the ‘third sector’ of non-profit civil society organizations (NGOs, religious groups) (1995:141). Numerous scholars contend that such practices of privatization and deregulation facilitate a “hollowing out of the state’s regulatory functions, but

also a hollowing out of citizenship”(Adkin 2009:299), because private nature of corporate structures “effectively removes from political discourse a whole host of issues that from the democratic perspective should be subjected to public debate” (Birchfield 1999:34). By excluding the public from participating in the setting of priorities, design of institutions, or decision-making about common resource use and the distribution of services and goods, privatization and deregulation weaken democracies (Overton 2009:165).

Harvey claims that supporters of neoliberal theory tend to be “profoundly suspicious of democracy”(2005:66), because the rights of private property and capital accumulation are privileged and considered over other types of rights, such as those of common public goods or individual citizens. As Birchfield explains:

For market mechanisms to work...private property must be guaranteed and incentives to compete for scarce resources are encouraged and described as natural. Communal values and cooperation are not nurtured, because that would undermine the role of scarcity, which is the idea underpinning the whole system. This is one way it weakens the prospects for democracy. By giving primacy to rules and, more importantly, venerating and reifying property to such an extent that it acquires the status of personhood, it excludes other potential ordering principles of society and diminishes the importance of social values, which are vital to democratic participation and decision making (1999:32).

Thus it can be understood that the paradigm of neoliberalism is functionally antithetical to democratic principles or participation. Viewing the market as the locus of societal organization and decision-making (because it is the best and most pure arena within which to exercise freedom), neoliberals view the role of the individual not as *citizen* but primarily as a “utility-maximizing economic agent” - *consumer* - which “ignores the possibility that freedom is exercised in ways other than producing and consuming” (Macias 2010:4 and Birchfield 1999:33). While an efficient mechanism to organize the exchange of goods and services, having the freedom of markets become so intractably linked and conflated with the values of liberty in democratic contexts “necessarily presupposes a narrow and materialistic conception of both freedom and the aims of democracy itself” (Birchfield 1999:32), reducing

public participation to that of solely citizen-consumer (Macias 2010:4). Revising the roles of governments and the public in this way seems to overlook that the first are not markets, nor the second merely consumers, for as Edward Weeks writes, such “views demean the nature of citizenship and the responsibilities of government” (2000:371). These passive applications of agency delegitimize political thinking and action, subsuming people beneath market ideology, and leading to “moral and political *de-skilling* of the electorate and the spread of cynical attitudes about public affairs and the notion of a public good” (Birchfield 1999:29 and Offe and Preuss 1991 in Smith 2003:55).

Canadian Changes: Harvey describes how neoliberalism has fostered large democratic deficits, such that “political representation is there compromised and corrupted by money power, to say nothing of an all too easily manipulated and corrupted electoral system” (2005:205). The Canadian 2011 federal election that brought the Harper Conservatives to power was won under the “first past the post” system with 37% of the popular vote (by approximately 6000 votes).⁴² The election is the focus of both an electoral fraud investigation for voter suppression in 247(of the 308) ridings,⁴³ and two federal court cases brought by constituents in six ridings seeking to throw-out the results (for details, see Appendix 3).⁴⁴

Many believe Canadian democratic institutions are in decline, best exemplified by the Conservative’s use of federal omnibus bills which effectively dispense with deliberative processes, have allowed for none of the thousands of proposed amendments, and contribute to the “general undermining of parliamentary democracy,” said Peter Russell, professor

⁴² Miller, Criz. (2013, April 29): “Canada, your emperor has no clothes,” *Rabble.ca*. Accessed 30 April 2013, <http://rabble.ca/news/2013/04/canada-your-emperor-has-no-clothes>

⁴³ Maher, S and G. McGregor (2013, March 28): “Elections Canada calls for crackdown on ‘deceptive’ political phone calls,” *National Post*. Accessed 10 April 2013, <http://news.nationalpost.com/2013/03/28/elections-canada-calls-for-crackdown-on-deceptive-political-phone-calls/>

⁴⁴ Payton, L. (2012, November 30): “Elections Canada to investigate call complaints in 56 Ridings,” *CBC News*. Accessed 15 December 2012, <http://www.cbc.ca/news/politics/story/2012/11/30/pol-robocalls-investigation-across-canada.html>

emeritus at the University of Toronto.⁴⁵ As leader of the opposition for many years, Harper regularly drew attention to deficiencies and gaps in the operating system of Canadian governance, and now numerous alterations have been implemented without debate by the Conservatives, having been decided by the PMO and his cabinet behind closed doors, as is consistent with the neoliberal preference for “government by executive order and by judicial decision rather than democratic and parliamentary decision-making” (Harvey 2005:66). Aside from proroguing parliament twice in two years, the Harper government is the first regime in Commonwealth history having been found in contempt of parliament for withholding requested documents related to the costs of corporate tax cuts, crime legislation changes, and procuring fighter jets, which prevented MPs from being able to do their jobs.⁴⁶ Although he promoted election-based Senate reforms as head of the opposition, once elected, Harper filled every open seat with loyalists (60 of 105).⁴⁷

Given the diversity of recent legislative and regulatory changes, the majority of the Canadian population are affected by 2012 Omnibus Budget Bills C-38 and C-45. These two bills are unprecedented at 489 and 443 pages respectively, expressing wide-reaching changes beyond normal budgetary bills or the intentions outlined in the Conservative Party’s election platform. In a particularly demonstrative example of the divergence between his policy positions since forming the government, in 1994 as an opposition MP, Harper was vociferous in his opposition to a 21-page Liberal government omnibus budget bill, demanding it be thrown out on a point of order, as it was “so diverse that a single vote on the content would put members in conflict with their own principles.”⁴⁸ In retrospect, the scope and changes present in C-38 and C-45 are twenty times the volume in comparison, though when on the

⁴⁵ Curry, B. and K.Mackrael (2012, October 18): “Conservatives unveil a few surprises, opposition cries foul” *The Globe and Mail*. Accessed 20 October 2012, <http://www.theglobeandmail.com/news/politics/conservatives-unveil-a-few-surprises-opposition-cries-foul/article4622787/>

⁴⁶ (2011, March 22): “MPs’ report finds government in contempt” *CBC News*. Accessed 20 October 2012, <http://www.cbc.ca/news/politics/story/2011/03/21/pol-privilege-contempt.html>

⁴⁷ Fife, R. (2012, May 18): “Harper to fill 18 seats with Tory loyalists”. *CTV News*. Accessed 22 October 2012, <http://www.ctvnews.ca/harper-to-fill-18-senate-seats-with-tory-loyalists-1.350380>

⁴⁸ Parliament of Canada (1994, March 25). *Parliamentary Business*. Accessed 15 April 2013, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2332300&Language=E&Mode=1>

other side of the house, he complained that there would be insufficient time or expertise to assess properly all the measures, though they all pertained directly to the budget.⁴⁹ Federal Green Party Leader, Elizabeth May, declared in Parliament on 29 November 2012:

We essentially have seen budget 2012 used as an excuse for the tabling of 900 pages of legislation largely unrelated to the budget itself. This exercise is both illegitimate and undemocratic in combining 70 different bills in Bill C-38, allegedly related to budget 2012, and now 60 different bills in Bill C-45. Bill C-38 took an axe to our Fisheries Act, destroying habitat protections; repealed the Environmental Assessment Act; and put in place a substitute piece of legislation that would be an embarrassment to a developing country. It was absolutely abominable...this is not proper parliamentary process.

With cuts to pensions, libraries and archives, students and social programs, changing the age of retirement and the conditions of employment insurance, alterations of regulatory mechanisms for environmental protection and industry oversight, and cancelling numerous government-funded research programs in climate, fisheries, fresh water ecosystems, and national parks, many fear it will be nearly impossible to recover the lost competencies of a country once world-renowned for research and its exemplary system of governance through these two bills. While much of the rest of the world struggles to develop policy and regulations to ensure the precautionary principle and proper deliberative consultations regarding proposed industrial projects, the Harper Government is dismantling Canada's. Such legislative changes also incapacitate the responsible agencies to perform their functions. As Adkin states "deregulation is justified by governments as a cost-cutting measure in the context of national debt or budgetary deficit...often, deregulation is justified using 'jobs blackmail' arguments – claiming that regulation will lead to the failure of or relocation of business activities" (Adkin 1992, 1998 in Overton 2009:162). But whilst simultaneously increasing spending on military and subsidies to the oil majors, "for every dollar the Harper budget allocates to Canadians' priorities—such as helping

⁴⁹ Curry, B. and K.Mackrael (2012, October 18): "Conservatives unveil a few surprises, opposition cries foul" *The Globe and Mail*. Accessed 20 October 2012, [http://www.theglobeandmail.com/news/politics/conservatives-unveil-a-few-surprises-opposition-cries-foul/article4622787/](http://www.theglobeandmail.com/news/politics/conservatives-unveil-a-few-surprises-opposition-cries-foul/article4622787/http://www.theglobeandmail.com/news/politics/conservatives-unveil-a-few-surprises-opposition-cries-foul/article4622787/)

seniors and cleaning up the environment—it devotes 7.5 dollars for Conservative priorities such as jails and corporate tax cuts,” says Canadian Centre for Policy Alternatives,’ David Macdonald.⁵⁰

While Canadian policy relations with business interests have long been characterised as ‘corporatist’, with an inclination to involve industry and economic interests in the formation and development of policy relative to their activities, recent manifestations have led to questions of ‘corporate capture’ of the government (Fluet et al 2009:124). Ottawa-based Polaris Institute released a 2012 report called “Big Oil’s Oily Grasp - The making of Canada as a Petro-State and how oil money is corrupting Canadian politics.” Between September 2011 and September 2012 (while Bill C-38 was being drafted and NGP sought approval) they report Natural Resources Minister Joe Oliver met an environmental organization once,⁵¹ yet oil and pipeline lobbyists met with cabinet ministers and public office holders 53 times, representing an increase in activity and access by: Canadian Energy Pipeline Association 71%, TransCanada Corporation 49%, Enbridge 44%, and The Canadian Association of Petroleum Producers (CAPP) 121% (Cayley-Daoust and Girard 2012).⁵² “Prime Minister Harper and his top ministers have spent hundreds of hours over the past few years listening to oil executives outline their policy wishes,” said Richard Girard, lead researcher of the Polaris Institute and co-author of the report.

Moreover, a letter accessed via the Freedom of Information Act from 12 December 2011 from the Energy Initiative Framework (representing oil, gas, and pipeline industry associations) to Ministers Kent and Oliver (Environment and Natural Resources, respectively) unambiguously outlines industries wishes:

⁵⁰ Canadian Centre for Policy Alternatives (2011, March 22): “Federal budget tosses crumbs to Canadians, bread to Harper’s pets” Alternative Federal Budget. Accessed 25 October 2012, <http://www.policyalternatives.ca/newsroom/updates/federal-budget-tosses-crumbs-canadians-bread-harpers-pet-projects>

⁵¹ Greenpeace met with Joe Oliver in March, 2012

⁵² Notably, “the two main fossil fuel industry associations have met with public office holders 367% more times than the two major Canadian automotive industry associations and 78% more times than both major mining industry associations since 2008.” (Cayley-Daoust and Girard 2012). Accessed 2 December 2012, <http://www.polarisinstitute.org/bigoilsoilygrasp>

[W]e believe that the basic approach embodied in existing legislation is outdated. At the heart of most existing legislation is a philosophy of prohibiting harm; 'environmental' legislation is almost entirely focused on preventing bad things from happening rather than enabling responsible outcomes. This results in a position of adversarial prohibition, rather than enabling collaborative conservation to achieve agreed common goals... In addition to considering regulatory reform in the context of environmental legislation and regulation, in parallel progress must be made on issues associated with Aboriginal consultation.⁵³

When questioned, Dave Collyer, president of the CAPP and one of the signatories on the industry letter, stated that it represents only part of the history of their lobbying: “That's one letter. It's one element of a very long engagement process we've had with government. Yes, we wanted changes because we think those changes enable economic activity and protect the environment at the same time.”⁵⁴ As per their requests, five of the six Acts named explicitly in the letter as posing nuisances to industry have been altered via the omnibus budget bills – Canadian Environmental Assessment Act (CEAA), Species At Risk Act (SARA), National Energy Board (NEB) Act, Fisheries Act, and Navigable Waters Protections (the Migratory Birds Convention Act remains). In direct relation to the NGP, Elizabeth May said:

In Bill C-38, we also saw the explicit removal of pipelines as a category of obstruction under the Navigable Waters Protection Act (NPA). I would have thought that the Conservative agenda toward pipelines was satisfied with Bill C-38, but we go on to Bill C-45 and see that the attack on environmental laws includes the evisceration of the Navigable Waters Protection Act.⁵⁵

Terry Lyn Karl has researched Petro-politics extensively, and warns that “oil revenues are the catalyst for a chronic tendency of the state to become

⁵³ 2011, December 12. Letter to Ministers Peter Kent and Joe Oliver from the Oil, gas and pipeline lobby group – CEPA, CGA, CPPI and CAPP. Accessed by Greenpeace through the Freedom of Information Act. Accessed 12 February 2013,

http://www.greenpeace.org/canada/Global/canada/pr/2013/01/ATIP_Industry_letter_on_enviro_regs_to_Oliver_and_Kent.pdf

⁵⁴ Paris, M. (2013, January 9): “Energy industry letter suggested environmental law changes.” *CBC News*. Accessed 12 February 2013,

<http://www.cbc.ca/news/business/story/2013/01/09/pol-oil-gas-industry-letter-to-government-on-environmental-laws.html>

⁵⁵ May, E (2012, November 29): “Jobs and Growth Act, 2012 (Bill C-45)” Speech to the House of Commons, Parliament of Canada. Accessed 5 December 2012,

<http://elizabethmaymp.ca/parliament/speeches/2012/11/29/jobs-and-growth-act-2012-bill-c-45-9/>

The changes to the NPA weaken the protections offered by federal regulation and oversight, though actually 99.7 per cent of lakes and more than 99.9 per cent of Canada's rivers are now excluded, according to Ecojustice.

Accessed 13 January 2013, http://www.ecojustice.ca/files/nwpa_legal_backgrounder_october-2012/at_download/file

overextended, over-centralized, and captured by special interests" (2007:17). In response to these shifts in access, Polaris report authors have called for "a full independent public inquiry in order to investigate how Canada may be on the road to becoming a petro-state due to the ability of the petroleum industry to exert influence on the Canadian government policy making through their lobby operations" (Cayley-Daoust and Girard 2012:12). Furthermore, the increase of the CAPP lobby "coincides with a major public relations push in print, television and online advertising designed to counter increasing opposition to the tar sands"(ibid). Canadians have witnessed the federal government's concurrent launch of a major advertising campaign (with a budget of \$9 million), promoting the oil sands as "responsible resource development."⁵⁶

Also as articulated by the oil industry, changes to eight separate pieces of legislation related to First Nations were also bundled within C-45 (which passed at 4am on 4 December 2012), such as lowering the thresholds for surrendering territorial land back to the Crown.⁵⁷ Harper's decision-making without consultation has Aboriginal Groups very concerned as he went directly against promises he made only a year previously to Chiefs not to amend or repeal the Indian Act unilaterally.⁵⁸ The Idle No More movement emerged as a direct response.⁵⁹ Contradictory governmental treatment towards First Nations, of offering apologies and promising self-governance (for instance), then changing laws and regulations without negotiation is no longer acceptable to them.⁶⁰

⁵⁶ Cheadle, B. (2012, December 4): "Oil and Gas Lobby in Canada overshadows all other pressure groups: Polaris study." *The Huffington Post*. Accessed 5 December 2012, http://www.huffingtonpost.ca/2012/12/04/oil-gas-lobbying-canada-polaris_n_2237826.html

⁵⁷ (2012, December 4): "Marathon vote on omnibus amendments takes more than six hours." *CTV News*. (Quoting Pam Palmater). Accessed 6 December 2012, <http://www.ctvnews.ca/canada/marathon-vote-on-omnibus-amendments-takes-more-than-six-hours-1.1065389>

⁵⁸ Kirkup, K (2012, January 24): "Harper says Tories won't scrap Indian Act" *Toronto Sun*. Accessed 6 December 2012, <http://www.torontosun.com/2012/01/24/govt-and-first-nations-meet-in-ottawa>

⁵⁹ See: Pam Palmater, <http://www.ctvnews.ca/canada/marathon-vote-on-omnibus-amendments-takes-more-than-six-hours-1.1065389> and <http://www.torontosun.com/2012/01/24/govt-and-first-nations-meet-in-ottawa>

⁶⁰ See www.idlenomore.ca for more information.

5. Analysis of the Northern Gateway Pipeline

While critics attack the data, economics and science related to the NGP proposal, the questions of many concerned citizens are fundamentally about the direction of our society, and the ethics involved in both the local and larger contexts of such projects. While it is well beyond the scope of a thesis to assess the data, economics or science in depth, in the following I present some of the more salient challenges to the proposal conducted by other academics, institutions and stakeholders in order to facilitate our understanding of the sources of contention. Differing paradigms direct us to the importance of deliberating on such issues, as there are multiple priorities, answers and directions which society must decide upon that exist beyond a presentation of scientific ‘facts’ or economic projections.

5.1 Technical and Environmental Considerations

5.1.1 The Athabasca Tar Sands and Climate Concerns

To their proponents, the oil sands are a technological marvel, a source of great wealth, and at least a partial solution to our future energy needs. To their opponents, the oil sands represent the ‘bottom of the barrel’ and a sure sign that the world’s addiction to oil trumps other concerns, particularly environmental ones (Way 2011:74).

Beneath the Boreal forest in an area about the size of Florida, the Athabasca tar sands are literally mired in sand, making it the least efficient source of unconventional crude and the largest industrial project in human history. While the resource was initially developed in the 1960s, as the Energy Return on Investment⁶¹ is so low, extracting tar sands are only profitable when oil is trading is about \$100/bbl, since costs of extraction are between \$60-80/bbl.⁶² Between 3.2-4.5 times as carbon intensive to extract compared to traditional oil, the ‘very heavy’ bitumen is either strip-mined, with two tons of earth moved per bbl of crude oil, or when too deep, extracted through in-situ Steam-Assisted Gravity Drilling, which requires approximately 1-5 bbl of water,

⁶¹ Energy Return on Investment, well explained by N.Hagens, 2008. <http://www.theoil drum.com/node/3839>

⁶² Bawden, T (2012, June 14): “Canada in danger of booming tar sands backlash,” *The Independent*. Accessed 12 September 2012, <http://www.independent.co.uk/news/business/analysis-and-features/canada-in-danger-of-booming-tar-sands-backlash-7848982.html>

mostly diverted from the Athabasca River, and 3 bbl of natural gas per single bbl of crude (Dyer 2010). These and related processes create 1.8 billion litres of unrecoverable tailings waste water per day, an estimated 5.5 trillion litres total, that is collected in unlined ponds beside the Athabasca River, so toxic that 1600 ducks died after landing a pond in 2006.⁶³ Those same ponds are under two separate investigations for accidental discharges of an industrial waste called “process-affected water” (which can include organic and inorganic compounds such as toxic heavy metals and cyanide or mercury⁶⁴) into the Athabasca River, which is used by downstream communities. Approximately 350,000 litres were released over 10 hours on 25 March 2013, and the communities were not even informed of the incident in 2011 (only discovered through the testing of dead fish), nor have they been provided details of the contaminants they have been exposed to in either incident.⁶⁵

While independent peer-reviewed research estimated in 2009 that 12,000 tons of toxic particulate (‘priority pollutants’ such as mercury, arsenic, polycyclic aromatic compounds, heavy metals, and other carcinogenic toxins) are dispersed into the air and water annually from the two largest tar sands operators, the Alberta government undermined the report (Kelly, Schindler et al 2009).⁶⁶ However, suppressed Environment Canada research from 2012 (which alarmingly required government spokesperson vetting before being released to the public⁶⁷), confirmed that pollutants were bio-accumulating at rates 2.5 to 23 times over pre-1960 levels in lake bottoms up to 100km away.⁶⁸

⁶³ Jones, J (2010, June 25): “Syncrude guilty in 1600 duck deaths in toxic pond,” *Reuters*. Accessed 25 April 2012, <http://www.reuters.com/article/2010/06/25/us-syncrude-ducks-idUSTRE65O68520100625>

⁶⁴ Ewart, S.(2013, April 3): “Oil spills disastrous for public relations,” *Calgary Herald*. Accessed 12 April 2013, http://www.calgaryherald.com/business/energy-resources/Ewart+spills+disastrous+public+relations/8181751/story.html?__lsa=b051-75d3

⁶⁵ Cryderman, K. (2013, March 28): “Suncor spill site also had incident in 2011,” *The Globe and Mail*. Accessed 3 April 2013, <http://www.theglobeandmail.com/globe-investor/suncor-spill-site-in-athabasca-river-also-had-incident-in-2011/article10541838/>

⁶⁶ Jones, J (2010, August 30): Oil sands polluting Canadian river system: study, “*Reuters*. Accessed 15 September 2012, <http://www.reuters.com/article/2010/08/30/us-oilsands-environment-idUSTRE67T3H920100830>. Also: Nikiforuk, A.(2010, September 17): “A smoking gun on the Athabasca River: Deformed fish,” *The Tyee*. Accessed 15 September 2012, <http://thetyee.ca/News/2010/09/17/AthabascaDeformedFish/>

⁶⁷ Linnitt, C (2012, November 8): “Stephen Harper hates science” *desmogblog.com*. Accessed November 13, 2012, <http://www.desmogblog.com/2012/11/08/stephen-harper-hates-science-federal-government-muzzles-scientists-protect-tar-sands-reputation>

⁶⁸ Munro, M.(2012, November 13): “Federal scientists uncover evidence that oilsands contaminants travel further than expected,” *Edmonton Journal*. Accessed November 23, 2012,

Environmental health professor at Boston University, David Ozonoff has aptly described that “a good working definition of a catastrophe is an effect so large that even an epidemiological study can detect it” (in Dryzek 2005:85). Downstream indigenous populations are experiencing increased respiratory and cardiovascular diseases, renal failure, lupus, diabetes and rare cancers, suspected to be caused by toxics leaching from tailings ponds and air pollution.⁶⁹ Alberta health authorities acknowledge a 30 per cent increase in cancers from 1995-2006 in the community of Fort Chipewyan.⁷⁰ Affected First Nations in the tar sands region are pursuing multiple lawsuits (Laboucan-Massimo 2011:11). The Athabasca Chipewyan First Nations are currently appealing a Supreme Court rejection regarding monitoring and consultations,⁷² while the Beaver Lake Cree celebrate an April 2013 Alberta Court of Appeals victory which allows them to continue to trial against Canada for failures to discharge their fiduciary responsibilities ensuring treaty rights.⁷³

Although reclamations are required by law, they have been marginal, less than .02% per cent (2 sq km) in 41 years of operations (Mech 2011:36). The Federal Government released secret documents which question whether rehabilitation is even possible given the levels of toxicity and extreme costs, for which inadequate public funds have been saved, representing a “significant environmental and financial risk.”⁷⁴ Losses of wetlands, habitat, and the carbon sink of the boreal forest (second only to the Amazon in size) are other

www.edmontonjournal.com/life/Federal+scientists+uncover+evidence+that+oilsands+contaminants/7542920/story.html

⁶⁹ Tenenbaum, D.J. (2009): “Oil Sands Development: A Health Risk Worth Taking?” *Environmental Health Perspectives*, 117 (4): A150-A156. Accessed March 31, 2012, www.ncbi.nlm.nih.gov/pmc/articles/PMC2679626/

⁷⁰ Chen, Y (2009, February): *Cancer Incidence in Fort Chipewyan, AB 1995-2006*. Alberta Cancer Board. Accessed 31 March 2012, <http://www.ualberta.ca/~avnish/rls-2009-02-06-fort-chipewyan-study.pdf>

