

The Political Economy of Oil Transportation and the Implications for Canada

Crystal Lamont

A Major Paper submitted to the Faculty of Environmental Studies in partial fulfillment of the
requirements for the degree of Master in Environmental Studies

York University, Ontario, Canada

Supervisor: Dayna N. Scott

July 31, 2014

Crystal Lamont
MES Candidate

Dayna N. Scott
Supervisor

Foreword

This paper is the culmination of two years of studying Canadian environmental policy; however, it is in no way the end. Canadian environmental policy encompasses so many facets, a wide variety of historical and emerging issues, as well as areas of clash and confrontation with other policy domains. As a result, it is unjustified to believe that one can become an expert in Canadian environmental policy in the span of two years. Nevertheless, through exploring current topics of environmental policy, such as the political economy of oil transportation, understanding of the factors influencing policy, analyzing policies in terms of sustainability, and understanding the challenges of jurisdictional responsibility help illuminate the broader aspects of environmental policy within Canada.

Specifically, this paper satisfies the learning objectives of exploring how current environmental policies are created and an understanding of the constitutional challenges and barriers to enacting environmental policy. The utilization of a political economic lens provides insight into the various power relationships and influence of interests in decision-making regarding oil transportation and illustrates the various actors, interests, and institutional factors that come to shape the contexts that such decisions are made within. Furthermore, oil transportation decisions, such as interprovincial pipelines, reveal the inherent constitutional challenges of regulation when two levels of government have various aspects of jurisdictional responsibility. These jurisdictional challenges are examined in this paper in terms of the potential for provinces to exert their constitutional power over federally regulated pipelines, as well as the various regulatory implications of split jurisdiction over spill response. Highlighting the jurisdictional battles over oil transportation translates into the broader realm of environmental

policy in Canada, thus satisfying my understanding of such constitutional barriers and challenges.

In addition to exploring and gaining an understanding of Canadian environmental policy a second learning component, energy and oil transportation, and its associated learning objectives have been addressed by the completion of this paper. The two learning objectives that were fulfilled by this paper were gaining an understanding of oil transportation and examining the sustainability of oil transport decisions. The in depth analysis presented in this paper on the political economy of oil transportation in Canada has provided a solid understanding of the various means of oil transportation, as well as what key factors interact to impact and influence such systems. Moreover, by examining the political economic interests surrounding oil transportation this paper draws many conclusions and insights into how these transport decisions, especially the role of oil pipelines, rate in terms of sustainability and Canada's future energy path. Overall, the role of this paper in fulfilling the requirements of the MES degree is its contribution to my learning components, but more so its addition to the knowledge that I have gained throughout my studies.

Abstract

In Canada, there are currently multiple oil pipeline projects being proposed, engaged in the regulatory process, or recently approved with conditions. While debates have focused on the environmental effects or environmental injustices of these projects, there is a lack of analysis on the overall political economy of oil transportation infrastructure and how interests and power relationships shape these debates. The importance of understanding the political economy of oil transportation is that pipeline projects have various implications for the future of Canada in terms of sustainability, Canada's energy path, and environmental consequences to be felt by future generations. To address the shortage of analysis, this paper provides a modified institutional-ideological framework applied to a case study of the Energy East Pipeline project to explore the current political economy of oil transportation in Canada. The framework comprises of four categories: material, physical, and economic factors; normative factors; institutional factors; and interests and societal factors. The analysis provides two tentative conclusions suggesting the future implications for Canada if the country continues down its current resource-based development path. The first is to call for a national energy policy involving a democratic opportunity to debate the available energy development options, and the second is to draw attention to the opportunities for resistance of the current direction of natural resource development in Canada. A choice is to be made regarding which path Canada will choose, with pipeline decisions being an important aspect of this choice.

Table of Contents

Foreword	i
Abstract	iii
<i>History of Oil in the Canadian Context</i>	1
<i>Current Canadian Oil Transportation Infrastructure</i>	3
<i>Regulation and Liability of Oil Transportation Infrastructure in Canada</i>	6
Part II Analytical Framework: Institutional-Ideological Approach	9
<i>Institutional-Ideological Analytical Framework</i>	9
<i>Figure 1: Institutional-Ideological Framework</i>	15
<i>Case Study: TransCanada's Energy East Pipeline Project</i>	16
Part III Analysis: Oil Transportation and Energy East	16
A. Material/Physical/Economic Factors	17
<i>Spatial/Geographic Realities</i>	17
<i>Proximity to Markets</i>	19
<i>Transportation/Distribution of Resources</i>	21
<i>Canada's Location in the Global Economy</i>	26
B. Normative Factors	27
<i>Distribution of Risks and Equity</i>	27
<i>The Duty to Consult</i>	31
<i>Responsible and Representative Government</i>	33
<i>National Interests</i>	36
<i>Sustainable Development</i>	39
<i>Market Liberalism</i>	42
C. Institutional Factors	45
<i>Cabinet-parliamentary Government</i>	45
<i>Federalism</i>	49
<i>Aboriginal Rights</i>	53
D. Interests/Societal Factors	56
<i>Public Opinion</i>	56
<i>Advocacy Groups</i>	60
<i>Media</i>	66
<i>Corporate Interests</i>	69
Part IV Conclusion: The Implications for Canada	74
<i>Need for National Discussion of Canada's Future Energy Path</i>	76
<i>Potential for Change and Challenge to the Dominant Ideas</i>	80
References	87
Cases and Legislation	100

Part I Introduction: Oil Transportation Infrastructure in Canada

Since the early days of colonization Canada has been extracting and exploiting its abundant natural resources starting with the historical fur trade. However, it would be wrong to suggest that growth based on natural resources is only a figment of Canada's historical past. Canadian environmental and resource policy has, and continues, to be shaped by the uneven and incomplete transition of Canada from a staples economy to a "poststaples" state (Hessing, Howlett & Summerville, 2005). Oil is one such resource that is still relied upon for growth of the Canadian economy (Isfield, 2013) and has become a hot topic in current Canadian debates, as evidenced by front-page news stories on the ways of transporting oil across the country (Lorinc, 2012), and the environmental consequences of the Alberta tar sands (Berman, 2014). These news stories are supplemented by analysis on political (Hoberg, 2013; Winfield, 2012b) and economic (CAPP, 2013; Angevine, 2013) debates, suggesting that Canada's political and economic landscape is dominated by emphasis on resource development; one resource particularly, oil from the Alberta tar sands. Furthermore, it is important to note that the extraction activities that are occurring in Alberta's Athabasca, Peace River, and Cold Lake areas are referred to as either the "oil sands" or the "tar sands."¹

History of Oil in the Canadian Context

In 1850, the first oil company in North America was established in Woodstock, Ontario after the discovery of seepages of crude oil in and around the auspiciously named towns of Oil Springs and Petrolia (Bott, 2012). Following the discovery in Southwestern Ontario, other reserves were located around Canada including Turner Valley near Calgary in 1914 and Norman Wells in the Northwest Territories in 1920 (Howlett & Brownsey, 2008). Alberta's future as Canada's oil province arguably was started with the discovery of the Leduc No.1 well in 1947

that created conditions for multinational companies to enter into Alberta and set up operations (Howlett & Brownsey, 2008). As such, during the 1950's and 1960's the Alberta oil industry was dominated by the "big four" vertically integrated, multinational companies: Shell, Imperial/Exxon, Gulf, and Texaco (Howlett & Brownsey, 2008). By the late 1960's conventional oil reserves were declining, and by the early 1970's the big four came to the conclusion that there were no more large deposits left in Alberta and shifted their attention to frontier areas of the Arctic and overseas (Howlett & Brownsey, 2008). Conventional reserves of crude oil have continued to decline since then; however, with the advancement of horizontal drilling the percentage of recoverable reserves has doubled or even tripled such that anticipated production of conventional oil is estimated at 1.4 million barrels per day (CAPP, 2013).