⁷¹ (2012, April 12): “Beaver Lake Cree Nation Allowed to Continue Lawsuit against Province and Feds” *Indian Country Today Media Network*. Accessed 15 May 2012, www.indiancountrytodaymedianetwork.com/2012/04/12/beaver-lake-cree-nation-allowed-to-continue-lawsuit-against-province-and-feds-107965

⁷² (2012, February 23): “Response to Supreme Court of Canada’s rejection of appeal of the Athabasca Chipewyan First Nation,” Athabasca Chipewyan First Nations and the Tar Sands[online]. Accessed 28 March 2012, <http://acfnchallenge.wordpress.com/2012/02/>

⁷³ 2013, April 30: Alberta Court of Appeals, *Lameman v Alberta*, 2013 ABCA 148, Appeal no: 1203-0169-AC. Accessed 1 May 2013, http://www.albertacourts.ab.ca/jdb_new/public/ca/2003-NewTemplate/ca/Civil/2013abca0148.pdf

⁷⁴ Government of Canada (2011): “Canada’s Energy Sector”, Office of the Privy Council Secret Memorandum, Pg 4. Accessed 3 February 2012, www.scribd.com/doc/82229219/PCO-Oilsands-memos

concerns not adequately understood at this time. Wildlife in the region has been heavily affected: systematic kill-offs to cull ‘problem’ black bears and wolves, pollution affecting migration patterns and health of numerous bird species, and caribou herds declining by more than 70 per cent since 1996.⁷⁵ To date, no cumulative environmental assessments have been done for the tar sands, and while only about 40 per cent of the reserves are being developed currently (127 operations in January 2013⁷⁶), approximately 40 proposals are tendered and one has yet to be denied by Alberta Regulators.⁷⁷

NASA climatologist James Hansen has stated “if Canada proceeds and we do nothing, it is game over for the climate,” because the carbon burden of tar sands (240 gigatons) is roughly equal to all the coal burned by humans, ever.⁷⁸ While most of the provinces have stabilized their GHG emissions, Alberta’s have grown 41 per cent, with the oil sands accounting for 5 per cent of total national emissions.⁷⁹ According to Jim Stanford, Senior economist for the Canadian Auto Workers, under current policies “the oil sands will account for more emissions than our entire passenger transportation sector and domestic aviation combined,” at 72Mt of carbon, following Environment Canada’s production figures of 3.3 million bbl/day by 2020 (2012:6).⁸⁰ National emissions are now 23 per cent over 1990 levels, accounting for Canada’s decision to be the first nation to withdraw from the Kyoto Accord, walking away from a legally binding treaty and signaling intentions to increase emissions through this single resource from 32 mt in 2005 to 104 mt by 2020, negating emission reductions projects (Demerse and Partington 2012:9). David McLaughlin, former president and CEO of the National Round

⁷⁵ The Co-operative and Beaver Lake Cree First Nation. (2010, July): *Save the Caribou – Stop the tar sands.*, Accessed 15 March 2012, <http://www.co-operative.coop/upload/ToxicFuels/docs/caribou-report.pdf>

⁷⁶ Government of Alberta (2013): “Oilsands Facts and Statistics,” *Alberta Ministry of Energy*. Accessed 3 April 2013, <http://www.energy.alberta.ca/oilsands/791.asp>

⁷⁷ Government of Alberta (2013): “Inventory of Major Projects: Map and Table,” *Alberta Enterprise and Advanced Education*. Accessed 5 April 2013, <http://albertacanada.com/business/statistics/inventory-of-major-projects.aspx> 44 projects recorded with search filters checked for: Sector -oil sands; Status - proposed and announced.

⁷⁸ Hansen, J. (2012, May 9): “Game over for the climate,” *New York Times*. Accessed June 23, 2012, http://www.nytimes.com/2012/05/10/opinion/game-over-for-the-climate.html?_r=0

⁷⁹ Doucet, I. (2012, November 26): “Canada, the surprise ‘pariah’ of the Kyoto protocol” *The Guardian*. Accessed 28 November 2012, <http://www.guardian.co.uk/world/2012/nov/26/canada-kyoto>

⁸⁰ Huot, M. (2012, December 12): “Oilsands emissions lie at the core of Canada’s climate challenge”, [Blog]. Calgary: *Pembina Insistute*. Accessed 5 January 2013, <http://www.pembina.org/blog/668#>

Table on the Environment and the Economy said, “There is only one sector that matters most for Canada when it comes to getting emissions down: the oilsands. If oilsands emissions go down, we meet our national carbon-reduction targets. If not, we don’t” (see Appendix 4 for figure).⁸¹

The Government of Canada is known as a laggard and obstructionist at the past 5-years of climate and environmental negotiations, and despite being briefed on the consequences of ignoring the ‘green energy revolution’ Canada is last among the G8 nations, having cut all funding for energy efficiency, green investments, or research and innovation.⁸² A report in the run-up to the recent COP18 Doha climate conference described Canada as the developed world’s worst performer in terms of feeble policies and action on climate change in 2012, ranking 58 out of 61 nations, ahead of only Kazakhstan, Iran, and Saudi Arabia, and was the only country in the Copenhagen Accord to weaken targets.⁸³ “The world has had enough of Canada’s inaction on climate change – it is clear that this government’s reckless fixation on the tar sands is going to cost us not only a safe and healthy future and economy for our children, but also our international credibility,” says Steven Guilbeault of the NGO Equiterre (ibid).

The Canadian Government has controversially lobbied the EU related to the proposed differentiation for their Fuel Quality Directive to list tar sands oil with a heavier carbon burden, as it emits 22 per cent more GHG than regular crude.⁸⁴ Notably, in a mock trial of the UK’s Supreme Court to test the proposed law of *Ecocide* as the 5th International Crime against Peace, the jury returned a unanimous guilty verdict against CEOs of tar sands

⁸¹ McLaughlin, D. (2012, December4): “Climate Change Talks: Let’s do at home what we preach abroad.” *Ocanada.com*. Accessed 10 January 2013, <http://o.canada.com/2012/12/04/climate-change-talks-lets-do-at-home-what-we-preach-abroad/>

⁸² De Souza, M.(2012, August 15): “Green economy ‘mega trend’ sweeping planet, Joe Oliver told” *Ocanada.com*. Accessed 10 January 2013, <http://o.canada.com/2012/08/15/green-economy-mega-trend-sweeping-planet-joe-oliver-told/>

⁸³ McKinnon, H.(2012, December 3): “Canada ranked worst performer in the developed world on climate change.” *Climate Action Network Canada*. Accessed 10 January 2013, <http://climateactionnetwork.ca/2012/12/03/canada-ranked-as-worst-performer-in-the-developed-world-on-climate-change/>

⁸⁴ Lewis, M (2012, February 23): “EU delays decision on whether oil sands crude more harmful to environment,” *The Star*. Accessed 15 January 2013, <http://www.thestar.com/business/article/1135590--eu-committee-undecided-on-labeling-oil-sands-as-worse-for-environment-than-other-crude>

companies.⁸⁵ Also of note, though the Federal government made an agreement at the G20 to reduce such subsidies, the fact remains that tar sands projects have been actively subsidized with approximately \$2.8 billion annually.⁸⁶

5.1.2 Pipelines and Diluted Bitumen

“Pipelines are the bloodlines of the tar sands. If we can stop the pipelines, we can stop the expansion of the tar sands” (Maude Barlow, chairperson Council of Canadians).⁸⁷

The US-based Natural Resources Defense Council produced a 2011 report for the proposed Keystone XL pipeline that would bring AB bitumen to Texas, highlighting the technical differences and enhanced risks of piping dilbit as compared to conventional crude. The report found that while pipeline companies and regulators did not distinguish between the two, substantial differences exist to undermine pipe integrity, including dilbit’s substantially higher acid and sulphur concentrations, higher amounts of quartz and silicate particles, being 70 per cent more viscous, so such combinations in high pressure pipelines (up to 1400 pounds per square inch- psi) is comparable to almost three times the abrasion of an average commercial sandblaster on the inside of the pipe (Swift et al 2011: 6).⁸⁸

In July 2010, a known structural weakness led to the North America’s largest inland crude oil spill when an Enbridge line carrying tar sands bitumen ruptured, spilling almost 25 000 bbl into Michigan’s Kalamazoo River. This incident led the U.S. Environmental Protection Agency commander on the scene to state that they were “writing the book” as to dealing with dilbit spills into water.⁸⁹ It was rapidly understood that bitumen sinks after only two days,

⁸⁵ Higgins, P (2011, September 30): “Mock Trial – Jury Unanimous: The Athabasca Tar Sands found to be a Crime.” *EradicatingEcocide.com*. Accessed 9 June 2012, <http://eradicatingecocide.com/overview/mock-trial/>

⁸⁶ (2010, November 2): “Canada’s oilpatch subsidies said to total \$2.8 billion a year, despite G20 pledge,” *Canadian Press*. Accessed 13 August 2012, http://dirtyoilsands.org/news/article/canadas_oilpatch_subsidies_said_to_total_2.8_billion_a_year_despite_g20_ple/

⁸⁷ Annis, R. (2012, November 1): “Canada: Movement against tar sands on the rise,” *Green Left*. Accessed November 30, 2012, <http://www.greenleft.org.au/node/52686>

⁸⁸ DilBit contains 15-20 times higher acid concentrations, 5-10 times higher sulfur concentrations, higher percentages of corrosive chloride salts, and, thus the high pressures required to move the substance through the pipes generates much higher temperatures (70°C), increasing speed of corrosion and heightening brittleness of the pipes. Natural Resources Defense Council 2011

⁸⁹ Klug, F (2011, July 24): “Kalamazoo River oil spill responders ‘writing the book’ on submerged oil spill clean up” *Mlive.com*. Accessed August 13, 2012, http://www.mlive.com/news/kalamazoo/index.ssf/2011/07/kalamazoo_river_oil_spill_resp.html

coating the base of a watercourse rather than floating on top like conventional oil, making cleaning-up extremely difficult if not impossible. Meanwhile, 60 per cent of the local population (320 people) began exhibiting symptoms such as nausea, dizziness, headaches, coughing, and fatigue as the diluent condensate was off-gassing toxins such as benzene, toluene, and micro-polyaromatic hydrocarbons (PAHs).⁹⁰ Oil spill expert Riki Ott describes that these compounds are linked to major health hazards such as cancer, asthma, hormone and reproductive problems by “jamming immune system and DNA functions.”⁹¹ After two-years and \$800 million in clean-up costs⁹² (on top of \$3.7 million in penalties for violations⁹³), the area is far from being remediated (only 3 of 37 miles of affected riverfront⁹⁴), with Environmental Defence estimating that it is 40 times more expensive per barrel to clean up dilbit spills as compared to conventional oil.⁹⁵

A 15 per cent recovery of oil spills is considered a success by industry standards, providing thin security in assurances for the capacity to deal adequately with accidents.⁹⁶ Enbridge’s own health and safety data reports 804 hydrocarbon spills from 1999 to 2010 that released 161,475 bbl (approximately 25.67 million litres) (Girard 2010:53). Robyn Allan, former CEO of the Insurance Corporation of British Columbia, stated “the private insurance market has adjusted its attitude regarding the spill risk Enbridge represents [as it was] unable to obtain the level of coverage it desired at an

⁹⁰ Nelson, J. (2012): “The Oil Industry’s Dilbit Cover-Up: Tar sands bitumen spills harder and costlier to clean up.” *The Monitor*. Canadian Centre for Policy Alternatives, October 1. Accessed 12 October 2012, <http://www.policyalternatives.ca/publications/monitor/oil-industrys-dilbit-cover>.

⁹¹ Broten, Delores. (2012): “Oil Spill Specialist Dr. Riki Ott: A Message of Warning and Hope” in *Watershed Sentinel*, September-October 2012 Vol.22(4). Accessed 23 October 2012. <http://www.watershedsentinel.ca/content/oil-spill-specialist-dr-riki-ott-message-warning-and-hope>.

⁹² Mufson, S (2012, July 11): “NTSB blames Enbridge, ‘weak’ regulations in Kalamazoo oil spill,” *Washington Post*. Accessed August 13, 2012, http://www.washingtonpost.com/business/economy/ntsb-blames-enbridge-weak-regulations-in-kalamazoo-oil-spill/2012/07/10/gJQAWzqgbW_story.html

⁹³ Spangler, T (2012, October 3): “Enbridge told more cleanup needed in Kalamazoo River oil spill,” *Detroit Free Press*. Accessed 23 October 2012, <http://www.freep.com/article/20121003/NEWS06/121003045/Kalamazoo-River-oil-spill-Enbridge-Energy-Partners-cleanup>

⁹⁴ Smith, L (2012, April 17): “Part of Kalamazoo River opens Wednesday, first time since oil spill,” *Michigan Radio*. Accessed 13 August 2012, <http://www.michiganradio.org/post/part-kalamazoo-river-opens-wednesday-first-time-oil-spill>

⁹⁵ Nelson, J. (2012): “The Oil Industry’s Dilbit Cover-Up: Tar sands bitumen spills harder and costlier to clean up.” *The Monitor*. Canadian Centre for Policy Alternatives, October 1. Accessed 12 October 2012, <http://www.policyalternatives.ca/publications/monitor/oil-industrys-dilbit-cover>.

⁹⁶ Broten, D. (2012): “Oil Spill Specialist Dr. Riki Ott: A Message of Warning and Hope” in *Watershed Sentinel*, September-October 2012 Vol.22(4). Accessed 23 October 2012. <http://www.watershedsentinel.ca/content/oil-spill-specialist-dr-riki-ott-message-warning-and-hope>.

affordable premium for the insurance year following the [Kalamazoo] spill” (2012a: 33-40). The US Transportation Board’s report on the Kalamazoo incident was scathing, with chairperson, Deborah Hersman stating that “when we were examining Enbridge's poor handling to their response to this rupture you can't help but think of the Keystone Cops,” given that although multiple alarms and public reports came in, Enbridge took 17 hours to respond.⁹⁷ More questionable, however, was the revelation that an internal inspection five years earlier had reported 15 000 defects including cracks and corrosion, but that nothing was done, displaying “pervasive organizational failures.”⁹⁸

In Alberta there had been little debate about the 400,00km of hydrocarbon pipelines that the province regulates. Based on data from Alberta’s Energy Resources Conservation Board of major oil spills, Assistant Professor Sean Kheraj from York University wrote that between 2006-2010, the network leaked roughly 174,213 bbl.⁹⁹ The province reported 687 failures in 2010, spilling 3,416 cubic metres of hydrocarbons,¹⁰⁰ while a single rupture in 2011 of 28,000 bbl (4,452 cubic metres) spilled near the indigenous community of Little Buffalo in Lubicon First Nations territory.¹⁰¹ A main source of municipal drinking water, the Red Deer River was also contaminated in 2012 when a pipeline break spilled 3000 bbl.¹⁰² Under public pressure, the provincial government commissioned an independent review focused on three areas of pipeline safety: how pipeline integrity is managed; how safety of

⁹⁷ Goldenberg,S (2012, July 10): “Oil firm accused over Kalamazoo spill ‘handled response like Keystone Cops,’” *The Guardian*. Accessed August 13, 2012, <http://www.guardian.co.uk/environment/2012/jul/10/oil-kalamazoo-spill-keystone-cops>

⁹⁸ Tait,C (2012, July 10): “Enbridge slammed for ‘Keystone Kops’ response to Michigan spill,” *The Globe and Mail*. Accessed 13 August 2012, <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/enbridge-slammed-for-keystone-kops-response-to-michigan-spill/article4402752/>

⁹⁹ Kheraj,S (2012, June 12): “The History of Oil Pipeline Spills in Alberta, 2006-2012,” *ActiveHistory.ca*. Accessed 14 August 2012, <http://activehistory.ca/2012/06/the-history-of-oil-pipeline-spills-in-alberta-2006-2012/>

¹⁰⁰ Duncan First Nation (2012, October 10): “The situation is not in hand: New Alberta oil spill impacts Duncan’s First Nations Lands,” *Marketwire*. Accessed 23 October 2012, <http://www.marketwire.com/press-release/situation-is-not-hand-new-alberta-oil-spill-impacts-duncans-first-nations-lands-1711195.htm>

¹⁰¹ Nosky, S., Chief of the Lubicon Cree (2011, May 4): “First Nations families sick after large oil spill in Albert’s Peace Region,” *Rabble.ca*. Accessed 30 May 2011, <http://rabble.ca/news/2011/05/residents-including-children-sick-after-large-oil-spill-albertas-peace-region>

¹⁰² (2012,June 8): “Alberta Oil Spill:Up to 3000 barrels spill near Red Deer River reports Plains Midstream Canada” *The Huffington Post*, Accessed 13 August 2012. http://www.huffingtonpost.ca/2012/06/08/alberta-oil-spill-red-deer-river_n_1581008.html

crossing waterways is ensured; and how responses to incidents are handled.¹⁰³ The results are expected to be made public in 2013, and most believe will confirm what other studies demonstrate; the “problem of pipeline ruptures is endemic to the industry.”¹⁰⁴ The exclusion of 54 various concerned public interest and stakeholder groups, such as the Canadian Association of Energy and Pipeline Landowners Associations (CAPLA), Alberta Surface Rights Group, E-NGOs, Association of Professional Engineers and Geo-Scientists of Alberta, and many First Nations, who had collectively called for the review initially is troubling, as the process only intends to consult with industry.¹⁰⁵ While the province has said they want to consult the public in 2013, that is long after the final independent report has been analyzed and approved by the Energy Resources Conservation Board (ERCB).¹⁰⁶

Systematic exclusion of concerned groups, whilst extensively engaging and consulting only with industry and the private sector, has led to characterizations of Alberta’s state-civil society relations as *right-wing corporatism* (Harrison 1995, in Fluet et al 2009:125). Alberta’s long standing Conservative government promotes the extraction of natural resources as the primary provincial economic driver. In contrast to the quote at the beginning of this section, Premier Allison Redford describes the tar sands as the “lifblood of our economy,”¹⁰⁷ and therefore synonymous with the public interest, which also led critical scholars to claim the corporate capture of the Alberta Ministries of Environment, Sustainable Resource Development, and Economic Development (Adkin 2009:303). Given the ‘insider’ nature of these relations, corporations are often heavily involved in the design of

¹⁰³ (2012, July 20): “Alberta pledges pipeline safety review” *CBC News*. Accessed 13 August 2012, <http://www.cbc.ca/news/canada/calgary/story/2012/07/20/calgary-pipeline-safety-review-alberta.html>

¹⁰⁴ Kheraj, S (2012, June 12): “The History of Oil Pipeline Spills in Alberta, 2006-2012,” *ActiveHistory.ca*. Accessed 14 August 2012, <http://activehistory.ca/2012/06/the-history-of-oil-pipeline-spills-in-alberta-2006-2012/>

¹⁰⁵ (2012, June 8): “Alberta Oil Spill: Up to 3000 barrels spill near Red Deer River reports Plains Midstream Canada” *The Huffington Post*. Accessed 13 August 2012, http://www.huffingtonpost.ca/2012/06/08/alberta-oil-spill-red-deer-river_n_1581008.html

¹⁰⁶ Weber, B (2012, December 9): “Alberta Pipeline Safety Review too industry Influenced: Greenpeace,” *Huffington Post*. Accessed 17 January 2013, http://www.huffingtonpost.ca/2012/12/09/alberta-pipeline-safety-review_n_2267802.html

¹⁰⁷ Alberta Government (2012, May 30): “Premier Alison Redford on Alberta’s Oil Sands,” youtube channel ‘Your Alberta,’ Accessed 1 June 2012, <http://www.youtube.com/watch?v=VtyfmrUVFMo&list=PL57354166730EA923>.

consultations or monitoring processes, the setting of the agenda, parameters, policy, and even targets (ibid:134). The scope of the review is also being criticized for being too limited. “The Situation is NOT in hand,” stated Chief Testawich of the local Duncan First Nation, dealing with a spill on their territory in October 2012. “In Alberta, there is very weak regulation. Alberta's philosophy and system of so called ‘results based regulation,’ simply allows industry to police itself with little on the ground monitoring and oversight by regulators.”¹⁰⁸

Although the BC Government has been largely silent on the NGP (despite it becoming a serious 2013 provincial election issue), their Environment Minister Terry Lake says he has “concerns about the level of detail of mapping around the terrain of the pipeline and also the ability to detect any leak in a very fast and responsive manner. [Moreover] of the leaks the company has had in the United States, the vast majority of those were not discovered by their automatic systems.”¹⁰⁹ It is widely understood that BC is seismically unstable. On 27 October 2012, a 7.7 magnitude earthquake occurred along the Queen Charlotte Fault off-shore west of the islands of Haida Gwaii along two major tectonic plates that are an active earthquake zone (in 1949 an 8.1-magnitude quake), prompting tsunami warnings as far as Hawaii, along the proposed tanker path.¹¹⁰ Lawyer for BC, Christopher Jones, pointed out during the JRP technical hearings that the Proponent failed to study two massive slide areas in Douglas Channel. Enbridge considers them “old faults not presently active,” although a Natural Resources Canada document suggests that there were 11 small earthquakes within 20 km of those slides in last 25 years.”¹¹¹¹¹² The risk of normal rockslides and avalanches

¹⁰⁸ Duncan First Nation (2012, October 10): “The situation is not in hand: New Alberta oil spill impacts Duncan’s First Nations Lands,” *Marketwire*. Accessed 23 October 2012, <http://www.marketwire.com/press-release/situation-is-not-hand-new-alberta-oil-spill-impacts-duncans-first-nations-lands-1711195.htm>

¹⁰⁹ Abshire, J. (2012, October 10): “BC has ‘extreme concern’ over Enbridge testimony,” *News 1130 for The Canadian Press*. Accessed 10 December 2012, <http://www.news1130.com/news/local/article/410684--bc-has-extreme-concern-over-enbridge-s-testimony>

¹¹⁰ Stueck, W. (2012, October 27): “Haida Gwaii’s weekend of tremors sheds new light on future disasters,” *The Globe and Mail*, Accessed 30 October 2012, <http://www.theglobeandmail.com/news/british-columbia/haida-gwaii-weekend-of-tremors-sheds-new-light-on-future-disasters/article4710930/>

¹¹¹ Saxifrage, C. (2012, October 12): “Enbridge promises minimum precautions, ignores seismic instability,” *Vancouver Observer*. Accessed 30 October 2012,

along the remote mountainous right of way of the NGP is also of concern regarding accessibility in an incident or emergency, given the commonly high snowfalls and the difficulties faced in handling spills in flat, populous areas, such as near the Kalamazoo River.

The extent of the environmental damages during construction has been a point of controversy as well. One economist for the Haisla Nation has estimated costs between \$254 -775 million for the construction of the corridor that would require a kilometer-wide right of way, resulting in adverse effects to the habitat of the forests, as well as the many watercourses, while Enbridge maintains that 80 per cent of the route they intend to use land previously disturbed by logging and to follow the 463-kilometre Pacific Trail natural gas pipeline (PTP) route of Apache Oil, from Prince George area to Kitimat.¹¹³ However, the legitimacy of the building of PTP is already being countered by direct action of First Nations, who have evicted the surveyors and blockaded access to their territory (details in Appendix 5).

The Federal Species At Risk Act (SARA) was designed to protect habitat for endangered species, and with an estimated population of only 355 Nechako white sturgeon surviving in two of the rivers crossed by the NGP, as well as at least five struggling herds of southern mountain caribou that will be disrupted by construction, applications for judicial review have been called against the Federal government by Ecojustice, The Western Canada Wilderness Committee, the David Suzuki Foundation, Greenpeace Canada, the Sierra Club, and Wildsight.¹¹⁴¹¹⁵ The vulnerability of other listed species, such as the Pacific humpback whale, the marbled murrelet bird, eulachon fish,

<http://www.vancouverobserver.com/blogs/earthmatters/enbridge-promises-minimum-precautions-ignores-seismic-instability>

¹¹² Vanderklippe, N. (2012, October 10): "Evidence of Douglas Channel slides stokes residents' concerns." *Globe and Mail*. Accessed 30 October 2012, <http://www.theglobeandmail.com/globe-investor/evidence-of-douglas-channel-slides-stokes-residents-concern/article4602829/>

¹¹³(2012, September 28): "Enbridge Questions estimates of Northern Gateway Pipeline's Environmental Costs" *Calgary Herald*. Accessed 8 January 2013, <http://insideclimatenews.org/print/16733>

¹¹⁴ Nixon, S. (2012, September 26): "Federal government's failure to protect endangered wildlife triggers lawsuit," *EcoJustice.ca*. Accessed 13 October 2012, <http://www.ecojustice.ca/media-centre/press-releases/federal-governments-failure-to-protect-endangered-wildlife-triggers-lawsuit/?searchterm=SARA>

¹¹⁵ Vanderklippe, N. (2012, November7): "Northern Gateway pipeline threatens caribou, group warns," *The Globe and Mail*. Accessed 13 October 2012, <http://www.theglobeandmail.com/news/national/northern-gateway-pipeline-threatens-caribou-group-warns/article5084138/>

northern abalone and several species of rockfish requires the federal Ministry of the Environment to publish recovery plans, thus the potential impacts of pipelines and tankers only exacerbate threats to their survival.¹¹⁶ While many opponents of the pipeline are concerned with the potential impacts on salmon populations which have important economic and traditional value, there are grave concerns regarding the SARA species.

5.1.3 Oil Super-Tankers

If the proposed NGP and pipeline expansions to Vancouver are built, the number of oil tankers on the Pacific coast would grow from 100 currently to more than 550, according to JRP environmental assessment hearings testimony from Jonathan Whitworth, representative of marine transportation companies.¹¹⁷ In October 2012, within a couple days, two large shipping vessels along the Northern BC coast ran aground and had incidents where control was lost, which does not engender trust in coastal communities for super tankers.¹¹⁸ Ironically, BC's largest oil spill response boat ran aground on a sandbar en route to make an appearance at a news conference hosted by Natural Resources Minister Joe Oliver in Vancouver on 21 March 2013, taking 11 hours to demonstrate the federal government's quick emergency response capacity in Canada's busiest port.¹¹⁹ As more than 1000 jobs have been cut from the federal Department of Fisheries and Oceans since 2011, MP Nathan Cullen also questioned the JRPs expert panel, because the "capacity of various departments to fulfill both their Constitutional and legal obligations is

¹¹⁶ Moore, D. (2012, September 26): "Environmentalist sue to force Ottawa to protect species along Northern Gateway Route," *The Globe and Mail*. Accessed 14 October 2012, <http://www.theglobeandmail.com/news/british-columbia/environmentalists-sue-to-force-ottawa-to-protect-species-along-northern-gateway-route/article4568673/>

¹¹⁷ Moore, D. (2012, October 10): "Enbridge oil leak effectiveness can't be known until pipeline is built, lawyer tells hearing," *Vancouver Sun*. Accessed 23 October 2012, http://www.vancouversun.com/business/energy/Enbridge+leak+effectiveness+known+until+pipeline+built/7370525/story.html?_lsa=5dae-c6ba

¹¹⁸ Pynn, L. (2012, November 23): "Second BC shipping incident in two days heightens concerns over Enbridge Northern Gateway project," *Vancouver Sun*. Accessed 30 November 2012, http://www.vancouversun.com/Second+shipping+incident+days+heightens+concerns+over+Enbridge+Northern+Gateway+project/7601958/story.html?utm_source&utm_medium&utm_campaign

¹¹⁹ Hagar, M. (2013, March 21): "Oil spill clean-up ship hit sandbar en route to government news conference in Vancouver," *Vancouver Sun*. Accessed 23 March 2013, <http://www.vancouversun.com/news/spill+clean+ship+sandbar+route+government+news+conference/8129094/story.html>

of direct consequence to the amount of staff they're able to devote, particularly on the science and monitoring side.”¹²⁰

Marine operators, fishermen, and other experts also question Enbridge’s methodology as only averaging the statistics, misrepresenting the worst of the weather risks inherent in this region, notorious for record-breaking waves (up to 26m high) and high winds (140km/h in 2011).¹²¹ Mariner Brian Falconer described at the JRP that Enbridge’s assessments of averaging 10.2m waves as “very, very misleading...it doesn’t match anybody’s experience on the coast.”¹²² The Raincoast Conservation Foundation and the Helitsuk Tribal Council are highly critical about the fact there is only one emergency anchorage large enough to harbour an oil tanker along the proposed routes in the “‘certain event’ of a surprise storm.”¹²³

The Exxon Valdez oil spill occurred in 1989, dumping 257, 000 bbl of light crude, and is still impacting the community and environment around Prince William Sound, Alaska today. The International Tanker Owners Pollution Federation states that “clean-up alone cost in the region of US\$2.5 billion and total costs (including fines, penalties and claims settlements) estimated at as much as US\$7 billion.”¹²⁴ South of BC, the Washington State Department of Ecology estimated that a proximate coastal oil spill “could cost Washington state 165,000 jobs and \$10.8 billion in economic losses.”¹²⁵ Many of the tankers proposed for Kitimat would be Very Large Crude Carriers(VLCC)with standard volumes of 2 million bbl, five-times the volume

¹²⁰ JRP Hearing Order OH-4-2011, 22 April 2013, Prince Rupert, BC. Vol 127, para 16753

¹²¹ Vanderklippe, N. (2012, December 12): “Enbridge, opponents spar over pipeline’s risks,” *The Globe and Mail*. Accessed 15 December 2012, <http://www.theglobeandmail.com/news/british-columbia/enbridge-opponents-spar-over-pipelines-risks/article6221920/>

¹²²“(2012, December 11):“Enbridge underestimates tanker risks in North Pacific, pipeline hearing told,” *Maclean’s*. Accessed 15 December 2012, <http://www2.macleans.ca/2012/12/11/enbridge-consistently-underestimates-tanker-risks-in-north-pacific-raincoast/Enbridge-underestimates-tanker-risks-in-North-Pacific-pipeline-hearing-told/>,” *Calgary Herald*, December 12, 2012. Accessed December 15, 2012, <http://www.calgaryherald.com/business/energy/resources/Enbridge+consistently+underestimates+tanker/7687124/story.html>

¹²³ Kopecky, A. (2013): “The \$273 Billion Question,” *Reader’s Digest Canada*, February: 61.

¹²⁴ International Tanker Owners Pollution Federation. (2010) *Cost of Spills*. Accessed 12 December 2012, www.itopf.com/spill-compensation/cost-of-spills/

¹²⁵ French-McCay, D et al (2006): “Evaluation of the Consequences of Various Response Options Using Modeling of Fate, Effects and NRDA costs for Oil Spills into Washington Waters, Volume I: Model Description, Approach, and Analysis, Phase II, Final Report,” State of Washington, Department of Ecology. Accessed 8 March 2013, http://www.ecy.wa.gov/programs/spills/studies_reports/ASA-Ph2-Vol1-Model-Tech-May06.pdf

of the Exxon Valdes, about 3.5 football fields long (330-470m) and 60m wide.¹²⁶

More disruptive than the possibility of a large spill to the many of Species at Risk in the region, however, are the permissible discharges from large ships, with Nature Canada's Lawyer, Chris Tollefson stating during the JRP, "the literature says that the cumulative effects of chronic oiling on marine birds is greater than the impact of catastrophic oil spills."¹²⁷ The proposed tanker route would negate a long-standing voluntary tanker-ban on the BC coastline and along the newly protected temperate Great Bear Rainforest.¹²⁸ The Living Oceans society has developed a number of oil spill models for the BC coast providing a graphic illustration of areas where herring, salmon, marine mammals, sea birds and communities could be impacted by spills.¹²⁹

5.1.4 On 'Objective Science'

"Our knowledge of the natural world is incomplete, uncertain and riddled with ignorance" (Bocking 2006:81 in Bardati 2009:117).

PM Harper and Minister of Natural Resources Joe Oliver have frequently stated that the fate of the NGP will not be based on politics, but on science. Project advocates often describe policy decisions and design as being 'science-based,' as it seeks to evoke a sense of 'objective' liberation from particular interests, and "conveys the ideas of impartiality and superior rationality, and may serve to circumscribe debate" (Adkin 2009:305-307). For Harvey, "the neoliberal presumption of perfect information and a level playing field for competition," is "either innocently utopian or a deliberate obfuscation of

¹²⁶ Maritime Connector (2013): "VLCC and ULCC," website. Accessed 5 April 2013, <http://maritime-connector.com/wiki/vlcc/>

¹²⁷ Tollefson is Executive director of the University of Victoria Environmental Law Centre. Moore, D. (2012, December 10): "Chronic oil discharge a greater risk than tanker spill, Northern Gateway pipeline panel told," *Vancouver Sun*. Accessed 11 December 2012, <http://www.vancouversun.com/business/Pipeline+panel+arrives+Prince+Rupert+next+phase+hearings/7676381/story.html>

¹²⁸ Sierra Club of BC (2012): "Tar Sands Pipeline and Tanker Traffic." Sierra Club website. Accessed 12 April 2013, <http://www.sierraclub.bc.ca/our-work/gbr/issues/tar-sands-pipeline-and-tanker-traffic>

¹²⁹ Living Oceans Society (2012): "Oil Spill Model" Interactive on-line map. Accessed 2 April 2013, <http://www.livingoceans.org/initiatives/tankers/oil-spill-model>

process” (2005:68). Ted Schrecker describes the hegemonic appropriation of science whereby:

Firms or industries that view environmental conservation initiatives as an economic threat are likely to contend that all policy and regulatory decisions should be ‘purely science based’...they invoke the cognitive authority of science (who, after all, can be against science?) for strategic purposes, in order to avoid discussion concepts like standards of proof in terms that are appropriate. Governments may pursue the same course of action in order to defend decisions that have been reached primarily on grounds unrelated to either science or the environment, such as trade-policy implications or the avoidance of major economic disruptions. Thus the idea of a science-based environmentally policy is superficially attractive, yet ultimately pernicious (2001:52).

Earlier studies have shown that the more formal quasi-judicial NEB Regulatory hearings tend to preference the “expertise honed by legal professionals,” favouring “well-financed corporate applicants and intervenors with a considerable staff to maintain, review and process the large amount of written material within very narrow time-lines,” as well as being intimidating and time-consuming for average citizen participants (Schneider et al 2007). This is consistent with CDA, whereby the net effect of cost-benefit analyses and EIAs serves to preference the expert-technocrat over the input of the non-specialist public, or even elected government representatives, in policy decisions, thus reducing the general agency available regarding public interest decisions (Dryzek 2005:85). Narrative is widely used in the JRP’s oral testimonies, particularly for First Nations who also present evidence as traditional knowledge (as affirmed in Supreme Court decision *Delamagwuk vs.Crown*); Young describes how this device can “counter exclusive tendencies...[as it] empowers relatively disenfranchised groups to assert themselves publically; it also offers means by which people whose experiences and beliefs differ so much that they do not share the premises to engage in fruitful debate [and] can nevertheless reach dialogical understanding” (Young 2000 in Smith 2003:57). However, the inclination to preference the competence of experts, professionals, and scientists also undermines the legitimacy of these other forms of knowledge (such as traditional, localized or

lay) that are commonly presented during consultation and negotiation; this serves to fortify structural power asymmetries and biases, resting on the socially-constructed assumptions present in western science, rather than fostering equity or the processes of learning and opinion formation that occur in deliberation (Bardati 2009:117 and Adkin 2009:306).

Throughout the technical and environmental portion of the JPR in September and October 2012, repeatedly Enbridge could not provide 'specs' on the engineering or answer particular design questions, saying they will only know once it is built. Subsequent cross-examinations have revealed the Proponent's use of questionable science with a number of serious questions raised around the Caribou 'errata', wherein an independent PowerPoint presentation about Yukon herds was used as data for basing Enbridge's entire population density threshold.¹³⁰ "Is it usual for a proponent to rely upon a single source to derive a key threshold such as this, especially where that source is a non-published, non-peer-reviewed work?" asked lawyer Chris Tollefson¹³¹ During cross-examinations of Enbridge's health impacts expert, Dennis Lee, by independent Intervenor Dr. Josette Wier on 28 February 2013, it was revealed he had misled the panel listing several publications which never occurred, leading Dr. Wier to question his expertise and state that "including misinformation in his resume which on three occasions he had sworn to as accurate shows a plain lack of credibility."¹³² Enbridge released a PR video in December 2011 of the proposed path of tanker traffic into Kitimat port which omitted thousands of square kilometres of islands in the Douglas Channel, depicting it as a wide open area (maps in Appendix 6).¹³³ In

¹³⁰ Hume, M (2012, November 11): "Enbridge's 'errata' on caribou could prove a costly error," *The Globe and Mail*. Accessed November 13, 2012, <http://www.theglobeandmail.com/news/british-columbia/enbridges-errata-on-caribou-could-prove-a-costly-error/article5188396/>

¹³¹ Hume, M (2012, November 11): "Enbridge's 'errata' on caribou could prove a costly error," *The Globe and Mail*. Accessed November 13, 2012, <http://www.theglobeandmail.com/news/british-columbia/enbridges-errata-on-caribou-could-prove-a-costly-error/article5188396/>

¹³² Wier, J. (2013, March 5): "Enbridge Human Health Risk Expert Provides Unreliable Testimony," *Watershed Sentinel*. Accessed 10 March 2013, <http://www.watershedsentinel.ca/content/enbridge-human-health-risk-expert-provides-unreliable-testimony>

¹³³ Tencer, D. (2012, August 16): "Northern Gateway: Enbridge accused of misleading public with video that shows smooth sailing in Douglas Channel," *The Huffington Post*. Accessed 12 September 2012, http://www.huffingtonpost.ca/2012/08/16/enbridge-douglas-channel-islands_n_1789223.html?utm_hp_ref=canada-british-columbia&ir=Canada British Columbia

reaction, a scientist launched a public formal complaint with the federal Competition Bureau and a 40 000-signature petition was presented to Enbridge by a Prince Rupert City Councillor requesting them to pull the misleading advertising, which to date has not happened.¹³⁴ Such deficiencies in rigour compel critics to question possibilities of other misrepresentations,¹³⁵ because government departments and agencies did not prepare independent assessments or conduct primary research, and as Micheal Engelsjord of the federal Department of Fisheries and Oceans testified at the JRP, “Our review consisted of reviewing the Proponent's evidence.”¹³⁶

A recurrent issue, particularly in Alberta, is the control of data, as exemplified above in the Tar Sands section when independent peer-reviewed data was undermined by the province, but then when later confirmed by government scientists, their own report was suppressed. Another recent political ecology study demonstrated that other provincial ministries suppressed sound environmental data from their own scientists in favor of replacing it with that of the industry, which was more favorable to their practices and economic interests (Fluet and Krogman 2009: 307).

5.2 Economic Considerations

“Canada cannot become a resource superpower by accident. It takes consultation, collaboration, and leadership” (Madeline Drohan 2012:i).

5.2.1 Necessity, Commercial Viability and Jobs

One of the JRP’s main tasks is to determine whether the NGP is currently necessary for economic development. The stated ‘necessity’ is “to give Canadian oil producers full value for their oil by diversifying market access, and preventing condensate shortages, and the purpose is to transport oil and condensate between Alberta and the coast. The Panel states that it will not consider any alternatives that are inconsistent with this need and purpose”

¹³⁴Waters, Lori (2012, September 16): “Letter of Complaint to the Competition Bureau of Canada against Enbridge for false or misleading advertising and deceptive marketing practices.” Accessed 17 September 2012 <https://www.box.com/s/16509628de91608d12e1#/s/16509628de91608d12e1/1/355824541/2876446089/1>

¹³⁵Moore,D.(2012, December 10): “Chronic oil discharge a greater trisk than tanker spill, Northern Gateway pipeline panel told,” *Vancouver Sun*. Accessed 11 December 2012, <http://www.vancouversun.com/business/Pipeline+panel+arrives+Prince+Rupert+next+phase+hearings/7676381/story.html>

¹³⁶ NGP-JRP Hearing Order OH-4-2011, 22 April 2013, Prince Rupert, BC. Vol 127.para 16770.

(WCEL 2011:3).

The necessity justification has been rebuked by a number of respected economists who challenge Enbridge's data and claims,¹³⁷ saying the pipelines will actually increase costs, which will ultimately be borne consumers. The Communications, Energy and Paperworkers (CEP) Union's submission to the JRP cites independent research that building NGP will contribute to creating surplus capacity well beyond prospective production in the oil sands for a decade, and that upon operationalization of other pipelines, over capacity will make pipeline tolls actually far more expensive (CEP 2012:4). According to CEP, unless other pipelines are emptied, NGP would not be filled until after 2025, which will "exacerbate problems that have already created an unfavourable market for Canadian upgrading and refining" rather than easing the glut, or creating the dreaded supply bottle-neck (CEP 2012:4 and Lempers 2010:27). In her in-depth analysis of Enbridge documents, economist and critic, Robyn Allan concluded that the vast majority of the benefits case for the Canadian public actually disappears:

[D]ue to double counting benefits, inappropriate exchange rate assumptions and calculation errors. Since the analysis has also excluded important economic costs, when these are considered Northern Gateway very likely represents a negative impact on the Canadian economy... Enbridge has confirmed the project's intention to raise the price of crude oil for all Canadian crude produced—not just crude oil shipped to Asia...Without this price increase, Enbridge does not have a benefits case since 90% of the value in their numbers depend on higher prices for all crude(2012b:9-10).

Naturally, Enbridge refutes these critical studies, and while an in-depth analysis of the economics of the value of the NGP is beyond the scope of this thesis, the presentation of competing claims is worthwhile.

Although alternatives are to be part of the JRPs considerations, these have been lacking in the debate. Robust discussions about a national energy strategy to supply Eastern Canada, the minimal bitumen upgrading being done domestically (which results in losses of value-added processing and employment opportunities), and the option of transporting bitumen via rail,

¹³⁷ Enbridge (2012): "Benefits for Canadians" Northern Gateway Pipeline Project (online). Accessed 20 November 2012, <http://www.northerngateway.ca/economic-opportunity/benefits-for-canadians/>

have not aired anywhere within the process. The extremely narrow interpretation of necessity also precludes the alternative of denying the project altogether, which ultimately undermines a genuine evaluation of the real worth of the project to the public interest, which is supposed to be foremost in the panel's decision (WCEL 2011:3).

The Northern Gateway Pipeline is a limited partnership, with Enbridge controlling a 50 per cent stake, with the remainder divided among 10 private investors including Suncor, MEG Energy, Cenovus, China's biggest state-owned company - Sinopec, French oil company Total, and Calgary-based Nexen (whose take-over by Chinese state-owned China National Offshore Oil Co. is currently hotly debated in parliament- notably they also own 17% of MEG energy), and in addition, there are four other confidential investors.¹³⁸ One of the major factors under the consideration of the JRP is establishing whether the proposed project is commercially viable, thus Enbridge's secrecy and refusal to divulge these stakeholders impedes clarity for decision makers and public opinion (Lempers 2010:6). The Chinese interests in NGP are very vertically integrated through state ownership of tar sands investments, fleets of tankers, the largest Chinese refineries, and most of their national petroleum distribution. Allen therefore concludes that the likelihood of Sinopec paying the Asian Premium and essentially price gauging itself (although one would never know due to the opacity of Chinese practices and heavy subsidization), means "Canadian markets will pay the Asia premium price, though we might be the only ones" (2012b: 30).

Controversial industrial projects are often promoted as bringing much needed economic opportunity to a region, and the case of NGP is no exception. However the standard discourse justifications of 'jobs and growth' for building the pipeline have proved weak under scrutiny, and employment creation has been overestimated by the Proponent, with fewer than 2000

¹³⁸ Moore, D. (2012, October 8): "Enbridge targets Northern gateway pipeline critics," *Calgary Herald*. Accessed 12 October 2012, <http://www.calgaryherald.com/technology/Enbridge+targets+Northern+Gateway+pipeline+critics/7359036/story.html#ixzz28ou69nretp://www.calgaryherald.com/technology/Enbridge+targets+Northern+Gateway+pipeline+critics/7359036/story.html#ixzz28ou69nre>

construction jobs over 3-years and about 217 permanent positions (Lee 2012:16). As pipeline workers would also be housed in separate camps, few economic spin-offs for communities along the route would materialize.

Rallying symbols for many in the BC countermovement have been around the Wild Salmon (Lempers 2012:22) and “BC Natural” tourism, which combined contribute some \$14 billion to GDP annually.¹³⁹ Provincial MLA Doug Donaldson testified at the JRP in Smithers, BC:

We don't want the existence of healthy salmon populations to be a story of the past here, something that we tell stories about, about the way it used to be. We must not allow wild salmon in the Northwest to become the modern-day buffalo story of the Plains (JRP Hearing Order OH-4-2011,16 January 2012, para 6329).

A study released in December 2012 by the World Wildlife Fund and the University of BC noted that even smaller spills would dramatically affect the robust ocean-oriented economy (tourism, fishing, aquaculture, marine transport) which employs 30 per cent of BCs coastal population (Hotte and Sumaila 2012). Independent research indicates that 18 000 sustainable jobs would be jeopardized were an oil spill to occur along the three economic development regions impacted by the pipeline, such that “if one in ten of these jobs were affected, the job losses that could result from an oil spill would be larger than new permanent jobs created” by the NGP (Lee 2012: 6).¹⁴⁰ Utilizing data from Enbridge's proposal and current regional economics, they estimate losses of up to \$300-million in economic activity, and between \$2.4-9.6 billion to clean-up a single spill, effectively negating any economic gains accrued by the pipeline (ibid:2).

I've gone into every one of the [First Nations] communities along the coast – they're desperate for jobs; they're desperate for economic development. And yet, despite the offers of millions of dollars from Enbridge, they are 100 per

¹³⁹ Gilchrist, E. (2013, January 6): “Enbridge oil pipeline and tanker proposal would threaten ‘Super, Natural’ BC tourism industry, Panel told,” *Vancouver Observer*. Accessed January 12, 2013, <http://www.vancouverobserver.com/politics/news/enbridge-oil-pipeline-and-tanker-proposal-would-threaten-super-natural-bc-tourism>

¹⁴⁰Of note, a report released by an alliance of Canadian environmental groups, civil society and labour unions 23 November 2012 stated “if the \$1.3 billion in government subsidies now given to the oil and gas sector were instead invested in renewable energy and energy efficiency, Canada would create more jobs: 18,000 more. - Blue Green Canada is strategic alliance between the United Steelworkers and Environmental Defence, but now includes the Communications, Energy and Paper Workers Union of Canada (CEP), the Columbia Institute, the Pembina Institute and Tides Canada. Accessed 3 Dec 2012, <http://bluegreencanada.ca/more-bang-for-our-buck>

cent opposed to the pipeline in their territory. Why? They're telling us there are things more important than money. They're telling us that culture, history and the future are all tied up in the threat from the supertankers that will come through. We have to be listening to that. These communities want jobs, they want economic development, and yet they are telling us, 'Look at what really matters in our lives.' And I thank them for that. -David Suzuki, scientist and activist¹⁴¹

5.2.2 Dutch Disease and the Making of a Petro-State

The Conservatives have slashed financing for climate science, closed facilities that do research on climate change, told federal government climate scientists not to speak publicly about their work without approval and tried, unsuccessfully, to portray the tar sands industry as environmentally benign (Thomas Homer-Dixon 2013).¹⁴²

Canada is increasingly characterized as a Petro-State, with democracy undermined by tar sands promotion and the influence of Alberta in federal politics (from whence a majority of the Conservative caucus hails, many of whom are vocal climate change sceptics), even going so far as to label critics of the development as 'unpatriotic' and 'radical' (ibid).