While the history of conventional oil is important to the overall narrative of the establishment of the Canadian oil industry, the real story of Canada's "oil" success lies in the development of the unconventional sources of oil; bitumen from the Alberta tar sands. The existence of the tar sands were described back in 1778 when Alexander Mackenzie spoke of the "bituminous fountains" and later in 1899 Charles Mair, as part of the Treaty Eight and the Half-breed Scrip commission, sought out to secure access to the oil reserve by recognizing Aboriginal claims through treaty-making (Nikiforuk, 2010). However, extracting bitumen was seen as too difficult and costly to extract and it was not until 1964 that an American oil baron entered the territory and sought approval to build the first modern open-pit mine, the Great Canadian Oil Sands Operation, now known as Suncor, that began production in 1967 (Bott, 2012). Nonetheless, the economics of the project were unfavourable, and the Operation subsequently lost money for twenty-years by producing the world's most expensive oil at the time, more than \$30 a barrel (Nikiforuk, 2010). It was not until the late 1990's that development in the tar sands

exploded and became economically viable due to changes in provincial royalties and federal taxes, rising crude oil prices, and the continuing improvements in technology (Bott, 2012). As such, the Canadian tar sands are now the largest energy project in the world (Nikiforuk, 2010) ranked as the third largest reserve after Venezuela and Saudi Arabia (CAPP, 2012).

Current Canadian Oil Transportation Infrastructure

Studies in critical geography and political ecology adopt a conception of crude oil as a material flow of commodified nature (Scott, 2012) flowing along six sequential processes of the hydrocarbon commodity chain: exploration, extraction/production, refining, distribution, consumption, and carbon capture (Bridge, 2008). Of importance to this analysis is the distribution, or transportation, link in the commodity chain. Specifically, pipeline debates have defined Canadian politics over the past year, with pipeline stories making front page news, shaping leaders meetings, and provoking indigenous resistance movements (Scott, 2012). However, once a pipeline is built it literally vanishes underground stifling an examination of the larger social relationships and power mechanisms at play (Scott, 2012). Arguably, the hidden elements of oil transportation make it an under appreciated part of the hydrocarbon commodity chain, despite the defining role in continuing the material flow from production to consumption and defining the path dependency of energy strategies and future developments (Scott, 2012).

There are three options available for continental travel of oil across Canada: pipeline, rail, and truck. The most popular and preferred method of transportation is by pipeline due to the perceived efficiency (Makholm, 2012) and lowest average cost of transporting large volumes of crude (Dawson & Bartucci, 2012). The first major piece of Canadian oil transportation infrastructure, the Interprovincial Pipeline, was built in 1950 to move crude oil from Edmonton to Superior, Wisconsin, and at the time was the largest single-season pipeline construction

project worldwide (Bott, 2012). During the 1950's pipeline debates were divided along those who believed pipelines should be built exclusively within Canada and serve Canadian markets, and others who were of the opinion that Canadian markets should be served only by domestic sources with pipelines built along the cheapest routes, requiring the inclusion of a United States (U.S.) export component (Doern & Toner, 1985). As a result of these debates, the Canadian pipeline projects that were approved between 1949 and 1961 entailed both elements and were characterized by a “quasi-national” or “semi-continental” patterns of transportation (Doern & Toner, 1985).

When discussing the current systems of oil pipelines in Canada, it is important not to confuse the systems with a network, as every pipeline has to some extent, its own definitive function (Makhholm, 2012). Currently, there are four major oil pipelines that move oil from Alberta to markets in British Columbia, Eastern Canada, and the United States: Enbridge Mainline, the Kinder Morgan TransMountain Pipeline, the Spectra Express Pipeline, and the TransCanada Keystone Pipeline (Angevine, 2013). The current total capacity available on Canadian oil pipelines is 3,671,000 barrels per day (bpd)² (CAPP, 2013). In addition to the existing infrastructure, there are several proposals in place to increase the pipeline systems both in terms of new pipelines and increasing capacity to older lines.

The Keystone XL Pipeline is a project meant to transport oil from Alberta to the U.S. Gulf coast (830,000 bpd); however, climate change has emerged as a prominent thorn in the side of the project and has created tensions in Canada-U.S. relations (Hoberg, 2013). Two pipeline proposals are aimed at moving oil from Alberta to the British Columbia (B.C.) coast, the Northern Gateway Pipeline (525,000 bpd) that has strong opposition stemming from the environmental risk concentrated in British Columbia and economic benefits concentrated in

Alberta (recently granted federal approval) and the Trans Mountain expansion that involves twinning an existing pipeline with a capacity of 540,000 bpd and increasing the capacity on the old line by 50,000 bpd (Hoberg, 2013). In addition, two pipelines are projected to transport Canadian bitumen east, the Line 9 Pipeline (recently approved) from Ontario to Quebec (300,000 bpd), and the Energy East Pipeline from Alberta to Atlantic Canada (1.1 million bpd) (Hoberg, 2013). Combined, these expansion and new infrastructure projects will double the transportation capacity of Canadian oil pipelines.

Although pipelines transport the majority of oil throughout Canada, lately the amount of oil being transported by rail has also increased. Over the past five years, there has been a substantial increase in the shipping of petroleum products on Canadian railways, from 500 carloads in 2009 to a projected 130,000 carloads in 2013 (Winfield, 2013). This past February, within one month 12,989 rail cars were loaded with oil, a sixty percent increase from February 2012 (CAPP, 2013). The benefit of rail is that extensive infrastructure is already in place that allows producers flexibility in reaching markets that they desire (CAPP, 2013). A deadly consequence of the increase in rail traffic was evidenced in July 2013 when a train derailed in Lac-Mégantic killing forty-seven people as a consequence of North American railway operators engaging in cutthroat competition to cut costs and increase profits by any means possible among other regulatory and safety failures (Winfield, 2013). In addition to pipelines and rail, trucks can also be used to transport oil to markets, although the use of trucks is much less common than rail and pipeline. However, one Alberta trucking company, Gibson Energy Inc., hauls roughly 250,000 barrels of energy product per day (Angevine, 2013), illustrating that the Canadian oil transportation story is complex and entails multiple modes of transportation, each with their own political economic relationships.

Regulation and Liability of Oil Transportation Infrastructure in Canada

Canada oil transportation regulation for oil pipelines is established at both the provincial and federal level. On the one hand, each province has its own legislation surrounding pipelines that stay within provincial boundaries, while on the other hand the federal government has authority over pipelines that are interprovincial or cross national boundaries (CEPA, 2012). Regulators are responsible for ensuring that companies meet all regulations for the safety of employees, the public, and the environment throughout all phases of the life of the pipeline, including the design, construction, operation, maintenance, and abandonment (CEPA, 2012). The federal regulator of oil pipelines is the National Energy Board (NEB). The NEB was established in 1959 with the purpose of advising the government on broad energy matters, as well as to serve as regulator of oil and gas pipelines and the export of oil, gas, and electricity (Doern & Gattinger, 2003). While the NEB has the power to prosecute and impose fines on companies that break federal rules, records from the NEB reveal that the Board generally responds to cases involving spills and ruptures with mere warnings to the companies and orders to fix defects (De Souza, 2014) rather than responding with stricter measures. An example of a provincial regulator is the Alberta Energy Regulator (AER) that was created as part of the *Responsible Energy Development Act (REDA)* in 2012 and that operates at arm's length from the Government of Alberta (Alberta Energy Regulator, 2014). Under the AER, 415,000 kilometres (km) of pipeline are regulated throughout the province (Alberta Energy Regulator, 2014).

While the federal and provincial regulators are responsible for ensuring company compliance on matters of safety, it has been unclear who is liable and responsible in the event of a spill or rupture, especially when the pipeline is federally regulated yet spills on provincial lands or in provincial waters. A review of land-based spill response and preparedness in British

Columbia outlines that “oversight of spill preparedness, response and recovery involves provincial, as well as federal agencies in a complex matrix of regulations and policies” (Ministry of Environment, 2014). While it is important that each agency has the proper rules and regulation in place, it is also important that unnecessary duplication of such regulations is avoided (Ministry of Environment, 2014). New changes to the federal pipeline regime have made it such that pipeline companies will be liable for all costs and damages related to oil spills, regardless of whether they are at fault; furthermore, companies will be required to have a minimum amount of cash available to pay cleanup costs (The Canadian Press, 2014). The changes are in response to the need to clarify the confusing and complex patchwork of regulations surrounding liability (The Canadian Press, 2014). Company liability is said to follow the principle of the polluter pays, whereby “the costs of addressing risk should be the responsibility of those industries that bring the risk, and not the communities that bear it” (Ministry of Environment, 2014). However, the full liability of the pipeline companies is only in terms of federally regulated pipelines, leaving decisions regarding the liability of spills on provincially regulated pipelines uncertain, such that there is no uniform approach to addressing the liability of pipeline spills across the country.