In the spring of 2012 reports and the Canadian media were focused on the oil sands relation to 'dutch disease,' succinctly described by J.A. McNiesh as "a condition in which a resource boom leads to the appreciation of the real exchange rate and in turn damages manufacturing and other tradable sectors" (2012:10). Canada's economy is again becoming caught in the 'staples trap' of being net exporters, dependent on raw and semi-processed resources and "trading low-value-added commodities for high-value-added technology" (CIC Habits 2012:25). Jim Stanford, Senior economist of the Canadian Auto Workers Union describes how "progress in diversifying Canadian exports and moving 'up the value chain' in our trade, has been undone in just 10 years of this resource-led trajectory" (2012:3). In 1999, manufactured goods comprised approximately 60 per cent of Canadian exports, while by July 2011, two-thirds of exports were partially-processed or raw materials (ibid:3), with energy products accounting for 22 per cent of 2010 export revenues (Doucet 2012:2).

¹⁴¹ Ball, David (2012, October 18): "David Suzuki: We've got to be ready to put our bodies on the line," *Rabble.ca*. October 20, 2012, <http://rabble.ca/blogs/bloggers/david-p-ball/2012/10/david-suzuki-weve-got-be-ready-put-our-bodies-line#.UIN7qdeg6yl.facebook>

¹⁴² Homer-Dixon, T. (2013, March 31): "The Tar Sands Disaster," *The New York Times*. Accessed 3 April 2013, http://www.nytimes.com/2013/04/01/opinion/the-tar-sands-disaster.html?nl=todaysheadlines&emc=edit_th_20130401&_r=3&

CERIs Study No122 also reports that “there is a negative and statistically significant relationship between the Canadian-US exchange rate and the price of crude oil,” so that because the Canadian Dollar appreciated 14 per cent between 2004-2009, “Canadian goods and services become relatively more expensive to purchase with US dollars, and Canadian exports to the US decline correspondingly - by 23 per cent” (Millington and Mei 2011:21). The last decade of appreciation has seen a 60 per cent rise in Canadian currency against the US dollar, corresponding with widespread trade balance deterioration, and Stanford states that the “shift to non-tradable sectors, loss of high-productivity manufacturing jobs, and the structural deterioration in our exports have all contributed to the worst decade of productivity growth in Canada’s post-war history” (2012:2). This serves to enlarge the gaps between oil-producing ‘have’ provinces of Alberta, Saskatchewan and Newfoundland-Labrador and all others,¹⁴³ since appreciation of the Canadian dollar means “Canadian-made products and services seem 25 per cent too expensive relative to their actual value,” further devaluing manufacturing and ‘value-added’ production (Stanford 2012:2). Thus, the economic benefit claims made by the proponents of the tar sands and Enbridge are fundamentally uncertain in a broader context.

Generally, the neoliberal model of natural resource exploitation tends to preference short-term contracts, which emphasizes the drive to extract everything as quickly as possible, lest other sources are found or the commodity rate changes, since “ the longest possible time-horizon for natural resource exploitation is that of the discount rate (i.e. about 25 yrs), but most contracts are now far shorter”(Harvey 2005: 174). This presents a real fear for the tar sands, given that recent gas deposit discoveries in the US shift the traditional market, driving the urgency to access new buyers in Asia and the EU. Besides, natural resource industries inevitably face declining productivity over time as costs of recovery increase when left with marginal or remote deposits, like deep sea oil drill rigs and tar sands, such that with continued

¹⁴³ Anderson, M. (2012, September 12): “Canada Next? Oil money drives prices sky high in Norway,” *The Tyee*. Accessed September 30, 2012, <http://thetyee.ca/News/2012/09/12/Norway-Oil-Drives-Prices/>

economic reliance and the past decade's refocus on raw resources, Canada's national productivity performance now so low, productivity growth ranked 30 out of 34 OECD nations (Stanford 2012: 4).

A recent MIT report further confirms this, stating how the oil sands industry is also extremely vulnerable to the potential ramifications of international climate policy regulating CO₂ emissions because:

[D]emand for petroleum products would be reduced with climate policy... there appears to be little role for Canadian oil sands at least through the 2050 time horizon of our analysis...[since] the demand for petroleum falls, and oil sands..are not competitive with conventional petroleum, [thus the] niche for the oil sands industry seems fairly narrow and mostly involves hoping that climate policy will fail (Chan et al 2010:19).

In this regard, Alberta tar sands producers ought to look to the difficulties faced by the coal industry in the US. Many companies are folding, due to over-capitalized expansions based on exaggeratedly optimistic predictions only a few years ago, being penalized for causing high pollution, and subsequently being replaced by cleaner, cheaper alternatives.¹⁴⁴ Consequently there could be difficulties for the expansion of the tar sands presented by the development of carbon-burden penalties in international energy trading regimes, further destabilizing economic benefits projections.

¹⁴⁴ Saxifrage, Berry (2012, October 19): "Rapid collapse of USA coals holds warning for tar sands", *Vancouver Observer*. Accessed 20 October 2012, <http://www.vancouverobserver.com/blogs/climatesnapshot/rapid-collapse-usa-coal-holds-warning-tar-sands>

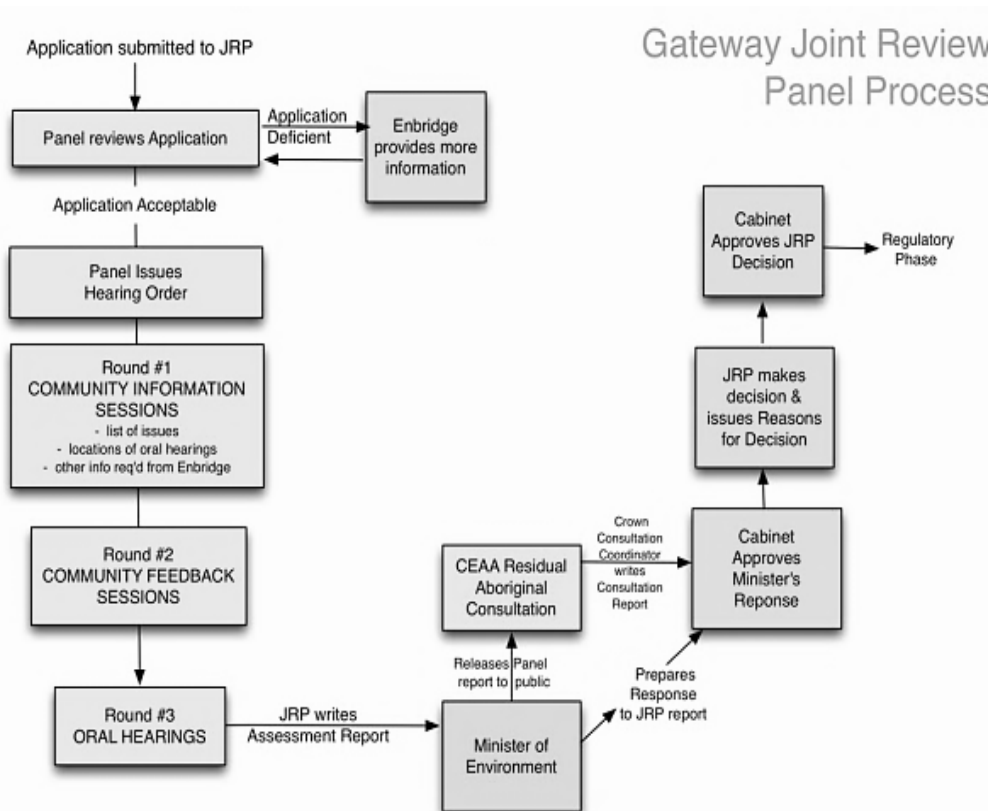
6. Regulatory Review Panels

6.1 The Joint Review Panel and Process

The Joint Review Panel is an independent body that will assess the environmental effects of the Project and make a recommendation on whether the Project should be approved....The Panel review process will provide opportunities for all hearing participants to express their views on the project in an open and transparent forum(JRP 2012a).

The quasi-judicial JRP consists of three National Energy Board members (two permanent employees Sheila Leggett, Kenneth Bateman, and one temporary, Hans Mathews). The Panel coordinates various responsible governmental authorities that are implicated in this project, which falls under both provincial and federal jurisdictions.¹⁴⁵

Figure 2. The Joint Review Panel Process



Source: T.Pearse Consulting (2010, June 27): "Preparing for the Panel Workshop," *Northwest Institute*. Powerpoint Slide 11. Accessed 13 April 2012, http://northwestinstitute.ca/images/uploads/pearse_NGP_workshop_smithers.pdf

¹⁴⁵ Responsible Authorities for the NGP include: the National Energy Board (certificate under section 52 of the *National Energy Board Act*), Transport Canada (grant leave under the *National Energy Board Act*; permit under the *Navigable Waters Protection Act*), Fisheries and Oceans Canada (authorization under the *Fisheries Act*), Indian and Northern Affairs Canada (access to federal lands for the purpose of project), Canadian Transportation Agency (permit under the *Transportation Safety Act*), Environment Canada (permit under the *Canadian Environmental Protection Act*).

Established to act on behalf of the CEAA and NEB, the JRP carries out the following broad mandate in assessing whether the NGP is in the public interest and the likelihood of detrimental environmental impacts (NEB 2009):

[To]examine environmental effects of proposed project and their significance (as per the Canadian Environmental Assessment Act); consider measures that are technically and economically feasible to mitigate any adverse environmental effects and the need for and the requirements of any follow-up programs; consider comments from public and Aboriginal peoples; conduct public hearings to receive relevant information about project provide ways in which interested organizations, people and groups may participate the hearing process; submit to the federal government an environmental assessment report with recommendations about the project; and issue Reasons for Decision[regarding] public convenience and necessity pursuant to the National Energy Board Act'(JRP 2012a).

The JRP Hearing Order released on 5 May 2011 provided details on the four ways to participate in the Panel. First, anyone could submit Letter of Comment by 31 August 2012, and approximately 9500 letters were received.¹⁴⁶

Secondly, individuals or groups could register by 6 October 2011 to make an Oral Statement of 10 minutes (though possibly longer by request) to share knowledge, views or concerns on the project and provide information to support those views at open public community hearings. Oral Statement participation January to April 2012 can be roughly summarized as: 39 Indigenous Groups (represented by 291 people); 52 individuals; six CBO-ENGO groups (33 speakers); one labour union; four governmental groups (represented by 11 people); one industry association (with two spokespeople); and two other groups.¹⁴⁷ By the end of the community hearings in February 2013, 1179 participants had spoken, and conspicuously only two people (a former Mayor and a former MLA) publicly supported the NGP.¹⁴⁸

¹⁴⁶ Spagnuolo, C. GATEWAYPROCESSADVISOR@CEAA-ACEE.GC.CA, 2013. Tables or numbers of participants available? Message to L.Stendie (larissa.stendie@gmail.com). Sent and accessed 11 February 2013.

¹⁴⁷ Compiled by the author from official JRP documentation and transcripts at: <https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/customview.html?func=ll&objId=620327&objAction=browse&sort=-name&redirect=3>

¹⁴⁸ Gilchrist, E.(2013, February 4): "Community Hearings are a Wrap! Now what?" *Dogwood Initiatives*. Accessed 6 February 2013, http://dogwoodinitiative.org/blog/all-opposed-to-Enbridge?utm_source=AdaptiveMailer&utm_medium=email&utm_campaign=20130213-E-News-starting-February-2013&org=354&lvl=100&ite=5562&lea=6084307&ctr=0&par=1

The third way to participate was to register by 14 July 2011 to become an Intervenor, which could be either groups or individuals, and if approved, that status:

[A]llows submission of written questions and evidence; question other Intervenor and Proponent orally at the final hearings; receive all documents submitted and to participate regarding notices of motion and submit a final argument. Submission of evidence as an Intervenor requires written responses to information requests about your evidence and a requirement to attend the final hearings. The Panel is prepared to receive the oral traditional knowledge of Aboriginal elders as oral evidence. Generally, the Panel will allow oral traditional evidence or evidence that cannot be provided in writing to be presented orally during the community hearings. It is suggested that Intervenor should take a maximum of 3 hours to present oral evidence(JRP 2012b).

Intervenor have consisted of: 48 Indigenous groups; 85 individuals; three labour unions; four land-owner groups; 11 environmental, conservation or community organizations; 36 energy industry or business associations; and three miscellaneous parties.¹⁴⁹

Finally, the Government Participants option (registered by 14 July 2011) allowed all levels of government organizations from federal, provincial, territorial and municipal, to participate without becoming Intervenor, and are 13 government participants (JRP 2012b). According to the JRP Process Advisor, 389 witnesses gave oral evidence, with 60 representing parties.¹⁵⁰

Of note, letters of comment or making oral statements did not enable participants to make arguments at the final hearings September 2012 to May 2013, which are reserved for Parties. Parties are Intervenor, Government Participants, the Panel and the Proponent (Enbridge).

In the interests of transparency, the JRP sessions have all been open to the public except in Vancouver and Victoria, BC, where the Panel believed there would be disruptions due to multiple earlier protest actions, allowing only one guest per registered participant providing oral statements and the media into the hearing room, and instead created live-feed public viewing

¹⁴⁹ Compiled by the author from official JRP documentation and transcripts: <https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/customview.html?func=ll&objId=620327&objAction=browse&sort=-name&redirect=3>

¹⁵⁰ Spagnuolo, C. GATEWAYPROCESSADVISOR@CEAA-ACEE.GC.CA, 2013. Tables or numbers of participants available? Message to L.Stendie (larissa.stendie@gmail.com). Sent and accessed 11 February 2013.

rooms in nearby venues. The following table, based upon official JRP documentation in the Public Registry, outlines the JRPs major dates and participation particulars.

Table 5. NGP-JRP: Schedule, Process and Participation

Dates	Event/Stage of Process	Details of participation
(Pre-JRP) 2002-2005	Aboriginal introduction to and engagement in the project by Enbridge	Details are sparse about what this actually entailed, but was intended to identify potentially affected communities and within 80-km radius of the the project. These ‘relationship-building’ activities also included information sharing and the undertaking of Traditional Knowledge studies(Enbridge 2005:4-4).
4 Dec 2009	Northern Gateway Pipeline Project Joint Review Panel Agreement Issued	Public comments on the draft agreement were considered between 9 February and 14 April 2009 to inform aspects of the ToR and JRP agreement.
27 May 2010	Northern Gateway Pipelines Inc. (Proponent) applied to the National Energy Board	Sought authorization to construct and operate (1) an oil export pipeline and associated facilities (2) a condensate import pipeline and associated facilities (3) a tank terminal and marine terminal to be located near Kitimat, BC.
5 July 2010	Joint Review Panel established, issues Procedural Direction for comments	<ul style="list-style-type: none"> • 27 communities had public access to hard copies of the complete Proponent proposal; • 25 notifications published in local, regional and national papers; • 200+ written comments between June –Sept 2010; • comments accepted on the draft List of Issues; additional information that Proponent should file, and location(s) for the oral hearings.
10, 31 Aug and 8 Sept 2010	Panel Sessions held in Whitecourt, AB, Kitimat, BC, and Prince George, BC	<ul style="list-style-type: none"> • 70 participants
19 Jan 2011	JRP decisions on procedural directions	<ul style="list-style-type: none"> • Required Proponent to file additional information re: engineering challenges and risks, impacts on subsistence communities, high volumes being transported; • Issued the revised List of Issues; • Determined locations of oral hearings
5 May 2011	Hearing Order released	Detailed four options for participating in the joint review process: (1) submit a letter of comment; (2) make an oral statement; (3) become a Party - Intervenor or (4) a Government Participant (federal, provincial, territorial or municipal government bodies).
Nov 2010 - Sept 2012	‘Letters of comment’ period	5,680 letters received at this time (by Feb 2013, total 9,500)
10 Jan – 17	Community Hearings (Oral	<ul style="list-style-type: none"> • Held in 17 communities along the proposed route;

April, 2012	Evidence from Parties and Oral Statements from registered participants	<ul style="list-style-type: none"> • Oral Evidence: 380 people representing 54 groups. Oral Statements by independents: 50 (3 hr max time limit for oral evidence) Interventions focus on what cannot be submitted in written evidence ie. oral traditional knowledge; personal knowledge or experience about potential effects to you and your community) • Oral Statements: 10 min time limit for oral statements: knowledge, views, concerns, position as to whether in the public interest • Stick to the issues list, not beyond the panel's scope. Not cross examined.
26 March – 10 Aug, 2012	Community hearings Oral statements from registered participants	<ul style="list-style-type: none"> • 14 communities (closest along the proposed route) • Oral Evidence from Parties: 5 • Oral Statements: 681 individuals
30 May 2012	Conference on Process for Procedure - Parties in the final hearings, Calgary, AB	<ul style="list-style-type: none"> • 34 participants • Allowed responses on range of questions related to procedural issues, process design particulars.
4 Sept – 15 Dec, 2012	Final Technical Hearings: Questioning Phase for Parties and expert or lay witnesses	<ul style="list-style-type: none"> • Edmonton, AB, Prince George, BC, and Prince Rupert, BC • 28 Parties, JRP Legal Counsel, and witnesses • Parties ask any outstanding questions to test credibility of the evidence filed and witnesses on record and about the issues on the list of issues. • Cross-examinations
4 Jan – Feb, 2013	Final Community hearings: Oral statements from registered participants	<ul style="list-style-type: none"> • Victoria, Vancouver, and Kelowna BC, (communities further from the proposed route) • Oral Statements: 482 • 10 min time limit. Stick to the issues list, not beyond the panel's scope. Not cross examined.
17 June 2013 (+2 weeks)	Final Arguments for Parties. Written Arguments from all parties by 31 May 2013. Oral Argument Responses to other parties' written arguments begin 17 June 2013.	<ul style="list-style-type: none"> • Session to be held in Terrace, BC • Number of participants unknown as of February 2013 • Parties express views, summarize evidence, cite law to persuade the panel whether proposal is in the public interest, recommend approval or denial, or suggest conditions for mitigation in Written Argument. Intervenors and Govt. Participants have 1h for oral argument and Proponent has 2 hrs (given burden of proving case and responding to all other parties).
Dec 2013	JRP report to federal cabinet	

Sources : Compiled by L.Stendie from the NEB-JRP official documentation found on-line on the Public Registry. Accessed between 15 February and 30 March 2013, <https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/customview.html?func=ll&objId=620327&objAction=browse&sort=-name>

Also: Spagnuolo, C. GATEWAYPROCESSADVISOR@CEAA-ACEE.GC.CA, 2013. "Tables or numbers of participants available?" Message to L.Stendie (larissa.stendie@gmail.com). Sent and accessed 11 February 2013.

Funds were made available by the government to facilitate the JRP participation of some Indigenous groups, which they were bound by law to provide, but most felt these were inadequate. Indigenous Peoples, academics and practitioners are also still uncertain regarding the interpretations of what proper consultations entail; Does it mean merely being present and told about a development, or getting information in the mail, or (as in the JRP) does being asked to recount stories or trace genealogy to establish continuous land usage count? To be active participants in public hearings, ample opportunities must be provided with participation actively encouraged and supported, as well as being supplied the relevant information and comprehensive details on how the process operates (Young 2001:680).

Several civil society organizations (Dogwood Initiative) and environmental law groups (West Coast Environmental Law) actively facilitated wide public involvement for formally participating in the JRP by providing simplified application information on-line for written submissions and applications to speak as interveners, as well as later offering tutoring to prepare for giving oral testimony and understanding the procedures. This 'Mob the Mic' campaign helped approximately 4000 citizens and groups access the JRP system, forcing the community hearings to be extended and prolonging the JRP process by about a year to accommodate all who had registered. Interestingly, via the omnibus legislative changes in Bills C-38 and C-45, the Federal government has subsequently decided to limit future hearings to an 18-24 month period.

6.2 The Berger Inquiry in the Northwest Territories, 1974-1978

“For one group it’s a frontier; For the other a homeland” (Hon. Thomas Berger 1988:15).

The historical precedent set by Berger Commission in the 1970s reviewed the proposal for a natural gas pipeline which would establish an energy corridor from the Beaufort Sea across the Northwest and Yukon Territories to Alberta refineries and Alaskan tanker ports. It is important to understand the NGP-JRP

case and conflicts within a historical context, for looking to past processes of this Commission demonstrates further how the contemporary situation deviates from long-standing practices, and that current actions of the Canadian Government demonstrates that much has changed in terms of the attitudes around civic inclusion. In less than 3-years, the Berger Inquiry drew together a broad segment of concerned Northern residents instigating practices that provided the time and opportunity for all to speak by providing funding for interveners to travel, interpretation to permit native language testimony, holding hearings in 35 remote and potentially affected communities, encouraging media coverage, and making proposal information from the proponents widely available. The Commission initiated “an important moment in this broad political transformation, which was both institutional and attitudinal” with regard to the processes of creating policy for developments and expanding participation (Abele *forthcoming*:1).

In many ways, the approach of Justice Berger moved towards Habermas’ ‘ideal speech situation’ of utilizing deliberative processes, such that “free and equal discussion, unlimited in duration, constrained only by consensus which would be arrived at by the force of the better argument” (Fishkin 1991:36). Based on widespread opposition, Berger recommended that there should never be a pipeline on the Yukon coast and that a ten-year moratorium on pipelines would facilitate time to settle indigenous land claims and determine a responsive, appropriate development program for residents, less based on short-term non-renewable resources projects that would likely only provide temporary low-skill employment (Abele *forthcoming*:2). Multiple parallels can be seen to the NGP:

We have to discuss what is an overall resource policy that is sustainable for this country?...What is likely to better satisfy the aspirations, the education and the skills of our people? Manufacturing and technology or digging ditches for pipelines and then employing 350 people thereafter?...That we explore it from its ecological and environmental aspects, from its effect on people, the overall economic policies and what kinds of adaptations we had better make to our commercial policies, our fiscal policies, our monetary policies, our exchange rate policies and indeed what shall be our future policy with respect to ownership and rents (Former Cabinet Minister Eric Kieran’s

statement at the Toronto public forum for the Berger Commission, 28 January 1973).¹⁵¹

Though decades later, projects have gone through the Northern corridor, and the Commission was not deliberative in the ways articulated by scholars, this exercise in inclusive participatory governance not only allowed for local people to make their case, it provided the Canadian people as whole the opportunity to better understand the issues and to relate to their distant countrymen, gave voice to the Indigenous Peoples of the North for the first time, and revealed the complex contentions beyond being simply economic oriented or anti-development. As the Hon. Thomas Berger stated recently in an interview regarding the NGP:

Democracy consists of more than just voting the government in or out every four years. Inquiries can be a critical part of the democratic process. It allows people to have a say about their future. If you consult local people, the people affected, you get better projects; that's a lesson in democracy. That's why it is so important that we provide for the fullest possible consultation in any major project.¹⁵²

¹⁵¹ (1973, January 28) "Eric Kierans Interview at the Berger Commission —Response to Billy Wilder", *CBC Radio Archives* at 8:15. Accessed 8 August 2012, <http://www.cbc.ca/archives/categories/politics/rights-freedoms/the-berger-pipeline-inquiry/canadians-question-the-proposed-mackenzie-pipeline.html>

¹⁵² West Coast Environmental Law (2012, November 27) "Living Democracy from the ground up; Part 3 - Honorable Thomas Berger," *YouTube video*, 3:53. Accessed 7 December 2012, http://www.youtube.com/watch?feature=player_embedded&v=n0bsqUIPEkM

7. Analysis of the Joint Review Panel

The following two-part analysis responds first to issues associated directly with the limitations of the NGP-Joint Review Panel, and secondly, addressing a number of the most salient general critiques related to the theoretical underpinnings of this thesis.

7.1 Limitations of the Joint Review Panel

The following section discusses some core concerns about the JRP including the scoping limits, polarizing rhetoric, the regulatory capture of the NEB, and what alterations to the CEAA and changes to ‘Interested Party’ status mean for both the NGP-JRP and future reviews.

7.1.1 Scoping

January 19, 2011 the JRP released its decision on the List of Issues for the environmental assessment, which stated that “any alternatives to the Project that are not consistent with the Project’s need and purpose, or that are otherwise hypothetical or speculative will be outside the scope of our assessment under the CEA Act”(JRP 2011:10). The JRP will not be considering:

a) the broad climate change and greenhouse gas implications of the project and the related increase in tar sands production, or the impact of the Enbridge project on Canada’s international commitments to reduce greenhouse gas emissions;

b) the land, water, air, health and social impacts of the increased tar sands developments facilitated by this pipeline;

c) the environmental and climate change impacts of burning the oil and fuel that travels through Enbridge pipelines and tankers; or

d) the question of whether this tar sands pipeline scheme should be a part of Canada’s energy future, given the need to transition away from fossil fuels(WCEL 2011).

Point by point, this means that: a) the only emissions considered are those caused by the pipeline itself (construction and operation); b) the argument of the panel against ‘upstream’ considerations is that since inputs to the pipeline could come from projects across Alberta, and their scope is about transportation not extraction, that there is an insufficient association “between

the Project and any particular existing or proposed oil sands development, or other oil production activities, to warrant consideration of the environmental effects of such activities as part of our assessment of the Project”; c) the panel has determined that considerations of the ‘downstream’ use of the fuel is “inappropriate and unmanageable,” as well as “speculative,” given that it becomes the regulatory responsibility of the end-user country; and d) it is beyond the panel’s mandate to address national energy strategies, but this has led to concerned citizens mobilizing around this missing debate (WCEL 2011).

At issue are the problems inherent in the limited scoping and other restrictions posed by EIAs or other industry-oriented panel reviews such as the JRP, which are neither equipped nor empowered to deal with the numerous higher-level strategic questions involving national energy policies or First Nations treaty issues. While this is somewhat understandable, being too much for such venues to adequately address, what is alarming is that these essential discussions on the outstanding issues are not airing anywhere in the Canadian system. Issues of conflation and substitutions were addressed in detail in earlier assessments of CEAA-EIA panels being substituted for NEB panels by the Canadian Environmental Network, who state that it cannot be stressed enough that “the broad goals of an environmental assessment are distinct from the more narrow regulatory approval considerations associated with the various administrative tribunals” (Schneider et al 2007:20).

West Coast Environmental Law describes how over several years of federal consultations establishing the JRPs ToR, concerned citizens and First Nations repeatedly explained the importance of including up-and down-stream considerations, particularly related to tar sands expansions and the carbon burden of burning dilbit. But contrarily, the panel now cites those same consultations as their justification to ignore the requests, arguing the issues are beyond the scope (WCEL 2011:2). As examined later, this is clearly an example of the focus on procedure displacing the substance of the results; yes, consultations were carried out, but the output negated the essence of the issue,

with the act of consultation serving to rationalize not actually taking stakeholder's position into account.

It is illogical to exclude an analysis of tar sands expansion impacts facilitated by the building of pipelines, when the associated economic growth is explicitly part of the Proponent's benefit case; Pipelines and marine tanker terminals do not exist for their own sake. The tar sands Keystone XL pipeline to Texas was denied US regulatory approval due to consideration of up- and down-stream impacts on sustainability and GHG-emissions.¹⁵³ The Keystone decision calls the similar Canadian process into question, as the JRP decision was wholly contradictory stating:

After considering the evidence, the NEB is not convinced that there are sufficient grounds for it to include a consideration of the upstream or downstream facilities either under the Canadian Environmental Assessment Act or NEB Act...[since they] are not part of the applied-for project, are not undertakings that will be carried out by the Proponent in relation to the Project and are not directly related to the Project(in CEP 2012:11).¹⁵⁴

Chief Alphonse Gagnon of the Wet'suwet'en described an example of the compartmentalization inherent to such 'siloing' and limits for scoping in his oral testimony at the JRP. At an Enbridge Shareholders meeting in May 2009, he asked CEO, Patrick Daniels "What do you propose to do about the troubles that are going on in the oil sands with the Aboriginal people with the oil development?" Daniels replied "We're not in the oil sands business. We're in the pipeline business, so you're going to have to go to the oil sands people." Further in the Chief's testimony in Smithers, BC, 16 January 2012, he stated:

The conscience is not even there to understand the effects that they're having with their pipeline to people before the pipeline. And it's really bothering me that our government is doing the same, you've got industry doing the same. All they're doing -- all they're answerable to is the -- is to the shareholders that they're receiving their money from.¹⁵⁵

¹⁵³ U.S. EPA's Draft Environmental Impact Statement, February 18, 2010: "In order to fully disclose the reasonably foreseeable environmental impacts on the U.S. of the Keystone XL project, we recommend that the discussion of GHG emissions be expanded to include, in particular, an estimate of the extraction related GHG emissions associated with long-term importation of large quantities of oil sands crude from a dedicated source." (CEP 2012:11)

¹⁵⁴ National Energy Board, Reasons for Decision TransCanada Keystone Pipeline GP Ltd., OH-1-2009:72. In (CEP 2012:11)

¹⁵⁵ Chief Alphonse Gagnon, Office of the Wet'suwet'en LAKSAMSHU clan, JRP Hearing Order OH-4-2011 Smithers, BC, January 16, 2012, (para. 6097-6099)

A review panel truly committed to making ‘science-based’ decisions for policy in the public interest would necessitate a comprehensive consideration of all options and the related environmental impacts and implications. Thus the Panel deciding that questions related to these associated issues are ‘out-of-bounds,’ means that certain science is preferred, and not others. That a line of inquiry the public brought forward as being of concern is not prioritized or designated to another venue, begs the question as to who chooses the questions, and to wonder about the predetermined consultation processes which decides which types of questions would be conspicuously absent.

7.1.2 ‘Taking Sides, Calling Names’

The Conservative Government’s rhetoric has consistently polarized the debate surrounding this pipeline, with internal Federal government documents from March 2011’s ‘international oil sands advocacy strategy’(released under the Freedom of Information Act) characterizing industry associations, energy companies, the NEB, Alberta, and business associations as ‘allies’, while Aboriginal groups, NGOs, media, and competing (green) industries were ‘adversaries’.¹⁵⁶ This is consistent with hegemonic discourse models that contrast ‘us’ with ‘them,’ as scholar Teun van Dijk describes:

[B]y emphasizing our tolerance, help or sympathy, and by focusing on negative social or cultural differences, deviance or threats attributed to them...If such polarized models are consistent with negative attitudes or ideologies, they may be used to sustain existing attitudes or form new negative attitudes(1993: 264).

On 9 January 2012, Natural Resources Minister Joe Oliver wrote a provocative open letter that stated:

Unfortunately, there are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth. No forestry. No mining. No oil. No gas. No more hydro-electric dams. These groups threaten to hijack our regulatory system to achieve their radical ideological agenda. They seek to exploit any loophole they can find, stacking public hearings with bodies to ensure that delays kill good projects. They use funding from foreign special interest groups to

¹⁵⁶ Government of Canada (2011, April 11):“Pan-European Oilsands strategy, internal memos” Federal Government documents. Accessed September 12, 2012, https://docs.google.com/file/d/0B_0MqnZ4wmcMYjY0NjY4Y2MtOWQzMj00NmU0LThhNWMTNzExN2EwYWI5N2Ex/edit?hl=en_US

undermine Canada's national economic interest. Finally, if all other avenues have failed, they will take a quintessential American approach: sue everyone and anyone to delay the project even further. They do this because they know it can work. It works because it helps them to achieve their ultimate objective: delay a project to the point it becomes economically unviable.¹⁵⁷

Oversimplifications such as this, of the reasonable concerns people have of the NGP, seek to discredit opposition by framing them as threats to the interests of the dominant, majority interests of Canadians. "Such a strategy is conducive to the formation of models that feature such well-known propositions as 'We are the real victims, We are being discriminated against, not they,'" argues van Dijk (1993:265). Chief Alphonse Gagnon agreed in his intervenor testimony at the JRP:

The simple fact [is] that we've got a Prime Minister that's standing up there making it look like that the people that are opposing the pipeline, are making the pipeline people and the government victims. They're not victims. We're the victims here. And it's important for everybody to understand who the victim is.¹⁵⁸

Iris Young writes "the common rhetorical move of official powers to paint all protest action with the tar of 'extremism,'" can be readily understood as a "power ploy whose function is to rule out of bounds all claims that question something basic about existing institutions and the terms in which they put political alternatives," and which ought to be "resisted by anyone committed to social justice and reasonable communication" (2001:675-76). Furthermore, scholars claim that characterizing critics of government projects in this way, as well as limiting their access to participation, are tactics used to delegitimize and marginalize opposition (Schilling-Vacaflor 2012:16). "I am not a radical. I am a protector of the land. I am not receiving money from outside foreign interest groups," Lucy Gagnon, Chief Dunehn and Manager of the Moricetown Band, told the JRP public hearing in Smithers, BC on 16 January 2012. "However, it is my responsibility to stand with my Nation to join other

¹⁵⁷ Oliver, Honourable Joe (2012, January 9): "An open letter from the Minister of Natural Resources," *Natural Resources of Canada*. Accessed 10 March 2012, <http://www.nrcan.gc.ca/media-room/news-release/2012/1/3520>.

¹⁵⁸ Chief Alphonse Gagnon, Office of the Wet'suwet'en LAKSAMSHU clan, JRP Hearing Order OH-4-2011, Smithers BC, 16 January 2012. para 6110

opponents to this devastating project to protect our territory from this pipeline.”¹⁵⁹

CDA further draws attention to the use of “foreign radicals hijacking the process”-hyperbole, and rhetoric of terrorism in relation to the American financial support of Canadian NGOs, though the amounts of money involved therein are negligible compared to the foreign companies operating or wanting to buy in to Canadian resources, including the majority of foreign interests invested in Enbridge’s NGP.¹⁶⁰ This regular device of neoliberal framing has “the tendency to characterize all critics of administration policies as aiding and abetting the enemy,” however, it often does functionally radicalize those in the opposition (Harvey 2005: 196). In Young’s view, such rhetorical devices contribute to ‘systemically distorted communication,’ because the “conceptual and normative framework of the members of a society [are] deeply influenced by premises and terms of discourse that make it difficult to think critically about aspects of their social relations or alternative possibilities of institutionalization and action” (2001: 685). Federal Green Party Leader Elizabeth May’s response to the letter was that “by characterizing this issue as environmental radicals versus Canada’s future prosperity you have done a grave disservice to the development of sensible public policy.”

7.1.3 The National Energy Board

The NEB is mandated to independently “regulate pipelines, energy development and trade in the Canadian public interest,” especially regarding permits for projects crossing provincial-territorial and international borders.¹⁶¹ Chair and CEO, Gaetan Caron, spoke publically in 2008 of the NEB as an “active, effective and knowledgeable partner in the responsible development of Canada’s energy sector for the benefit of Canadians,” and considering that industry funding now accounts for 90 per cent of the Board’s budget, many have charged that it is a ‘captured’ regulator, incapable of fulfilling its other

¹⁵⁹ Lucy Gagnon, Chief Dunehh ,JRP Hearing Order OH-4-2011, Smithers, BC. 16 January 2012. para 5577

¹⁶⁰ Oliver, Honourable Joe (2012, January 9):”An open letter from the Minister of Natural Resources,” *Natural Resources of Canada*. Accessed 10 March 2012,<http://www.nrcan.gc.ca/media-room/news-release/2012/1/3520>

¹⁶¹ National Energy Board site, Accessed 30 September 2012, <http://www.neb-one.gc.ca>

duties, such as ensuring public safety, landowner rights and environmental regulations (NEB 2009). David Core, of the Canadian Association of Energy and Pipeline Landowner Associations, states:

Real regulators know that they are not in a partnership with anybody, and that they are obligated to be unbiased agents that act in the public interest. That the NEB didn't know this, and doesn't know this, says about all that needs to be said about the corporate culture of Ottawa's National Energy Board. They call us stakeholders. But we are stewards, who have to live with the risks and liabilities.¹⁶²

7.1.4 The Canadian Environmental Assessment Act 2012

Changes made through Bill C-38 and C-45 in 2012 contain widespread alterations and have amended JRPs ToR to conform with the revised Canadian Environmental Assessment Act 2012,¹⁶³ so that while the panel was only empowered with an extremely limited scope in the first place, now the Federal government has ‘streamlined’ and altered the process whilst in progress. This can impact upon the NGP’s actual construction, monitoring, and response capacity. As well, that ultimate decision-making responsibility about the project design and approval has reverted to the Federal cabinet, regardless of the recommendations of the JRP, leads many to question the legitimacy of the JRP as a locus of real deliberation or public participation.

The omnibus budget bills were passed without time for debate within Parliament and in relation to the JRP have dramatically changed the Fisheries Act, Species at Risk Act, Navigable Waters Protection Act, Canadian Environmental Protection Act, the Nuclear Safety and Control Act and the National Energy Board Act. The Economic Action Plan 2012, and associated Responsible Resource Development policy improvements, intend to streamline the review process for major economic processes to make them “more predictable and timely, reduced duplication of project reviews, strengthen environmental protection, and enhance consultation with aboriginal

¹⁶² Nikiforuk, Andrew (2011, June 17): “National Energy Board: Captured Regulator?” *The Tyee*. Accessed March 23, 2012, <http://thetyee.ca/Opinion/2011/06/17/NEB/>

¹⁶³ According to their website: “The Canadian Environmental Assessment Agency administers the federal environmental assessment process, which identifies the environmental effects of proposed projects and measures to address those effects, in support of sustainable development.” Accessed 4 March 2012, <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=0046B0B2-1>

people.”¹⁶⁴ While continually updating review policies is desirable, many have objected to this streamlining, which seems like a means to prevent future public processes such as the JRP. Emerging evidence seems to indicate federal acquiescence to the heavy lobbying of the energy sector, as outlined in a letter from major industry associations, which proposed these changes to regulations that impeded their activities.¹⁶⁵ Conveniently for industries, the recent regulatory alterations include cancelling thousands of assessments (particularly 2,950 preliminary screenings), as they are now based on a ‘project list’ and volume (watts/tonnage) ‘thresholds,’ designed only with the input of project proponents and industry, and no public participation whatsoever (Ecojustice 2012). The federal government reviewed approximately 6000 projects annually until 2012; under the new CEAA, fewer than 40 are expected in 2013.¹⁶⁶

Also of concern, is that the need for project assessments and their design will henceforth be determined solely at the discretion of the federal Minister of Environment (Vittal 2012). Many practitioners and professionals who have worked with CEAA-EIAs expressed a great deal of uncertainty about how the changes will actually affect the quality, depth, comprehensiveness of assessments now, given that the process does not apply predictable, established rules, but “would rely on the predilections of the Minister of the day” (Vittal 2012:4), leaving many to question the potential for politicization of projects determined on one-off basis (Ecojustice 2012).¹⁶⁷ Corporations and governments often strive to obtain the “social licence to operate” in extractives industry projects quickly as possible, given that proper

¹⁶⁴ Government of Canada(2012): “Responsible Resource Development and related regulatory and policy improvements to modernize the regulatory review process,” *Natural Resources Canada website*. Accessed 8 March 2013, <http://www.nrcan.gc.ca/environmental-assessment/regulatory-system/6297>

¹⁶⁵Letter to Ministers Peter Kent and Joe Oliver from the Oil, gas and pipeline lobby group –CEPA, CGA, CPPI and CAPP, 2011, December 12. Accessed by Greenpeace through the Freedom of Information Act. Accessed 12 February 2013, http://www.greenpeace.org/canada/Global/canada/pr/2013/01/ATIP_Industry_letter_on_enviro_regs_to_Oliver_and_Kent.pdf

¹⁶⁶ Carniol, N. (2013, April 5): “New undemocratic rules create barrier to public participation in upcoming pipeline hearings: a consequence of weakened federal environmental laws under Bill C-38” *Environmental Defence*. Accessed 7 April 2013, <http://environmentaldefence.ca/articles/new-undemocratic-rules-create-barrier-public-participation-in-upcoming-pipeline-hearings-co>

¹⁶⁷ Author’s notes from participation in West Coast Environmental Law Webinar on CEAA 2012, Hosted by Rachel Forbes and Jay Nelson in Vancouver, BC, 24 October 2012.

consultations and deliberation can be a long, expensive process (Schilling-Vacaflor 2012:17). However, as Schilling-Vacaflor warns, “acceleration of consultation procedures frequently proves counterproductive, as in the long term their deficiencies are likely to come to light and to instigate anger, protest activities, social conflicts or even the revoking of obtained agreements”(2012:17).

In direct relation to the NGP-JRP, these changes are also of concern because the CEAA is charged with conducting ‘post-report’ consultations on residual issues not addressed or resolved by JRP and Enbridge, including negotiation of Aboriginal accommodation. However, as these residual issues can only relate directly to the report and not deal with new information already excluded by the JRPs scoping limitations, it is unclear how or what process will really deal with such unaddressed matters during the regulatory phase.

7.1.5 The Future of Interested Party Status

“Governments may establish advisory committees and consult with those whom they define as ‘stakeholders,’ but this is a way of limiting - not promoting - meaningful public participation”(Overton 2009:165).

Changes to restrict public participation have been part of the revised Acts, such that ‘interested party’ status now determines who can take part in a review. Many lawyers deem that this vetting process was implemented to restrict public participation in the wake of the thousands of people who applied to participate in the NGP-JRP, facilitated by various organizations who sought to maximize civic involvement. Now, an interested party is defined as “a person who is directly affected by the carrying out of the designated project or a person with relevant information or expertise” (although neither are clearly defined), meaning that concerned Canadian citizens could be completely excluded from the process, which could in turn cost proponents the chance to meaningfully engage with the greater community to attain the social license (Vittal 2012:3). Natural Resources Minister, Joe Oliver, has implied that only certain people and groups would be allowed to speak at future reviews, saying “We want to allow everyone who has a *direct* interest in a particular project to have the time. What we don't

need, frankly, is thousands of people belonging to the same organization coming and repeating the same packaged presentation.”¹⁶⁸

Oral Statements and evidence at the JRP were the opportunity for people to give personal accounts, relay experience and explain their position on the NGP, thus such changes can be understood as an attempt to limit participation in democratic process by the dominant perspective, for:

At virtually each level of the structures of text and talk, therefore, freedom of choice may be restricted, [which] may more or less acceptably be the case by convention, rule or law, as when chairs organize discussions, allow or prohibit specific speech acts, monitor the agenda, set and change topics or regulate turn-taking (van Dijk 1998: 260).

A recent use of this new rule regarding interested party status was the case of several Alberta First Nations bands downstream of the Jackpine Tar Sands, regarding an expansion proposed by Shell Oil on their traditional territories. Band members and chiefs were denied the opportunity to speak during the Environmental Assessment hearing, with that regulatory panel citing problems with their applications, although notably similar documentation issues were overlooked for industry interests. “We made the deadline. We went through the process of applying. It seems like they’re looking for a technicality to not hear us. We have a right to speak on anything that affects our land,” said Bill Erasmus, Dene National Chief and Assembly of First Nations Regional Chief.¹⁶⁹ There was also concern because a number of those excluded were elders wanting to give oral testimony, the importance and validity of which was affirmed in the Supreme Court Case *Delgamuukw v B.C.* (1997).

Remarkably, in early April 2013, citizens who wished to participate in the NEB’s upcoming hearings for the Enbridge proposed Line 9 Reversal to move bitumen to Eastern Canada, had less than two weeks before the deadline to fill a 10-page application form and submit their CV with references for

¹⁶⁸ Power and Politics with Evan Solomon (2012, March 30): “Minister on pipeline review,” *CBC television*. Accessed same day, <http://www.cbc.ca/player/Shows/ID/2217656262/>

¹⁶⁹ Courtney, K. (2012, October 27) “First Nations shut out of Jackpine oilsands hearing,” *Financial Post*. Accessed 30 October 2012, <http://business.financialpost.com/2012/10/26/first-nations-shut-out-of-jackpine-oil-sands-hearing/>

permission to even submit a letter of comment.¹⁷⁰ “The new rules are undemocratic,” said Adam Scott of Environmental Defence, while Greenpeace Canada’s Keith Stewart agreed that any citizen can “send a letter of comment and have it considered by public agencies...[that] is part of the basic rights and freedoms Canadians enjoy” (ibid).

7.2 Theoretical Analysis of the JRP

Understanding the value pluralism that exists in Canada, one must ask whether the JRP is an adequate venue for satisfying the processes of citizen participation or negotiation required from either the Free Prior Informed Consent-Consultation (FPIC) required for affected Indigenous Peoples, or that of deliberative-participatory democratic practices. Both FPIC and deliberative and participatory principles should have been guiding the negotiation and consultation processes of the JRP in an on-going, iterative fashion, but the integrity of the process has been undermined with the federal government openly supporting the proposal, exerting undue influence in what ought to be unbiased, regulatory-based processes, towards creating a predetermined outcome. As lawyer and scholar Cesar Rodríguez-Garavito has observed regarding indigenous control of resources and self-determination, “Neoliberal multiculturalism, for its part, recognizes cultural differences and collective rights, as long as they do not give rise to this type of entitlement and do not question, as indigenous claims do, the conventional conceptions of economic development” (2010:280).

7.2.1 Public Interest, Utilitarian Justifications

The public interest debate is highly relevant in the case of NGP, whereby strategic resources, such as oil, become the purview of national interests, effectively superseding the interests of individual landowners and local citizens. Public interest discourse has often been used to delegitimize localized complaints such as a dissident landowner, or questions about the

¹⁷⁰ Carniol, N. (2013, April 5): “New undemocratic rules create barrier to public participation in upcoming pipeline hearings: a consequence of weakened federal environmental laws under Bill C-38” *Environmental Defence*. Accessed 7 April 2013, <http://environmentaldefence.ca/articles/new-undemocratic-rules-create-barrier-public-participation-in-upcoming-pipeline-hearings-co>

appropriateness of short-term or risky resource developments, since these are ultimately framed as being of greater utilitarian interest for “the benefit of a mythical and undifferentiated ‘public’” (Willems-Braun 1997 in Hipwell 2009:143). Contentions arise, however, because these are rarely issues of only “strategic or instrumental rationality” (Smith 2003:57). In Alberta, for example, landowners generally have rights only to the top meter of soil, meaning that should they deny access to oil or gas drilling on their property, companies can simply horizontally drill and access the resources regardless.

CDA suggests that “the perspectives of the privileged are likely to dominate the definition of the common good”(Young 1996, in Smith 2003:59), thus the question becomes a matter of “whose values should count in decision-making processes?” (Smith 2003:42) Utilitarian justifications seek to make judgements and evaluations commensurable when often they are not. One result of the co-optation of ‘sustainability’ discourse by corporate interests, has been attempts at a conflation of interests that are at odds, “such as those of capitalist accumulation versus those of ecology and equality...[which] cannot be dissolved into a common, generalized interest,” and whereby “large corporate interests ultimately decide the limits of sustainability” (Adkin 2009:3,316). Some contend that government-industry collusions seek a utilitarian justification for legitimating the fostering of industry interests, as though these are synonymous with the interests of the population (Ballamingie 2009:91). Scholars like Robin Eckersley claim such complicity effectively trades the long-term good of the public and environment for the short-term interests of capital, and it is that “process (and expectation) of trade-off that has been inscribed into the state agencies and decision rules which govern environmental decision-making” (1996: 215 in Adkin 2009:3).