Rail regulations follow a similar structure in that the federal government has authority over rail that is interprovincial and provinces are responsible for rail regulation within their own provincial borders. The federal authority responsible for rail transportation is Transport Canada with over thirty railway companies under federal jurisdiction including the Canadian National (CN) Railway Company and the Canadian Pacific (CP) Railway Company (Government of Canada, 2012). On a provincial level, though each province has its own railway legislation (with the exception of Newfoundland and Prince Edward Island) the provinces still rely on Transport

Canada to inspect and recommend actions with regards to safety (Government of Canada, 2012). While Transport Canada inspects and makes recommendations the provinces exercise jurisdiction over enforcement of the legislation with three exceptions, British Columbia conducts its own inspections, Saskatchewan has not made use of Transport Canada's services, and in Ontario Transport Canada conducts both inspection and enforcement tasks (Government of Canada, 2012).

In addition, Transport Canada is responsible for the regulatory oversight of domestic and international shipping of dangerous goods (the federal government has classified oil as a dangerous product) via road, rail, air, and marine transportation set out in the *Transportation of Dangerous Goods Act, 1992* (Office of the Auditor General of Canada, 2011). Similar to the regulation of oil pipelines, the regulation of rail is far from perfect and gaps in the regulation have been identified. In a report released by the Auditor General in 2011, it was concluded that "Transport Canada has not designed and implemented the management practices needed to effectively monitor regulatory compliance with the *Transportation of Dangerous Goods Act, 1992*" and that there is no national risk-based compliance inspection plan (Office of the Auditor General of Canada, 2011). Furthermore, in the case of a rail accident, Canada's Transportation Safety Board is charged with identifying the causes of rail accidents; however Mark Winfield following the Lac-Mégantic disaster, argues, "its mandate may be too narrow to address the wider questions about the federal government's approach to public-safety regulation" referring to the emphasis on "partnerships" with regulated entities (Winfield, 2013). Both pipeline and rail regulation highlight the challenge of interprovincial transportation systems and a need for improved regulations in terms of public and environmental safety.

This paper is structured around a current analysis of the political economy of oil transportation infrastructure in Canada with recognition of the historical basis of decision-making, alongside an examination into the broader implications of expanding the oil infrastructure systems on the Canadian oil industry and future paths of energy development. Part I provides an overview and introduction of the development of the oil industry in Canada and the current oil transportation infrastructure available, along with oil transportation regulations. The introduction provides the context for a consideration of how oil transportation infrastructure, especially pipelines, encompasses its own political economy. Part II provides the analytical framework that will be used throughout this analysis and develops the four factors that will be examined in detail: material, physical, and economic factors; normative factors; institutional factors; and interests and societal factors. Part II also establishes background information on the case study used in applying the analysis, TransCanada's Energy East Pipeline project. Part III is an application of the analytical framework, organized around the aforementioned four factors and divided into subsections divulging into the case study and exploring the various power relationships that exist within the political economy of oil transportation. The fourth and final section, Part IV, provides conclusions on the lessons learned from the analysis and suggests future responses to the oil transportation debates that have taken hold of Canada.

Part II Analytical Framework: Institutional-Ideological Approach

Institutional-Ideological Analytical Framework

Research of Canadian government, politics, and political economy tend to overlook environmental policy (Winfield, 2012a). Furthermore, analysis on the Canadian oil sector focus predominately on the environmental consequences of the Alberta tar sands with very little

attention paid to the transportation infrastructure that makes development possible. Moreover, discussions of oil transportation in Canada primarily focus on pipeline safety and spill risk, only recently has the connection been made between transportation infrastructure and tar sands expansion (Scott, 2013a; Nikiforuk, 2010; Hoberg, 2013). Yet even within these discussions, there lacks a comprehensive analysis of the overarching interests and factors at play that are shaping the political economic landscape of oil transportation in Canada.