In a state such as Canada, where pluralist politics are supposedly representative of the broad perspectives of citizens, regulatory processes such as mediation or independent panel reviews such as the JRP are required in attempt to transcend different views for the public interest, and as in

deliberative democracy, the weight of the better argument ought to win (Amy 1987:187). Yet, citizens in low-density, rural regions in representative post-colonial democracies face problems of the “virtual dictatorship of the urban majority and non-Aboriginal settler population,” as academic William Hipwell asserts, wherein, “variations in the social and political topography are flattened out in favour of an illusory homogeneity” (2009:143). With decision-making power concentrated in the hands of elites outside of local, affected areas, the “private interest in capital accumulation” is framed as linked to a “public interest in economic growth,” and Hipwell goes on to explain how “this amorphous, ghost-like ‘public interest’ is a key component of the modernist telling of the story of political life, used frequently to disguise the operations of a small group of elites” (ibid:150).

7.2.2 The Countermovement

If two or more of the five categories of people described – saboteurs, eco-terrorists, mainstream environmentalists, Treaty 8 First Nations, and Métis – came together in a single movement, they could become a serious obstacle to development, given that innumerable roads, pipelines, and physical installations are widely spread across the huge, thinly settled, lightly policed territory of northern Alberta and adjacent areas of British Columbia and Saskatchewan. But such a convergent movement is unlikely to emerge, because of pronounced differences of interest and lifestyle among the potential opponents of development (Flannigan 2009:12).

As the push of liberal capitalism forced the rise of countermovement to ensure hard-won social protections in the 19th Century is described by Polanyi, such momentum is also reflected within the contemporary context of social and environmental movements coalescing to oppose the NGP (list of active groups in Appendix 7). What ultimately unites the array of opposition groups is the lack of meaningful deliberation, transparency, and information about a project which represents to them a great deal of risk with little possible reward; the resilience of these living communities will not be easily traded for dead commodities. The rise of this countermovement is based on collective affinity for the place, such that “equivalences [are] established among these different

subject positions (e.g. gender, race, class, ethnicity) which acknowledges what is unique about each experience while demonstrating their common stakes in a counter-hegemonic project” (Adkin 1998 in Ballamingie 2009:100).

Western Canada has a strong and successful history of First Nations’ diverse, effective and uncompromising activism and coalition building with environmental movements going back several decades, with numerous examples related to resource exploitation (Davis 2012:240).¹⁷¹ In this way, the variety of groups can “identify commonalities that enable political alliance without reducing the specific identities to a single overarching meaning... viewing such alliances as a critical political imperative” (Haraway 1990 in Ballamingie 2009:95). BC in the 1990s met similar direct actions in the ‘Wars of the Woods,’ which included road blocks and widespread public and aboriginal protests against clear-cut logging (Bardati 2009:104).¹⁷² Alberta saw widespread environmental protests in the 1980s and 1990s,¹⁷³ however, despite the participation of activists and concerned citizens, the outcomes were without exception in the interests of economic development, leading to a general disillusionment with the governmental consultation processes available (Fluet et al 2009:127).

On 22 October 2012, concerned organizations used digital activism to mobilize the Defend Our Coast rally, bringing 4000 people to the lawn of the BC legislature. Organizer Jolan Bailey said:

It’s about showing [the] Premiere and Prime Minister just how far regular Canadians are willing to go to stop tanker and pipeline expansion. The power in a movement is at that moment when people are willing to get arrested - People from all walks of life came together and committed to taking a stand ... everything that usually divides us didn’t today.¹⁷⁴

Coastal First Nations leader Art Sterritt asked the crowd “who is willing to lay

¹⁷¹ “The Kaska-dene people, McLeod Lake Band and the Nuu-chah-nulth blocking logging access roads; Haida obstructing logging; the Nlaka’pamux obstructing railway construction; BC-wide Indian threat not to participate in the census which would result in BC losing funding for up to \$3000 per person in Federal payments.” Davis 2012, 241

¹⁷² In Clayoquot Sound, the South Moresby archipelago, and the Stein, Carmanah and Slovan Valleys, for instance. See Bardati 2009

¹⁷³ Against numerous pulp mills, the Cheviot Mine, the provincial Forest Conservation Strategy among others. See Fluet et al 2009

¹⁷⁴ Defend Our Coast (2012, October 22) Rally coverage. Accessed 23 October 2012, <http://defendourcoast.ca/oct22/>

down in front of the bulldozers to stop the pipeline...to change those Conservative MP's if Harper continues to push these projects... to change the BC government if they don't stop putting our coast up for sale?" In each instance the crowd roared back "WE WILL!"¹⁷⁵ Follow-up demonstrations were held at 72 provincial MLA's offices, with 7,000 people expressing their concerns,¹⁷⁶ and polls reported that 57% of British Columbians oppose the NGP (34% completely, 23% with reservations).¹⁷⁸ The project will have a clear impact in the provincial elections of BC in 2013, with the Union of BC Municipalities voting on 3 October 2012, to "oppose projects that would lead to the expansion of oil tanker traffic through BC's coastal waters," and urging representatives in the BC government to "use whatever legislative and administrative means that are available."¹⁷⁹ The Communications Energy and Paperworkers Union (which also represents workers in the tar sands), Canadian Autoworkers, BC Teachers' Federation, the United Fisherman and Allied Workers', and the Canadian Union of Public Employees BC, also oppose NGP. These Unions are advocating instead via the Canadian Labour Congress for a 'Just Transition for Workers' towards the green economy.¹⁸⁰

7.2.3 Differing Paradigms and the Duty to Consult

While the Harper Government has characterized Indigenous peoples opposing this project as being anti-development, such a reductionist view lumps highly dissimilar groups with differing agendas together and ignores First Nations that are actively involved in mining activities and supportive of LNG(liquefied

¹⁷⁵ Defend Our Coast (2012, October 22) Rally coverage. Accessed 23 October 2012, <http://defendourcoast.ca/oct22/>

¹⁷⁶ Defend our coast (2012, October 25) "Yesterdays opposition bigger than expected." Accessed 27 October 2012, <http://defendourcoast.ca/uncategorized/yesterdays-unbroken-wall-of-opposition-was-way-bigger-than-expected/>

¹⁷⁷ Burgmann, T. (2012, October 25) "Protesters gather at MLA offices to demand more action against pipelines," *The Globe and Mail*. Accessed 27 October 2012, <http://www.theglobeandmail.com/news/british-columbia/protesters-gather-at-mla-offices-to-demand-more-action-against-pipelines/article4650773/>

¹⁷⁸ Angus Reid (2012, October 11) "Opposition to Northern Gateway remains high in British Columbia," Press release. Accessed 30 October 2012, http://www.angus-reid.com/wp-content/uploads/2012/10/2012.10.11_Pipelines_BC.pdf

¹⁷⁹ Resolutions of the 2012 Annual Conference of the Union of BC Municipalities, 2012, October 3. p 13. Accessed 25 October 2012, <http://www.ubcm.ca/EN/meta/news/news-archive/2012-archive/resolutions-results-from-2012-convention.html>

¹⁸⁰ Canadian Labour Congress(2000):*Just Transition for Workers During Environmental Change*. Accessed 14 February 2012, <http://www.canadianlabour.ca/news-room/publications/just-transition-workers-during-environmental-change>

natural gas) pipelines on their territories (e.g. the Haisla-Kitimat), but who still stand unified in opposition to tar sands pipelines and tankers.

The Government's duty to consult and accommodate First Nations ought to have been triggered for the NGP far earlier in the process, when first considering the project,¹⁸¹ but the *Approach to Crown Consultation* was independently developed and simply sent to some First Nations around 9 February 2009 (WCEL 2009). It states that "the Crown will rely on the consultation efforts of the Proponent and the JRP process, to the extent possible, to meet the duty to consult...[being the] key assessment and decision-making body for the project," while leaving the CEAA responsible for aspects beyond the scope of the JRP, although the only other platform for consultation is actually prior to the final report's submission to Cabinet(WCEL 2009). This governmental discharging of consultation and accommodation responsibilities to a proponent presents multiple unclear legalities. West Coast Environmental Law responded:

The JRP does not respect the decision-making authority of Indigenous peoples. The JRP was unilaterally imposed on First Nations by the federal government. The terms of reference and list of issues to be considered were developed without meaningful consultation. The JRP lacks the authority to fully assess potential impacts on Aboriginal Title and Rights, and there is still no established process outside of the JRP to assess these impacts. As a result of these flaws in consultation, there continues to be significant, on-going legal risk to the Enbridge project (WCEL 2011:1).

Thus, as per Table 2, the FPIC standard requiring "genuine and constant dialogue between representatives of state institutions and indigenous communities, carried out previously to a planned legislative or administrative measure, in a climate of confidence, mutual respect and good will" has not been achieved by the JRP to the satisfaction of many First Nations. In June

¹⁸¹ WCEL2009: "Recent litigation with respect to the Mackenzie Gas Pipeline suggests that the duty to consult and accommodate with respect to the Enbridge Gateway project was likely triggered at a very early stage, when the agencies involved initially contemplated proceeding by way of Joint Review Panel and other decisions about process design: *Ministry of Environment et al v. Dene Tha' First Nation*, 2006 FC 1354 at para. 110, aff'd 2008 FCA 20. Also, in *Carrier Sekani Tribal Council v. British Columbia (Utilities Commission)*, the BC Court of Appeal recently confirmed that the process of consultation requires discussion at an early stage of a government plan that may impact Aboriginal interests, before a decision crystallizes, "so that First Nations do not have to deal with a plan that has become an accomplished fact": 2009 BCCA 67 at para. 52.

2011, the Hereditary Chiefs of the Wet'suwet'en sent a letter to the CEEA Panel Manager, contesting Enbridge's and the NEB's public claims of having consulted them about the pipeline.¹⁸² Anne Marie Sam, of the Lasilyoo clan of the Nak'azdli, told the JRP on 19 July 2012, "it's not acceptable when we ask for a consultation or we ask to be talked to, the Canadian government that they say, 'Well wait till the JRP process is finished and then we will consult with you'. That is like telling somebody, 'We'll take your house down but afterwards we'll talk to you about how it impacts you.'"¹⁸³

First Nations are applying a variety of strategies regarding the levels of engagement with the Joint Review Panel and Enbridge, but there are a number of important historically based considerations. Many British Columbia First Nations have unsettled land claims and treaty issues, and have never relinquished their sovereignty. While many of the 30 First Nations along the path of the pipeline have participated in the JRP process, as a means of protest, others, such as the Carrier-Sekani First Nations, have decided to denounce and boycott the proceedings entirely. They assert the JRP is an illegitimate substitute forum to deal with the numerous unresolved Treaty and other issues in a 'Nation to Nation spirit of mutual respect and diplomacy' with the federal government, particularly in relation to resources and land.¹⁸⁴

The Nuxalk Nation withdrew from the JRP though they were initially Intervenors, after the Prime Minister and the Minister of Natural Resources made statements which caused them to have "a reasonable apprehension that approval of this project has been 'predetermined' by federal government [sic], and that the Enbridge regulatory process is not part of a good faith effort to consult First Nations."¹⁸⁵ Andrew Andy, Chief Elect, wrote on behalf of the

¹⁸² David de Wit, Natural Resource Manager, Office of the Wet'suwet'en, letter to Panel Manager, Canadian Environmental Assessment Agency, Review Panels Division, dated June 20, 2011. Letter on file with the NGP JRP Public Registry, https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624910/699647/697977/D157-1-1_-_Office_of_the_Wet'suwet'en_-_Letter_-_A1Z9S8.pdf?nodeid=697978&vernum=0.

¹⁸³ JRP Hearing Order OH-4-2011 Vol 63, Fort St. James BC, 19 July 2012 : para 11186.

¹⁸⁴ Moore, D. (2013, February 4): "Coastal First Nations Quit Northern Gateway Pipeline Review." *The Canadian Press*. Accessed 10 February 2013 http://www.huffingtonpost.ca/2013/02/04/coastal-first-nations-northern-gateway-pipeline_n_2616287.html?view=print&comm_ref=false.

¹⁸⁵ Andrew Andy, Chief Elect, Nuxalk Nation, (2012, April 4): Letter to the Secretariat of the Joint Review Panel, filed with the JRP's Public Registry, Accessed 18 Mrch 2013, <https://www.neb-one.gc.ca/ll->

elders council that “the process chosen by the Crown does not allow any scope for Nuxalk to be recognized as a decision-maker in a true government-to-government decision-making process”(ibid). Numerous nations feel similarly, as the quote on this thesis’ first page from Wet’suwet’en band member Richard Sam expressed to the JRP. Across British Columbia, Alberta and the Northwest Territories, 130 First Nations representatives have signed the Save the Fraser Declaration which unequivocally states:¹⁸⁶

We have inhabited and governed our territories within the Fraser watershed, according to our laws and traditions, since time immemorial. Our relationship with the watershed is ancient and profound, and our inherent Title and Rights and legal authority over these lands and waters have never been relinquished through treaty or war... We will not allow the proposed Enbridge Northern Gateway Pipelines, or similar Tar Sands projects, to cross our lands, territories and watersheds, or the ocean migration routes of Fraser River salmon. We are adamant and resolved in this declaration, made according to our Indigenous laws and authority. We call on all who would place our lands and waters at risk – we have suffered enough, we will protect our watersheds, and we will not tolerate this great threat to us all and to all future generations.¹⁸⁷

Lillian Sam of the Nak’azdli Band gave oral evidence at the JRP hearing in Fort St. James on 2 February 2012, for the Daiya-Mattess Keyoh (hereditary trapline-stewardship owners), whose territory would be halved by the NGP, testifying, “How can I speak on behalf of my people? I can only emphasize that it’s so important for us to be heard, to be recognized for who we are and to allow us to live as we live and not have to answer to someone that wants to give you money in exchange for the land.”¹⁸⁸ Pecuniary recompense is inadequate in the case of the NGP for, as per the example of the incident in Kalamazoo, the myriad potential losses are beyond compensation, which in BC could also include irrevocable cultural loss. Trade-offs are not necessarily well captured in money-based reparations “as monetary value is

eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624910/703060/806858/D156-2-1_-_Nuxalk_Nation_-_Withdrawal_of_Intervenor_Status_-_A2S0J3.pdf?nodeid=806859&vernum=0.

¹⁸⁶ Harden-Donahue, A (2012, January 31):“Alberta and N.W.T. First Nations sign Fraser Declaration against Enbridge and Kinder Morgan pipelines,” *Rabble.ca*. Accessed 23 April 2012, <http://rabble.ca/blogs/bloggers/council-canadians/2012/01/alberta-and-nwt-first-nations-sign-fraser-declaration-again>

¹⁸⁷ *Save the Fraser Declaration*, 2010, December 2, Accessed 23 April 2012, <http://savethefraser.ca/>

¹⁸⁸ Lillian Sam of the Nak’azdli Band, JRP Hearing Order OH-4-2011, Fort St James, BC, Feb 2, 2012, para 10581.

not equivalent to the plurality of values associated with a landscape... misrepresenting the very nature of environmental (and other) values and leads to a distorted judgement of relative worth”(Smith 2003:38). Chief Martin Louie of the Nadleh Whut’en First Nation of the Yinka Dene Alliance stated, “We cannot be bought off by money. We’re fighting not just for our children, but for your children too.”¹⁸⁹

The historic legacy of colonial paternalism and on-going lack of respect for the distinctive rights of Aboriginal peoples in Canada was demarcated by Justice Antonio Latimer of the Supreme Court, as not warranting serious consideration should it go against requirements of the settler economic agenda of the majority:

In my opinion, the development of agriculture, forestry, mining and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kind of objectives that ...can justify the infringement of aboriginal title (*Delgamuuk v.R* – para 165 of the Chief Justice’s opinion, 11 December 1997).

Understanding these distortions, and that certain fundamentally unjust perspectives, policies and processes exist, mean that morally based arguments of many social movements may establish positions that are non-negotiable when dealing with deliberations on issues that are based upon what they feel are unacceptable premises (Young 2001:683). Such opinions are reflected in Minister Oliver’s promotion of NGP as potentially beneficial for ‘socially dysfunctional’ First Nations Communities, offending the Nuxalk Nation who responded that “Our hereditary Chiefs and Elders know what is best for our people...we have evaluated this project very carefully and are convinced that it offers us no benefits and massive and potentially catastrophic risks to our people, our health, our environment, our economy and our way of life.”¹⁹⁰

¹⁸⁹ WCEL (2013, April 9): “Fighting not just for our children, but your children too...” WCEL Website. Accessed 12 April 2013, <http://wcel.org/resources/environmental-law-alert/fighting-for-our-children-your-children-too>

¹⁹⁰ Andrew Andy, Chief Elect, Nuxalk Nation(2012, April4): Letter to the Secretariat of the Joint Review Panel, filed with the JRP’s Public Registry, Accessed 18 Mrch 2012, https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624910/703060/806858/D156-2-1_-_Nuxalk_Nation_-_Withdrawal_of_Intervenor_Status_-_A2S0J3.pdf?nodeid=806859&vernum=0

The more rooted in values, morality, or structural societal issues (exemplified by the anti-slavery, suffragette, civil rights, anti-nuclear arms, banning clear-cutting, or similar movements), the less compelling compromise or even engagement becomes, because as academic Douglas Amy states “it should be clearly recognized that there are times when you can’t negotiate, because some things in the world are non-negotiable” (1987:185, and Adkin 2009:10). While proponents will often present industrial projects by appealing to the need for jobs, or the discourse of sustainable or responsible development (which would mean adhering to some regulatory or safety measures to appease critics), entrenched activists and Indigenous Peoples tend to view such arrangements as capitulation and “may even prefer to lose a political battle outright than to agree to a compromise that would violate their basic principles and goals” (Amy 1987:182, 185). Opponents philosophically against a project like NGP readily view a premise aimed towards compromise as implicitly favouring the proponents and denying them the space to favour non-development entirely, which is at the heart of the contentions of the NEB being an effective, independent mediation body to decide necessity of the project when they frame themselves as an ‘industry partner’. Such positions are profoundly incommensurable.

The non-negotiable stance of First Nations can be attributed to the lack of “shared procedure of claim validation because the scientific, materialistic framework employed by the majority society is fundamentally incompatible with [their] holistic, spiritual ecological framework,” and thus the “verification claims based on ‘quantitative, standardized measurement techniques’ of industry and neoliberal economics does not meet their spiritual, ‘non-standardized experiential criteria’” (Valadez 2001:62). When forced to accept a situation where profound moral convictions are superseded by political reasoning in a pluralist society, “the psychological burdens are unlikely to be distributed evenly [and] the burden will be lightest for those whose deepest convictions are fundamentally compatible with these ‘liberal’ conceptions” (Cooke 2000:961). Indeed, the potential impacts for indigenous peoples can be

existential in nature. Theresa Tait-Day of the Wet'suwet'en testified at the JRP "If there is an impact, it will kill us. It will literally kill our nation. I ask you to open your heart and to consider what it's going to take. There has to be another way."¹⁹¹ American Indigenous activist Winona Laduke reminds us that fundamental differences are deeply embedded in the divergent worldviews of the European settler mentality, based in conquest, transience and empire, versus the situated indigenous understanding that "we are here and nowhere else."¹⁹² Chief Namoks, John Ridsdale, of the Wet'suwet'en similarly expressed that "If I was not a proud Wet'suwet'en, I don't know who I would be."¹⁹³

Also relevant in this case are different conceptions of time. European culture is rooted in linear, singularly forward directional, short-view time spans (i.e. economic quarters), whereas Indigenous paradigms have a circular understanding of time, more embedded in the natural cycles that sustain them, and taking decisions with a long-term (often described as seventh generational) perspective. The concept of intergenerational justice is starting to be embraced by progressive economists, such as Robert Solow's extension of 'sustainable development' going beyond merely satisfying needs to requiring that the next generation being left with "whatever it takes to achieve a standard of living at least as good as our own and to look after their next generation similarly" (in Sen 2009:250). Whilst this serves to mobilize environmental protection, it must also go beyond maintaining our quality of life to reflect our responsibility to vulnerable populations and the non-human world. Laura Holland, spokeswoman of the Grassroots Wet'suwet'en Movement, stated at a rally 11 November 2012 supporting the Unist'ot'en clan, having just evicted PTP pipeline surveyors from their territories (details in Appendix 5):

Our connection to our homelands runs deep, our connection to our homelands is our connection to community. This is not just some noble notion or romantic fantasy! When we see the lands' destruction, we see the loss of community. Environment *is* community - destruction of environment *is*

¹⁹¹ JRP Hearing Order OH-4-2011, Smithers, 16 Febuary 2012. Para.6154

¹⁹² Laduke, Winona(2012, October 28): "Keynote Address for Powershift 2012" *YouTube video*, Posted by Clayton Thomas-Muller. Ottawa, Canada. Accessed 15 November 2012, www.youtube.com/watch?feature=player_embedded&v=nFv8AUQzhZA

¹⁹³ Personal communication with the author: 1 February 2012, Smithers, BC.

destruction of community and no loss of community is ever acceptable. And we have suffered many losses for generations.¹⁹⁴

The assumption of some deliberative democrats that it is possible reach inclusive rationally-based consensus to which all parties can concede, forgets that when interests are put ahead of ethics such as justice, equality and freedom, the most intractable disputes emerge because compromise is simply not an appropriate solution for the inevitable conflicts “between capitalist accumulation, on the one hand, and societal and ecological interests, on the other”(Adkin 2009:9 and Amy 1987:178, 180). As Chief Adam Gagnon’s oral evidence to the JRP on 16 January 2012 in Smithers, BC, stated:

They’ve asked for the last eight years about this pipeline with the Wet’suwet’en. The answer was unilaterally “no” right from the beginning. What part of “no” do they not understand? It’s not respectful there to keep on begging after you’ve been told something. It brings shame onto them. It brings shame onto the Harper government, brings shame onto all of the Euro-Canadians that are a part of what kind of catastrophes that they could bring. And if Enbridge does not get the message that they are not welcome on our territory unless, unless their pipeline is going to be moving honey or something like that, you know, they have to think about that. There’s an exception, but it’s a long stretch. (JRP Hearing Order OH-4-2011: para 6178.)

7.2.4 Legalism and the Fairness of Process

As addressed initially in the theoretical chapter, the reliance on the *lingua franca* and provisional equality found in legal and other similar processes are often looked to in attempts to assuage some of the differences between competing actors. The Crown’s approach to negotiations with First Nations has always been via legalism, wherein “treaty interpretation became the province of the judiciary. Thus treaty agreements meant that ‘law shored up the sovereignty of the settler-state’ and ‘like it or not [Indigenous Peoples] had no option but to participate inside the common law constitutionalism that had engulfed them’” (MacHugh 2004:4 in Davis 2012:232). Contemporary indigenous legal activism has actually proven the most effective way of

¹⁹⁴ Holland, L. (2012, November 27): “Statement by Laura Holland Wet’suwet’en Nation at the Vancouver Rally in Support of the Unist’ot’en,” *Vancouver Media Co-op*. Accessed 3 December 2012, <http://vancouver.mediacoop.ca/story/statement-laura-holland-wetuwet-en-nation-vancouver/14735>

confronting state and corporate powers, with numerous successful cases.¹⁹⁵ Having adopted traditional liberal democratic institutions and now applying them to their benefit, the Courts continue to affirm and improve social rights and resource claims for Canadian First Nations.

While hitherto excluded perspectives may find opportunities to participate or even contribute to the agenda via procedural norms, substantive outputs and decision-making are often sidelined (Adkin 2009:317). The important distinction between participation and deliberation should not be conflated or confused, as they can express quite different manifestations of public involvement and mean the difference between passive tokenism in the former, versus agency empowering, potentially beneficial, impactful, educational, transformative involvement of the latter. The probability is high in structurally imbalanced or contentious situations that participation “runs the risk of becoming a reinforcing exercise for determined decisions, where participants serve as window dressing, lending credibility to decisions rather than actually helping to construct them” (Hanna 2000:399 in Bardati 2009:119).

When politically charged decisions are necessary, but negotiation is at an impasse, judgements are often deferred to governments, but this proves exceedingly problematic in cases such as the NGP, where there are questions of state and regulatory capture and complicity, rendering the Federal government and NEB far from neutral, unbiased adjudicators(Adkin 2009:10). Yet the JRP is consistent with most public hearings processes, where “officials commit to no more than receiving the testimony of participants and considering their views in their own subsequent deliberations” (Fung 2012:615). In other similar forums in Canada, “citizens who tried to participate in the process found it to be an insurmountable challenge; many said that, in retrospect, it seemed more like a ‘done deal’ than a democratic process”(Susan Lee in Adkin 2009:210). When governments are not required

¹⁹⁵ An important example is the case regarding logging on traditional lands in *Haida vs BC and Weyerhaeuser*, where the Supreme Court found (and reaffirmed) the indigenous right of prior consultation and the BC Crown and Weyerhaeuser were censured for being ‘in breach of an enforceable, legal and equitable duty to consult with the Haida people and seek an accommodation with them.’ See (Davis 2012:241)

to honor results of hard-fought negotiations, discounting or discarding recommendations, as may well happen when the JRP's report moves to Cabinet, the value of the process, no matter how fairly conducted, becomes moot for all participants (Adkin 2009:314). Moreover, studies have documented that “various practices or strategies were employed by government authorities and corporate representatives to predetermine the outcomes while maintaining the appearance of an open-ended and inclusive decision-making process” (Adkin 2009:313).

There is a serious legal threat to the likelihood of the NGP coming to fruition due to the lack of proper involvement of Indigenous Peoples potentially affected throughout BC and AB, and the nearly unanimous opposition. Were even one of the over 100 First Nations directly involved to make such claims, lengthy judicial delays would be inevitable. “We will fight this insanity through the Joint Review Panel, in the courts of this country and, if necessary, at the barricades on the land itself,” vowed Grand Chief Stewart Phillip of the Union of BC Indian Chiefs.¹⁹⁶ The JRP is being forced to inadvertently deal with myriad issues outside their scope and capacity because of the Federal decision to delegate indigenous consultation responsibility to the Panel and Proponent, the results of which are unlikely to hold up in court, given that this far exceeds their jurisdiction, mandate, or expertise.¹⁹⁷

7.2.5 Displacing the Substantive

In his studies of the potentially ambiguous impacts of FPIC in Colombia, Rodriguez-Garavito elucidates how opportunities for indigenous consultation tend to substitute form for substance; the preoccupations with concerns of procedure in legal frameworks concentrating on timelines, affidavits, and attendees' legal standing tend to take the place of substantive discussions on values based conflicts regarding ethnic rights, territory, and natural resources (2010:273). He describes how such “pervasive entanglement of form

¹⁹⁶Shaw, R and J. Lavoie, (2012, October 22): “Protesters gather at legislature to rally against expansion of pipelines and oil tanker traffic,” *Vancouver Sun*. Accessed 23 October 2012, <http://www.vancouversun.com/technology/Protestors+gather+legislature+rally+against+expansion/7428686/story.html>

¹⁹⁷ Nikki Skuce of Forestethics, personal communication, 1 February 2012, Smithers BC.

and substance produces recurrent misunderstandings and missteps during negotiations among corporations, governments and indigenous peoples... FPICs impact on indigenous people is also ambiguous – [it] dilutes and displaces collective demands [turning them] into procedural observations”(2010:274).

While the legalistic approach can mitigate conflict and allows the opportunity for deliberation, substantive and non-negotiable paradigmatic differences will not be downplayed out of sight by the depoliticizing, displacing, filtering and narrowing of issues disputed in procedurally focused debates (Schilling-Vacaflor 2012:19 and Amy 1987:192). In the JRP, these differences have become key points of contention. The Chairwoman of the JRP has repeatedly cut off or redirected participants who brought questions forward at the wrong part of the panel, or who wished to raise such issues determined beyond the scope via oral testimony, but sought to register their concerns onto the public record. By limiting and cutting short opportunities to discuss broader concerns and issues beyond the narrow scoping, being incapable of pointing to the space where such residual concerns will be addressed, the JRP is proving insufficient.

Habermas described this as ‘systematically distorted communication,’ for those deliberating may come to agree on the ToR and upon the circumstances, articulating positions, and even arriving at a consensus, however, when hegemonic discourse is present, it may still be considered a false consensus, for as Young describes, “the premises and terms of the account mask the reproduction of power and injustice”(2001:685).

James Bohman’s deliberative theory explains that legitimacy is not conferred merely by being granted access to the system, but can be understood by the degree to which participants may initiate, introduce, and influence discussion points, problems, or even alternative proposals, thus accordingly, I find the JRP is inadequate as a venue for meaningful, inclusive participation. (in Young 2001: 686) Although the JRP follows formal, transparent procedures, this does nothing to reflect whether the eventual substantive

decision-making will be free of bias or influence, given that Federal cabinet reasoning will occur behind closed doors, without transparency or oversight.

7.2.6 Actor Asymmetry and Barriers to Participation

The JRP faces major questions regarding the inequitable access permitted to the Proponent, as well as obvious differences concerning capacities to participate in such a process. Enbridge has had more than double the presentation time before the JRP compared to other intervenors or parties, which can be understood as the need to prove their case. Yet in a particularly glaring example, after the JRP's technical hearings concluded, Enbridge submitted documents proposing to double the marine terminal capacity, although no other intervenors were permitted to include late evidence, and that this also leads to fewer chances for scrutiny and public questioning about the expansion.¹⁹⁸

As required by law, the Canadian Environmental Assessment Agency provided approximately \$3 million in participation funding for First Nations wishing to engage in the JRP.¹⁹⁹ The Coastal First Nations, which represents nine bands from the BC coast and Haida Gwaii,²⁰⁰ applied for \$520,000 for expenses, lawyers, attendance at the hearings, as well as commissioning studies and in 2009 were allotted \$286,000, which included \$25,000 for legal costs.²⁰¹ However, the Coastal First Nations withdrew from the JRP in February 2013 because they had already spent more than three times the allocated funding, though this amount still did not permit them to participate comparably with Enbridge, who claim to have

¹⁹⁸ Rowland, R. (2012, February 4): "Expansion of proposed Kitimat bitumen terminal urgent to get offshore markets, Enbridge tells JRP," *Northwest Coast Energy News and Issues*. Accessed 22 February 2013, <http://nwcoastenergynews.com/2013/02/04/4184/expansion-proposed-kitimat-bitumen-terminal-urgent-offshore-markets-enbridge-tells-jrp/>.

¹⁹⁹ Hamilton, G. (2013, February 4): "First nations group quits Enbridge hearings, citing lack of cash," *The Vancouver Sun*. Accessed 10 February 2013, <http://www.vancouversun.com/business/resources/First+Nations+group+quits+Enbridge+hearings+citing/7917488/story.html>

²⁰⁰ The Coastal First Nations include Wuikinuxv Nation, Heiltsuk, Kitasoo/Xaixais, Nuxalk Nation, Gitga'at, Metlakatla, Old Massett, Skidegate, and Council of the Haida Nation.

²⁰¹ Moore, D. (2013, February 4): "Coastal First Nations Quit Northern Gateway Pipeline Review." *The Canadian Press*. Accessed 10 February 2013 http://www.huffingtonpost.ca/2013/02/04/coastal-first-nations-northern-gateway-pipeline_n_2616287.html?view=print&comm_ref=false.

spent \$300 million on the regulatory review process.²⁰² Executive Director of Coastal First Nations, Art Sterritt told the JRP:

We simply have not been provided with the funding necessary to engage in this process meaningfully or effectively... This is extremely distressing and disappointing to us, as we have a great deal at stake in these proceedings... It seems the only party that can afford this long and extended hearing process is Enbridge itself, and perhaps the Crown. The average citizen can't afford to be here, and certainly the Coastal First Nations can't afford it.²⁰³

Because of their withdrawal, Coastal First Nations could not participate in the final technical hearings, which looked into the potential of marine spills and Enbridge's emergency preparations, which Sterritt said was of great concern, as they felt more scientific studies are needed for the panel to make informed recommendations.²⁰⁴ If a coalition of nine bands faces such barriers to participation, it is reasonable to speculate that individual bands along the pipeline route have struggled. Meanwhile, Enbridge has "a battery of lawyers" according to Sterritt, as well as ample resources they can readily and quickly mobilize (e.g. legal, technical, engineering, scientific) making the process functionally asymmetrical.²⁰⁵

Citizen participation in deliberations and policy formation must go beyond merely being procedurally fair to address structurally ingrained disparities, acknowledging differing interpretations, data and forms of knowledge to ensure that the quality and substance of decision outcomes are a focal point in the initial process design, so that particular interests are not dominant, nor given preferential access or treatment (Bardati 2009:121-122). To avoid being tokenistic, information and decisions must also move in both directions, not just from the top-down, with participants capable of

²⁰² Hamilton, G. (2013, February 4): "First nations group quits Enbridge hearings, citing lack of cash," *The Vancouver Sun*. Accessed 10 February 2013, <http://www.vancouversun.com/business/resources/First+Nations+group+quits+Enbridge+hearings+citing/7917488/story.html>

²⁰³ Moore, D. (2013, February 4): "Coastal First Nations Quit Northern Gateway Pipeline Review." *The Canadian Press*. Accessed 10 February 2013 http://www.huffingtonpost.ca/2013/02/04/coastal-first-nations-northern-gateway-pipeline_n_2616287.html?view=print&comm_ref=false.

²⁰⁴ Coastal First Nations (2013, February 4): "Coastal First Nations to pull out of this week's Northern Gateway Review panel hearings," Press release. Accessed 10 February 2013, <http://www.coastalfirstnations.ca/news-release/february-4-2013-844am>

²⁰⁵ Moore, D. (2013, February 4): "Coastal First Nations Quit Northern Gateway Pipeline Review." *The Canadian Press*. Accessed 10 February 2013 http://www.huffingtonpost.ca/2013/02/04/coastal-first-nations-northern-gateway-pipeline_n_2616287.html?view=print&comm_ref=false.

contributing information (Hanna 2000:400 in Bardati 2009:119). In this capacity, the JRP has been moderately satisfactory, within the limited scoping, due to its quasi-judicial ‘response’ structure, which permits cross-examinations and in-depth questioning, responding to the evidence presented by other intervenors and Enbridge. Yet this does not mean that participants are constructing ‘substantive outcomes’ or decisions, as to satisfy that would require a commitment by the JRP and the federal government to accept the consensus-(or majority) based recommendations of the citizens, intervenors and other stakeholders involved in the process.

Deliberation as a joint social activity is successful, according to Bohman, not only when consensus or compromise occurs, but when participants feel they “have contributed to and influenced the outcome, even when they disagree with it,” which in cases of incommensurability, may be the most reasonable expectation (1996:33 in Valadez 2001:59). This can lead to moral compromise, which can be impartial if two criteria are met: if power asymmetries reflected in the inequalities present in deliberation are accounted for, and if widely inclusive participation is continually promoted (Valadez 2001:64). Constant, iterative and meaningful involvement of all parties would remedy the ‘displacing effect’ legalism can have on consultations, that “transform[s] substance into form’ while it could still retain ‘its capacity to offer a point of contact among actors defending extremely different, even antagonistic, positions” (Rodriguez-Garavito 2010:292). The JRP, in its best incarnation, could still be characterized as ‘procedural parochialism,’ for as Sen describes, “closed impartiality is devised to eliminate partiality towards the vested interests or personal objectives of individuals in the focal group, but it is not designed to address the limitations of partiality towards the shared prejudices or biases of the focal group itself” (2009:299,139).

Given that environmental organizations and First Nations distrust that the decision-making process was fair and just, a decision to endorse the pipeline from the Canadian government will not be accepted. The majority of potentially impacted First Nations have been vociferously opposed to NGP,

though the incapacity for them to contribute meaningfully to agenda formation, or to expressly deny the project, were fundamental flaws in the way consultations were established from the outset. The high costs in terms of both time and money were prohibitive to active, equal participation, and few opportunities existed to fund studies other than those produced by the Enbridge. The closed-door nature of many Enbridge-First Nations negotiations has fermented discord in communities regarding legitimacy of representation during negotiations with band councils and offices, creating both division within groups, as well as unity across groups.²⁰⁶ Traditionally many of the First Nations united in this struggle were bitter enemies, but as Wet'suwet'en Hereditary Chief Toghestiy's statement of solidarity from November 2012 declared, "We all share a common struggle because for many decades our families and communities have endured horrible and terrifying and brutal acts genocide against our people and territories by invading government and industry forces."²⁰⁷

In the case of NGP, a wider, more inclusive method to develop the procedures of the JRP itself, or whatever acceptable adjudication body was decided upon, would have facilitated greater openness to the process. Consequently, more iterative development of opinion formation would likely to have been more conducive to advancing shared understanding or even ultimate acceptance of decisions. Those affected (particularly First Nations) should have been involved when Enbridge first began the feasibility studies and preliminary explorations with the Government, for concrete planning was well underway before stakeholders and the public were made conscious of the proposal. Instead, what has transpired is more akin to an inadvertent application of the 'avoidance strategy' interpretation of Rawls' 'fact of

²⁰⁶ In "December of 2011, shortly after the PTP blockade the Gitksan people, who are the Western neighbors to the Wet'suwet'en, boarded up the Gitksan Treaty office Society because of a backroom deal that was signed with the much contested Enbridge Northern Gateway Pipeline company. The Grassroots Wet'suwet'en regularly visited and openly supported the grassroots Gitksan who successfully blocked the entry to the office for an additional six months." Unistotencamp(2012, November 7): "The uncertainty of pipelines in unceded lands," Unist'ot'en and Likhts'amisyu clans and Grassroots Wet'suwet'en. <http://unistotencamp.wordpress.com/decolonizing-the-carbon-corridor/>

²⁰⁷ Holland, Laura (2012, November 27): "Statement by Laura Holland Wet'suwet'en Nation at the Vancouver Rally in Support of the Unist'ot'en," *Vancouver Media Co-op*. Accessed 3 December 2012, <http://vancouver.mediacoop.ca/story/statement-laura-holland-wetuweten-nation-vancouver/14735>

reasonable pluralism,’ because there is no venue for discussion of the wider scoping issues related to the NGP. The ‘avoidance strategy’ occurs when the totality of differing ethical views is considered so irreconcilable as to simply be tolerated and exempted from deliberation, instead of engaging in respectful discourse in attempts to understand one another or advance solutions (Rawls 1997 in Cooke 2000:961). Other interpretations of the ‘fact of reasonable pluralism,’ however, involve the “productive interchange between, and possible modification of, opposing ethical views” (ibid 2000:962), for as Sen believes, differing perspectives of what is just can exist simultaneously, providing opposing, yet rationally conceived reasons that have “survive[d] critical scrutiny, but yields divergent conclusions” (Sen 2009:x).

Reasoning and impartial scrutiny are essential. However, even the most vigorous of critical examinations can still leave conflicting and competing arguments that are not eliminated by impartial scrutiny...the necessity of reasoning and scrutiny is not compromised in any way by the possibility that some competing priorities may survive despite the confrontation of reason. The plurality with which we will then end up will be the result of reasoning, not the abstention from it (Sen 2009:x).

7.2.7 Ecological Citizenship

The concept of Ecological Citizenship links many of these issues and is a “shorthand term for a more complex articulation of ecological concerns to social justice and participatory governance” (Gilbert and Phillips 2003: 314 in Adkin 2009:14).

Environmental Citizenship: a personal commitment to learning more about the environment and to taking responsible environmental action. Environmental citizenship encourages individuals, communities and organizations to think about environmental rights and responsibilities we all have as residents of planet Earth. Environmental Citizenship means caring for the Earth and caring for Canada. (Environment Canada 2006)²⁰⁸

While this thesis looks at the divergent approaches elucidated by Polanyi’s ‘double movement,’ it also seeks to reframe the conflict beyond a binary

²⁰⁸ Environment Canada(2006): *From the Mountains to the Sea : A Journey in Environmental Citizenship*(Online). Ottawa: Minister of the Environment. Accessed 10 April 2012, <http://www.ec.gc.ca/eau-water/default.asp?lang=En&n=9E705000-1>

polemic between “necessary growth versus the environment and quality of life to a struggle between reckless and destructive growth, on one hand, and responsible ecosystem management and land-use policies on the other” (Wekerle, Sanberg and Gilbert:285 in Adkin 2009:301). Such concepts of engaged citizenship incorporate *rights*, as well as *responsibilities*, empowering individuals in advanced democracies beyond voting or polls to enable responsive practices to emerge in both public and private realms (Connelly 2006:63). Embracing a concept of ‘Ecological citizenship’ promotes these by integrating political, social, and ecological concerns within a multi-scalar, dynamic framework for “a more complex articulation of ecological concerns to social justice and participatory governance,” whereby citizens work toward becoming responsible for ensuring protection of rights of both the human and non-human constituencies (Adkin 2009:14).

Beyond the governmental bestowing of a narrow set of formalized rights, public participation in the on-going processes of transforming and constructing rights, as well as their role in decision-making, are parts of what defines engaged eco-citizenship across a variety of rights: “to information, to expression, to culture, to identity and difference (and equality), to self-management, to the city, to nature, and to services” (Gilbert and Phillips 2003:314 in Adkin 2009:319). While on one hand, the ‘Environmental Justice’ framework looks at human-centred inequity regarding harms (racism, exclusion, disproportionate risk) without addressing the natural world in itself ‘Environmental stewardship’ or ‘conservation’, on the other hand, neglect the justice aspects in the human dimension; ‘Ecological citizenship,’ is especially useful because it acknowledges that “gender equity, social justice, anti-racism, anti-colonialism, eco-centrism – all intersect with ecological choices” (ibid:4,6).

Bearing this in mind, ecological citizenship in the Canadian context is found to be lacking on multiple levels, wherein the health of most environmental public goods (clean water, air, biodiversity) are protected in a piecemeal approach (due to jurisdictional issues), if at all, due to the voluntary,

discretionary nature of much of the compliance, coupled with poor governmental monitoring capacity (Boyd 2003 in Adkin 2009:312). Independent evaluation of the Canadian Environmental Protection Act (CEPA) by environmental law associations²⁰⁹ in Canada in 2006 stated that “more weight is given in practice to social, economic, and legal considerations than to protecting health of the environment. The Act does not operationalize the [precautionary] principle by setting out how it shall be explicitly used at every stage of the decision-making process” (Pollution Watch 2006:27-29). Nor is there transparent or effective public reporting of government science, audits, or reports. Of note, while civil (privately) prosecuted lawsuits are provided under the CEPA, Boyd describes that they “have never been successfully used,” generally being appropriated and dropped pre-trial by provincial attorneys (2003:247-48, in Adkin 2009:318).

Ecological citizenship can thus be understood in the context of this thesis as a means of extending the scope of democratic civic engagement that seeks to address, according to John Barry, “underlying causes of environmental degradation and other infringements of sustainable development such as human rights abuses or social injustice,” but which will only emerge via “informed, radicalized ‘green’ citizens and their oppositional practices (resistance) – including civil disobedience” (2006:23-24 in Adkin 2009:6,14).

²⁰⁹ Environmental Defence Canada and the Canadian Environmental Law Association

8. Concluding Remarks

The effect of participation in the Community hearings was described in JRP's Procedural Direction #3, September 2011:

The Panel's decision will be made on the content of the information it receives and not on the number of individuals that relay the same message... Repeating similar views a number of times does not provide the Panel with useful information. The Panel makes its decisions on the facts or evidence in front of it. It does not make its decision based on the number of people who expressed similar views (original emphasis).²¹⁰

Yet, it appears the NGP has not "survived the scrutiny of public reasoning" (Sen 2009:399), for the fact remains that of the 1179 citizens who felt strongly enough to take the time to engage the panel, only two former politicians (provincial legislative member and mayor) publically supported the Northern Gateway proposal.²¹¹ In attempting to fulfil the requirements of public hearings and discharging the Crowns' Duty to Consult with First Nations, without acknowledging important differences between meaningful deliberative public-spirited involvement, and oft devolving to tokenistic participation, the JRP proves insufficient, especially given that whatever their recommendations, the Federal cabinet holds ultimate discretion.

I therefore argue that participation is not synonymous with meaningful negotiation or deliberation, for while participation means being included at the table, it fails to define the relative value of input, often resulting in a very passive exercise of agency, with participants relegated to tokenism, or worse, spectatorship. Restrictions to active participation in the JRP have included the suppression or negation of types of knowledge or submissions, not having the capacity to add to or amend agendas or processes, nor the opportunities to effectively influence and contribute to decision-making and outcome formation. On the contrary, true deliberative and discursive processes are

²¹⁰ NGP-JRP (2011, Septmeber 12):*Procedural Direction #3-Community Hearings*, NEB, page 2. Accessed 15 March 2013, https://www.neb-one.gc.ca/ll-eng/livelink.exe/fetch/2000/90464/90552/384192/620327/624909/771578/A71-1_-_Panel-Commission_-_Procedural_Direction_No._3_Community_Hearings_-_A2J6R3?nodeid=771579&vernum=0

²¹¹ Gilchrist, E.(2013, February 4): "Community Hearings are a Wrap! Now what?" *Dogwood Initiative*. Accessed 6 February 2013, http://dogwoodinitiative.org/blog/all-opposed-to-Enbridge?utm_source=AdaptiveMailer&utm_medium=email&utm_campaign=20130213-E-News-starting-February-2013&org=354&lvl=100&ite=5562&lea=6084307&ctr=0&par=1

agent empowering for the individual citizen, as well as the community, because the processes are an expression not just of their rights, but responsibilities. Not merely allowing inputs, deliberative participatory democratic processes actively encourage contributions, discussion, and public defense of rationally derived perspectives and opinions from as wide a swath of society as possible, highlighting that the wishes of those most affected are demonstrably reflected in structure of final decisions, and therein lays the transformative potential of meaningful deliberative public politics.

The JRP is supposed to be impartial, whereby reasons as per Habermas, gain “their consensus producing force,” with participants and decision-makers open to changing their minds based on the force of arguments presented (1992:411). Although neutrality is the position to which such a panel aspires, all positions are shaped by the norms that are the result of each actor’s particular perspective, as is the nature of dominant discourses, thus questions arise given that the NEB is an unabashedly industry-oriented board, listed as an ‘ally’ of the Federal tar sands promotion plan (Toke 2000:71). Given the influence of industry, there is reason to doubt the capacity of the panel to adjudicate among divergent perspectives, and raises questions about the degree to which “political biases are built into the process itself” (Amy 1987:196).

Much of the deliberation literature focuses on procedure, while respect for existing substantive rights receives too little attention as a measurement of the success of deliberative processes. Do indigenous or affected communities have a serious impact on decision-making (such as the opportunity to refuse consent), or merely the chance to express their thoughts? (Shilling-Vacaflor 2012:15) The outputs are important, but it must be clear who makes the decisions and on what basis, as beyond mere opinion-formation, “decision-making competencies would further democratization and social equality” within society (ibid:16). Thus it follows that fair procedures do not nullify the consequence of substantive outcomes. Fairness, access and justice should be the minimum standards present in processes of consultation and deliberation,

but perhaps current preoccupations with legalism and procedures are still attempting to realize these standards in complex pluralistic, post-colonial, multicultural societies in practice. Relying on transparent and fair procedures when denying or ignoring the results of difficult negotiations and compromises, negates the worth of challenging and costly participation; commendable efforts are pointless if they have no influence on decision-making or the outcomes chosen, as substantive results are vital to the accountability and justification of authority decisions.