One such analysis that explores the political economy of pipelines is Jeff Makhholm's (2012) history of the pipeline transport industry (both oil and natural gas) in the United States over the last century. Makhholm argues that a neoclassical economic model that focuses on technology and costs, rational choice, and equilibrium does little in the way of explaining the oil transport industry, specifically pipelines (Makhholm, 2012). As a result of the failure of neoclassical economics, Makhholm (2012) points out the importance of using new institutional economics to explain markets, market behaviour, regulation, and competitive entry in the pipelines industry. Furthermore, he uses a new institutional economic model to explore the development and regulation of pipelines in the United States drawing upon the institutional, regional, and political histories, and their influence in shaping the pipeline transport market. While Makhholm's institutional economic model is valuable in analyzing pipelines, his work is based on American pipeline systems and does not fully translate into the Canadian context due to different realities and histories. As a result, this analysis will provide a look into the Canada oil transportation structure, as well as adding the useful element of a contemporary case study to direct and focus the analysis, an aspect missing in Makhholm's historical review.

This analysis will focus on the political economy of oil transportation in order to explore the intersection of politics and the economy in order to gain an understanding of the current

transportation infrastructure surrounding oil in Canada, as well as the implications of such systems upon the broader theme of tar sands expansion. Political economic relationships are built on interests, the interests of political and economic actors. The importance of these actors, according to G. Bruce Doern and Glen Toner (1985), is that these actors have the capacity to exercise power in terms of the ability to act in order to achieve their objectives. Central to this analysis is an understanding of the different interests that surround the oil transportation debates and how these interests interact with, and influence one another. Moreover, it is not merely a matter of identifying different interests and power relationships, but evaluating the processes that guide these interests. It is these interests that will compete to have their views and opinions represented, the successful interests will have profound implications on the future landscape of Canadian oil transportation and the fate of the Canadian tar sands.

The analytical framework that will be employed for this analysis is modeled after the institutional-ideological approach utilized by Mark S. Winfield in his political economic investigation of environmental policy in Ontario (Winfield, 2012a). Winfield's framework expands upon the institutional-ideological approach developed by Doern and Toner (1985) for their analysis of the Canadian National Energy Plan (NEP). Winfield's framework focuses on four categories of factors that are seen as influential in the development and shaping of interests. These factors include material, physical, and economic factors; normative factors; institutional factors; and societal factors (Winfield, 2012a). Exploring each of these factors is key due to the complexity of interests, for interests are economic but also entail social, technical, ideological, and political aspects (Hessing & Howlett, 1997). However, while Winfield utilized his analysis on the broader aspects of environmental policy, this analysis is narrower in focus and will provide an analysis concentrated on a specific issue within environmental policy.

An institutional-ideological policy framework is useful in exploring oil transportation infrastructure in Canada, for the transportation of resources exist in an intricate arena with multiple stakeholders and competing ideas. Furthermore, it is not simply enough to examine oil transportation from only one of the factors included within the framework since each factor is intricately tied to another factor. For instance, the institutional factor of federalism influence interests involved in the physical distribution of resources, especially across provincial boundaries, which in essence implicates normative factors of the distribution of risks and equity and the notion of national interests. The main benefit of an institutional-ideological framework is that it combines multiple models of policy analysis; therefore, constituting a better attempt at encapsulating the complexity of policy making and identification of who is benefiting and who is suffering at the hands of policy and resource-use decisions.

The institutional-ideological framework of Winfield has been modified to reflect the factors as they relate to oil transportation infrastructure in Canada, shown in Figure 1, and will be used for this analysis. Winfield, as with Makhholm, focuses on a historical approach, whereas this analysis takes a primarily present-day approach, although in certain circumstances the historical basis of decisions is acknowledged. It is important to recognize the historical context that current debates are situated for example, the history of built infrastructure entails fixed, physical structures that determine the routes of resource flows and shape the available options for new infrastructure (Scott, 2013a). Due to the current interest surrounding the topic, especially the numerous pipeline debates, this analysis is well timed to serve as a way of understanding the political economy of oil transportation in Canada and its connections to larger environmental issues such as tar sands expansion and future energy developments. In terms of material, physical, and economic factors, these factors require consideration for they present important

realities that cannot be overlooked and shape the Canadian context for which oil transportation is situated. Doern and Toner (1985) outlined several aspects of material, physical, and economic factors in their analysis of the NEP that are relevant to this endeavor including: spatial and geographic realities, the proximity to markets, the transportation and distribution of resources, and Canada's location in the global economy. These factors are relevant in providing a foundation upon which other factors must be acknowledged. For example, the geographic realities of the location of the oil that requires transportation, and where the oil needs to be transported have larger implications such as which actors become involved, especially in terms of triggering provincial interests.