The JRP is similar to other government-initiated consultation processes in accommodating 'special conditions' for First Nations participation, such as the use of 'oral traditional knowledge,' from elders. But the Panel and the Federal cabinet have the choice whether to react to traditional ecological knowledge at their pleasure; there is nothing within the process that modifies ingrained structural power asymmetries and biases, despite the possibility that such voices heard by the larger public might help promote 'dialogical understanding' (Young 2000 in Smith 2003:57). Important in the context of this case is the post-colonial First Nations relationship to the settler state, which has a long, complex history of marginalization. Even if deliberation could not achieve a consensus acceptable to Indigenous participants, perhaps it would at least create space for interests and beliefs outside of the hegemonic consensus to be heard, and to gain legitimacy. These resource developments and legislative alterations are now serving as an excuse to bridge gaps in communication among neighbouring bands, catalysing and galvanizing solidarity. As in Idle No More, these are highly educated warriors that fight for the recognition of their rights, culture, and continued existence, and lines are being drawn to prevent this or any other project that undermines their ability to maintain their way of life. Against the NGP and other tar sands projects they are willing to fight through the courts, or direct action on the ground if pushed to it, which would include teens to the last elder.

Numerous international indigenous instruments have also emerged since the United Nations Declaration of the Rights of Indigenous Peoples, such as the Save

the Fraser Declaration, the Mother Earth Accord, and most recently, the nine bands in North America who signed the International Treaty to Protect the Sacred from Tar Sands Projects, which binds the signatory groups together in collective responsibility for protection of their territories. Article V reads:

We affirm that our laws define our solemn duty and responsibility to our ancestors, to ourselves, and to future generations, to protect the lands and waters of our homelands and we agree to mutually and collectively oppose tar sands projects which would impact our territories, including but not limited to the TransCanada Keystone XL pipeline, the Enbridge Northern Gateway, Enbridge lines nine (9) and sixty-seven (67), or the Kinder Morgan Trans Mountain pipeline and tanker projects.”²¹²

The connection to the place of their ancestors is not necessarily something we can relate to or understand easily, we of the modernized, displaced, hyper-mobile, convenience-based colonial-settler societies, and yet, the current oppositional alliances have united around attachments to the uniqueness of BC. The application of a utilitarian ‘public good’ argument for contentious proposals is most relative when considering the proximity of potentially adverse effects and benefits, but is far from a universally applicable justification, though it has dominated this debate. Utilitarian argumentation is insufficient reason for them to abandon this thriving cultural homeland for destructive, profit-driven interests. Grand Chief Stewart Phillip has said that “by clear-cutting environmental protections and by taking no notice of our Aboriginal Title, Rights and Treaty Rights—our Human Rights ... more and more British Columbians realize that the Harper Government cares more for industry interests rather than the fundamental democratic and human rights of all Canadians.”²¹³ While the countermovement is directly against the crude oil pipelines and tankers, it is also fundamentally about addressing changing public preferences and articulating a transition to carbon-free, sustainable visions of the future. Spokeswoman Pamela Palmater of the Idle No More movement stated on January 4, 2013:

First Nations have constitutionally protected Aboriginal and treaty rights which mandate Canada to obtain the consent of First Nations prior to acting.

²¹² *The International Treaty to Protect the Sacred from Tar Sands Projects*, signed 23 January 2013 in Yankton Sioux Reservation, South Dakota. Accessed 3 April 2013, <http://www.protectthesacred.org/>

²¹³ Defend Our Coast (2012, October 22) Rally coverage. Accessed 23 October 2012, <http://defendourcoast.ca/oct22/>

The most precious resources in the near future will be farmable lands and drinkable water. We are standing up not only to protect our lands and waters, but we are also standing up to restore justice for First Nations and democracy for Canadians.²¹⁴

It is impossible to guarantee that pipelines built underneath the 1000-odd watercourses, through mountains, and beside seismically unstable rockslide and avalanche terrain will maintain their integrity. The challenges associated with piping dilbit compared to pipelines carrying regular crude, which consistently fail within 16 years and leak on average every 1000km,²¹⁵ are not recipes for safety or longevity. Were the “full costs of carbon emissions from extraction, processing and combustion counted,” states economist Marc Lee “the pipeline would likely be uneconomical...While private gains accrue to the oil and gas industry, huge costs are borne by others” (2012: 4). The JRP is therefore inadequate to even superficially address the “interface between the political and economic dynamics of global capitalism, on one hand, and local processes of value formation, personhood, histories and relationships to resources on the other” (McNiesh 2012:30). As in Environmental Justice discourse, the risks associated with these industries are not equally distributed, placing the cultural survival at stake for Aboriginal communities all across Canada, with the Chief of the Fort McKay First Nations in Northern Alberta recognizing that they are forced to accept tar sands activities, though “the environmental cost has been great...[as] there is no other economic option; hunting, trapping, fishing is gone” (Struck 2006 in Adkin 2009:309).

The Enbridge Northern Gateway Pipeline is project based on a short-term vision of energy revenue security that will contribute to accelerating climate change by increasing the demand for unmarketable tar sands crude in more loosely regulated environmental regions, fuelling Chinese growth at the expense of other considerations. As an emerging petro-state *par excellence*,

²¹⁴Palmater, P.(2013, January 4):“Idle No More: What do we want and where are we headed?” *Rabble.ca*. Accessed 8 January 2013, <http://rabble.ca/blogs/bloggers/pamela-palmater/2013/01/what-idle-no-more-movement-really#.UOdLK-5zFMY.facebook>

²¹⁵ Pembina Institute et al.(2009, October 16): *Oil and Salmon Don't Mix -fact sheet*. Calgary:Pembina Institute. Accessed 15 March 2012, <http://www.pembina.org/pub/1895>

the Harper Conservatives' singular focus on the tar sands continues to erode many existing standards and criteria for engagement in their first year of government. The results have been a growing public distrust in the impartiality and democratic accountability of the Federal government, deepening polarization and cynicism, as well as the emergence of a radicalized aboriginal rights movement and new convergence of civil society. Yet despite the apparent willingness of the Federal cabinet to invoke justification of the pipeline on 'national interest' grounds,²¹⁶ even Natural Resources Minister Joe Oliver has begun to realize the importance of gaining public support, telling the Economic Club of Canada on 30 November 2012 that "we could well get a positive regulatory conclusion from the joint panel that is looking at the Northern Gateway, but if the population is not on side, there is a big problem."²¹⁷ For Harper's application of neoliberal governance, Polanyi offers this: "The economic process may, naturally supply the vehicle of destruction and almost invariably economic inferiority will make the weaker yield, but the immediate cause of his undoing is not for that reason economic; it lies in the lethal injury to the institutions in which his social existence is embodied" (2001:164). While the Federal government may force through the NGP and similar developments regardless of the wishes of the Canadian people, the effects of such unresponsive governance alters the institutions, reputation, and unity of the nation, and is likely to lead to both the political demise of the Federal Conservative Party, as well as provoking acts of resistance, direct action and civil disobedience.

Enhanced participation is the best means to reassert rights and democracy via Free Prior Informed Consent and deliberative democratic practices, yet these too lead to the problems which arise in regard to value plurality and incommensurability. Scholars describe that such divisions are

²¹⁶ O'Neil, P. (2012, November 12): "Oil industry's 'nation-building' pipeline won't be stopped by protesters: Natural Resources Minister," *The National Post*. Accessed 19 November 2012, <http://news.nationalpost.com/2011/12/06/oil-industrys-nation-building-pipeline-wont-be-stopped-by-protesters-natural-resources-minister/>

²¹⁷ Cattaneo, C. (2012, November 30): "Ottawa dials down support for Northern Gateway pipeline, citing 'huge challenges,'" *The Financial Post*. Accessed 5 January 2013, <http://business.financialpost.com/2012/11/30/ottawa-dials-down-support-for-northern-gateway-pipeline-citing-huge-challenges/>

only potentially solved through the use of fair processes as a levelling force between entrenched positions, such that if the process is trustworthy, few would oppose the outcomes. Questions arise, however, as to whether this serves to displace substantive outputs with legalism and procedural fetishism.

The value of deliberation and FPIC is not in finding the compromise which facilitates business interests, but that it leads societies to better understand both the plurality of viewpoints and the commonly held values, which can in turn lay the groundwork for concessions or for legitimating the mandate for government to make higher-level strategic decisions. The differing ethics beyond personal utility maximization in environmental, cultural and societal negotiations are such that panels like the JRP must extend their scope beyond instrumentalism, considering intergenerational values, aesthetic and non-instrumental worth. Smith argues “value pluralism cannot be overcome, but deliberation provides an effective context within which ‘enlarged mentality’ can be cultivated” (2003:64). Alternatively, this realization also forces the recognition that the JRP process (or ultimately cabinet decision-making) is unsatisfactory for determining a case this complex, especially when it is impossible to ensure fairness or force compromise. When projects have the potential for profound impacts on societal groups, Schilling-Vacaflor argues that executive branch or parliamentary decisions are insufficient; development planning, which includes deliberative processes and local knowledge rather than just expert opinions, results in more effective policy (2012:6).

In their strategic plan, quoted in the JRP decision on issues, the NEB defines “the public interest as being inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society’s values and preferences evolve over time” (2011:18). The public outcry against the NGP makes clear that Canadians want greater opportunities for ecological citizenship, encompassing meaningful participation (not restrictions and closed-door elite access for industry preferences), coupled with a new, clean, progressive mandate, not a carbon-intensive, extractive

based economy. As Bill Moyer describes, “the intensity of public feeling, opinion and upset required for social movements to take-off can happen only when the public realizes that government policies violate widely beliefs, principles and values”(2001:48). A clear call exists to broaden the discussion of Canada’s national vision beyond extractive capitalism, towards a more human- and environmentally-centred society. The unified opposition to the NGP should not be viewed in Ottawa as adversarial, but instead as broadly legitimizing a federal mandate to boldly support transitioning towards a green future, for when such paradigms become entrenched within the popular perception, disagreements with the status quo will no longer be “sporadic, but systemic and continual”(Valadez 2001:66). “The rolling back of regulatory frameworks designed to protect labour and the environment from degradation has entailed the loss of rights,” described by Harvey as “one of the most egregious of all policies of dispossession”(2005: 161). The retreat of the state in affording protections or access to justice, as per Polanyi, leads to the disillusionment of those who have tried to operate within the system, forcing them into Tilly and Tarrow’s ‘cycles of contention,’²¹⁸ embracing direct action and civil disobedience, seen as Idle No More plans the ‘Sovereignty Summer 2013’ campaign against the tar sands.²¹⁹

In trying to unpack such a complex situation, my thesis admittedly raises more questions than it is capable of answering, leaving ample room for more research. Current systems must be adapted to reintegrate us within natural limits by retooling economic growth through embracing clean available technology, regulating resource exploitation rates, reducing greenhouse gas emissions, and fostering resilient, sustainable communities. Such a vision of ecological citizenship requires the institutionalizing an inclusive, participatory deliberative democracy, which was once a utopian ideal, but has now become an urgent necessity.

²¹⁸ See McAdam, Doug, and S.Tarrow, C.Tilly(2001),(2009); Tarrow, Sidney and C.Tilly(2006); and Tilly, Charles (2007).

²¹⁹ (2013, April 11) “Supreme Court loss pushes Athabasca Chipewyan FN towards Sovereignty Summer campaign,” *APTN News*. Accessed 15 April 2013, <http://aptn.ca/pages/news/2013/04/11/supreme-court-loss-pushes-athabasca-chipewyan-fn-toward-sovereignty-summer-campaign/>



9. Appendices:

Appendix 1. Seminars, external classes, conferences.

Directly related to this thesis, I participated in:

UN Expert Mechanism on the Rights of Indigenous Peoples in Geneva 2011; the Extractives Industry Transparency Initiative Meeting in Paris 2011; a PhD course in Environmental Justice with Joan Martinez-Alier in Barcelona in 2012; Indigenous Rights distance learning course (Human Rights Education Associates- HREA.org); conference in Cuzco, Peru on ‘post-extractivism’ November 2011; International Environmental Law Conference in Oslo March 2012; and several ‘webinars’ with the West Coast Environmental Law offices in Vancouver, Canada.

Appendix 2. Jurisdiction

Federal and Provincial Division of Powers

Exclusive Provincial Jurisdiction	Exclusive Federal Jurisdiction	Joint Federal & Provincial Powers
<ul style="list-style-type: none"> • Anything local or private in nature • Direct taxation • Crown lands and natural resources • Hospitals (health sector) • Education • Welfare • Municipalities • Local works • Intra-provincial transportation and business • Administration of justice • Property and civil rights • Cooperatives and savings banks 	<ul style="list-style-type: none"> • Peace, order and good government • Any form of taxation • International/interprovincial trade and commerce, communications & transportation • Banking and currency • Foreign affairs (treaties) • Militia and defense • Criminal law and penitentiaries • Naturalization • Weights, measures, copyrights, patents • First Nations • Residual powers • Declaratory power • Disallowance and reservation • Unemployment insurance and old age pensions 	<ul style="list-style-type: none"> • Immigration • Agriculture • Pensions • Inter-provincial projects

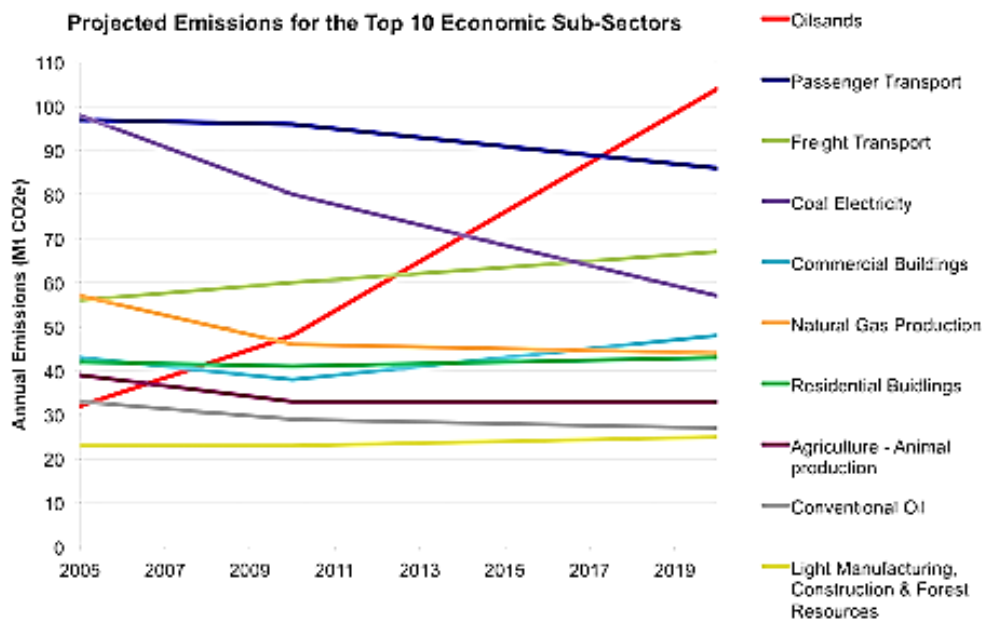
Source: Bélanger 2007

Appendix 3. Federal Election 2011 Controversy

The ‘robo-calls’ scandals are the results of 1,400 official complaints about (an estimated 690,000) automated phone calls made fraudulently on behalf of Elections Canada officials in ‘swing-ridings’ that misled voters, who had polled as supporting parties other than the Conservatives, by directing them to the wrong voting stations

on election day.²²⁰ There were also complaints of 857 harassment-styled calls (early morning, late at night) that investigators characterize as intending to influence voters to “refrain from voting from a particular candidate.”²²¹

Appendix 4. Projected GHG Emissions by Economic Sub-Sectors in Canada



Source: Huot, M. (2012, December 12) Calgary: Pembina Institute. Accessed 8 January 2013, <http://www.pembina.org/images/oil-sands/emissions-sectors.png>

Appendix 5. Lessons from the Unist’ot’en Blockades

A large section of the ‘energy corridor’ uses the same path for multiple pipeline projects, with NGP following the path Pacific Trail Pipeline project, scheduled to break ground in 2012. However, the Unist’ot’en Clan of the Wet’suwet’en has directly challenged the legitimacy of the PTP since November 2011 when representatives of the C’ilhts’ekhyu and Likhts’amisyu Clans escorted drillers and other PTP employees off their territories. Hereditary Chief Toghestiy again evicted surveyors from their territory on 20 November 2012, by presenting them with an eagle feather, the first and only traditional notice of trespass, then building roadblocks. The First Nation had not been properly consulted, and objects that the

²²⁰ Miller, Criz. (2013, April 29): “Canada, your emperor has no clothes,” *Rabble.ca*. Accessed 30 April 2013, <http://rabble.ca/news/2013/04/canada-your-emperor-has-no-clothes>

²²¹ Champion-Smith, B and I. Whittington (2012, November 30): “Elections Canada reveals massive robo-calls probe of 2011 election.” *The Toronto Star*. Accessed 15 December 2012, <http://www.thestar.com/news/canada/politics/article/1296114--elections-canada-reveals-massive-robo-calls-probe-of-2011-election>

pipeline contributes to expanding controversial shale gas extraction through hydraulic fracturing ('fracking'), which uses and destroys enormous volumes of fresh water.

On 27 November 2012, solidarity protests for the blockade and against fracking were held in 13 cities, from California to Toronto and across British Columbia,²²² and representatives of the Wet'suwet'en delivered eviction notices to Apache Oil and Enbridge stating that the companies are "not permitted onto unceded lands of the Wet'suwet'en; are not permitted to place their greed ahead of Indigenous self-determination; are not permitted to destroy and exploit the lands; are not permitted to disregard the safety and health of communities;[and] are not permitted to disregard [our] Law!"²²³ Freda Huson, spokeswoman for the clan, had written a letter "To the illegitimate colonial governments of Canada and British Columbia, and to all parties involved in the proposed PTP project. This letter is to issue a warning of trespass to those companies associated with the PTP industrial extraction project and against any affiliates and contractors infringing upon traditional Wet'suwet'en territory...any further incursion into their territory [interpreted]as an act of aggression against their sovereignty and that violators will be held accountable."²²⁴ She also writes that "Indian Act and Society Act governing structures do not belong to us nor do they have the ability to override the jurisdiction of our people. If our people make decisions with our unborn populations in mind, the manipulative tactics by industry and governments which are meant to divide our people will not work. We will prevail as sovereign people on our unceded and protected lands."²²⁵

Appendix 6. Formal Complaint against Enbridge PR and maps

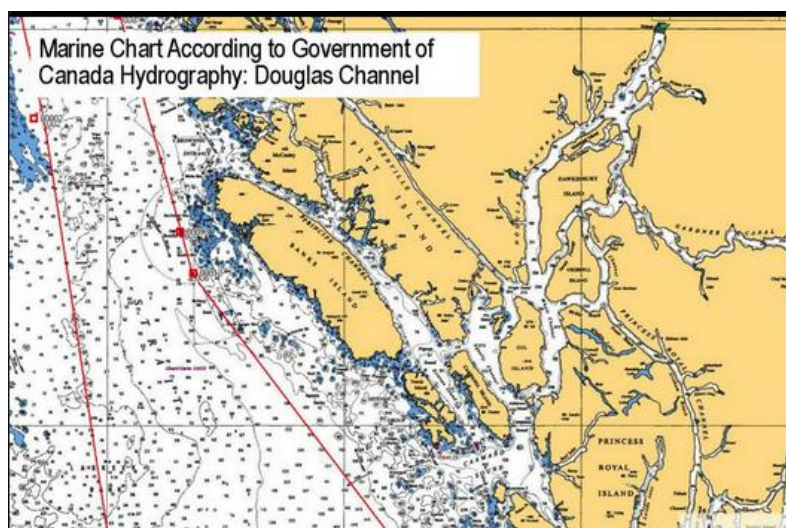
Waters, Lori (2012, August 16). Letter of Complaint to the Competition Bureau of Canada against Enbridge for false or misleading advertising and deceptive marketing practices. Accessed 17.8.2012, <https://www.box.com/s/16509628de91608d12e1#/s/16509628de91608d12e1/1/355824541/2876446089/1>

²²² House, T. (2012, November 29): "Support growing for Unist'ot'en battle against BC pipeline," *APTN National News [TV report]*. Accessed 4 December 2012, <http://aptn.ca/pages/news/2012/11/29/support-growing-for-unistoten-battle-against-b-c-pipeline/>

²²³ Holland, Laura (2012, November 27): "Statement by Laura Holland Wet'suwet'en Nation at the Vancouver Rally in Support of the Unist'ot'en," *Vancouver Media Co-op*. Accessed 3 December 2012, <http://vancouver.mediacoop.ca/story/statement-laura-holland-wetuwet-en-nation-vancouver/14735>

²²⁴ Unistotencamp(2012, November 27): "Raising Resistance- global Day of Action #nopipelines," Unist'ot'en and Likhts'amisyu clans and Grassroots Wet'suwet'en. Accessed 5 December 2012, <http://unistotencamp.wordpress.com/2012/11/27/raising-resistance-global-day-of-action-nopipelines/>

²²⁵ Unistotencamp(2012, November 7): "The uncertainty of pipelines in unceded lands," Unist'ot'en and Likhts'amisyu clans and Grassroots Wet'suwet'en. <http://unistotencamp.wordpress.com/decolonizing-the-carbon-corridor/>



Also: Hong, Beth (2012, August 16): "BC woman files complaint against Enbridge for misleading promotional videos," *Vancouver Observer*. Accessed 17 August 2012, <http://www.vancouverobserver.com/sustainability/bc-woman-files-complaint-against-enbridge-misleading-promotional-videos#nextimg>

Appendix 7. Active Oppositional Groups and First Nations

The following are links to the various groups actively campaigning in opposition to the Northern Gateway and other similar 'energy corridor' projects (found at <http://www.pipeupagainstenbridge.ca/the-movement/organizations>).

Grassroots organizations in northern B.C.:

- Douglas Channel Watch (Kitimat)
- Haida Gwaii CoASt
- Friends of Morice-Bulkley
- Friends of Wild Salmon
- Prince Rupert Environmental Society
- Sea 2 Sands Conservation Alliance (Prince George)
- SkeenaWild Conservation Trust

Provincial and National NGOs:

- Dogwood Initiative
- ForestEthics
- Greenpeace Canada
- Living Oceans Society
- Pacific Wild
- Polaris institute
- Raincoast Conservation Foundation
- Sierra Club BC
- T.Buck Suzuki Environmental Foundation
- Council of Canadians
- West Coast Environmental Law

First Nations organizations:

- Carrier-Sekani Tribal Council
- Office of the Wet'suwet'en
- Coastal First Nations
- Yinka Dene Alliance

Awareness-raising Expeditions

- The PipeDreams Project (kayak expedition along proposed tanker route)
- On The Line (self-propelled journey along the length of the proposed pipeline route)
- StandUp4GreatBear (Norm Hann's stand-up paddleboard expedition along the proposed tanker route)

West Coast Environmental Law developed a **listing of the First Nations** that (as of 12 March 2012) have declared opposition to the proposed Enbridge tanker and pipeline project, which can be found at:

<http://wcel.org/sites/default/files/publications/List%20of%20FNs%20opposed%20to%20Enbridge%20March%202012.pdf>

It is not, however, an up-to-date listing of the First Nations who have signed treaties and declarations in opposition to tar sands related projects, as that would include numerous bands in Eastern Canada and the USA, but has not yet been released (30 April 2013).

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