Normative factors include general ideologies and dominant ideas (Doern & Toner, 1985) that inform ideas about the role of the state and concepts surrounding a given issue (Winfield, 2012a). For the purpose of this analysis, six ideas and ideologies have been chosen to explore regarding in what way these ideas play a role in how oil transportation is currently understood and responded to. The ideas and ideologies that will be examined incorporate ideas of the distribution of risks and equity, the duty to consult, the ideology of responsible and representative government, notions of national interest, sustainable development, and market liberalism. Just as resources are not equally distributed geographically, risks and rewards of certain development projects, or transportation routes, are also not equally distributed. The distribution of risks involves environmental as well as social elements, such as who benefits from certain projects and who can have their voices heard, as aspect inherent in the duty to consult. Furthermore, the idea of projects and development being in the name of the national interest require further scrutiny, for there are many different notions of what the national interest may entail. Finally, ideologies of sustainable development and market liberalism influence the

path of development and it is important to determine which interests are active in promoting these various ideologies.

The third part of the framework explores the institutional factors that form the structural basis of power. These include the division of power in a cabinet-parliamentary government, the structure of federalism, and Aboriginal rights. Important considerations regarding institutional factors include the constitutional division of powers and the strong jurisdictional position of provincial governments with respect to the environment and natural resources, as well as the high levels of executive autonomy of majority governments (Doern & Toner, 1985; Winfield, 2012a). Furthermore, when exploring institutional factors it is important to look historically in order to cast comparisons with the current institutional structures. For example, the current federal government under Prime Minister Harper has been able to espouse a great deal of power in terms of negating advancements in environmental policy and paving the way for natural resource development. While at the same time, Aboriginal interests have also become a forefront for contestation and legal battles to a greater extent than in the past.

The final component of the analytical framework includes societal factors; these are the impacts of public opinions, the changing power positions of non-state actors, and the role of the media in framing and drawing attention to issues (Winfield, 2012a). The analysis will thus focus on public opinion, advocacy groups, the media, and corporate interests. Winfield (2012a) noted that a weakness of Doern and Toner's framework was its failure to differentiate between the roles of state and non-state actors while neglecting other factors outside of the state; Winfield accounted for these in his modified framework. The current framework also includes these elements for there exists many important interests that are non-state, yet can have a heavy influence on state action. Specifically, corporate interests, and to a certain extent advocacy

groups (which include First Nations, non-government organizations (NGOs), and unions) play a significant role in terms of imposing their interests onto government. Furthermore, the way that the media shapes certain issues can influence how the debates transpire and can also influence public opinion, which itself can be a large catalyst for change.

The following section will employ this institutional ideological framework in assessing the current Canadian oil transportation infrastructure and analyzing the political economy of these systems. Furthermore, using the currently proposed pipeline project, TransCanada's Energy East Pipeline, as a case study will create a lens for which to view the various factors, and further an understanding of the larger implications oil transportation will have on the Canadian tar sands. As such, each factor will be explored in general terms of oil transportation followed by an application of the factor in relation to the Energy East Pipeline.

Figure 1

Analytical framework for oil transportation			
A. Material/physical/economic factors	B. Normative factors	C. Institutional factors	D. Interests/societal factors
Spatial/geographic realities	Ideas/ideologies surrounding oil transportation:	Cabinet-parliamentary government	Public opinion
Proximity to markets	<ul style="list-style-type: none"> • Distribution of risks and equity 	Federalism	Advocacy groups
Transportation/distribution of resources	<ul style="list-style-type: none"> • Duty to consult • Responsible and representative government 	Aboriginal rights	Media
Canada's location in the global economy	<ul style="list-style-type: none"> • National interest • Sustainable development • Market liberalism 		Corporate interests

Case Study: TransCanada's Energy East Pipeline Project

The proposed pipeline, known as Energy East, is a west-to-east pipeline championed by the company TransCanada. According to the company, the pipeline would extend 4,500 kilometres from Alberta and Saskatchewan to refineries in Eastern Canada with a capacity of 1.1 million barrels of crude oil per day (TransCanada, 2014a). The project consists of converting close to 3,000km of an existing natural gas pipeline to oil service, and constructing 1,500km of new pipeline (TransCanada, 2014b). With a declining demand from the United States markets, continental demand for Canadian supplies have decreased and thus Canadian oil sells at a discounted price; this loss in revenue creates pressure to access the global market in order to receive world prices for Canadian product (Hoberg, 2013). Energy East is one of five pipeline projects that are directed at removing the transportation bottleneck that is occurring in the Alberta tar sands due to the decline in continental demand, with the further goal of accessing tidewaters that lead to global markets. The other pipeline projects include Keystone XL, Northern Gateway (recently approved), Line 9 Reversal (recently approved), and the Trans Mountain Expansion.

Part III Analysis: Oil Transportation and Energy East

This section will employ an application of the established framework exploring the political economy of oil transportation in Canada using TransCanada's Energy East Pipeline project as a contemporary case study. The analysis will work through the four factors: material, physical, and economic factors; normative factors; institutional factors; and interests and societal factors, with each element broken down into various ideas, interests, and realities that contribute to the factor. In addition to applying the aspects to oil transportation infrastructure, the analysis

will also take a broader look at how oil transportation infrastructure interacts with expansion in the tar sands and the path of natural resource development in Canada.

A. Material/Physical/Economic Factors

Spatial/Geographic Realities

The spatial and geographic realities lay the foundation for much of the political economic tensions and discussions surrounding the transportation of oil from the tar sands. Philippe Le Billon (2001) makes a clear observation; “the business of resource extraction has thus one specific characteristic: it cannot choose where the resources are” (p. 569). Furthermore, the business of resource transportation also follows this characteristic in that if you cannot choose where the resources are then you cannot choose where the transportation systems begin; the choice therefore lies in choosing the path that it will take and where it will end.

When it comes to natural resources in Canada there has commonly been a historical tension between the regional areas that produce the resource and the region that consumes the resource. This relationship is not unique to the Canadian experience, when exploring environmental history and accounts of the transition to a capitalism-based economy there are discussions of the “core-periphery polarization” (Moore, 2003). This polarization refers to the development of resources in the periphery, farmland and the countryside, in order for consumption in the core, what would be city centres and places of urbanization. While some scholars saw the staples based economy as a transitional stage, Harold Innis the economic historian, believed that natural resource communities would increasingly become economically dependent on the populated centres (Ali, 2009). Furthermore, the precariousness of dependence on natural resources would not allow the economy to mature or develop itself in a permanent

manner (Ali, 2009). While this core-periphery polarization occurs around Canada, more importantly is the spatial separation of resources and consumers within Canada.

Within Canada the major population concentrations are in the Eastern provinces of Ontario and Quebec, while energy sources are located in the less populated Western provinces (Doern & Gattinger, 2003). Especially in terms of oil, the spatial realities of where oil is located dictates how and where oil is transported. In order to understand the impacts on the geographic realities of oil on transportation infrastructure it is important to explore the uneven distribution of the resource across the nation.

In 2012, Canadian production of crude oil, combining conventional and unconventional production (tar sands) was over 3.2 million barrels per day (CAPP, 2013). Of those 3.2 million barrels, only six percent came from Eastern Canada (200,000 bpd) and the remainder was produced in Western Canada, more specifically the province of Alberta (CAPP, 2013). The unequal distribution of oil resources is forecasted to increase with the production of the tar sands, with estimates placing total Canadian oil production at 6.7 million bpd in 2030, with 6.6 million barrels coming out of Alberta, a contribution of over ninety-eight percent of total production (CAPP, 2013).

While the resources are unequally distributed across Canada, another spatial and geographic reality of the country is its geographic size and how it influences transportation systems. For example, the spatial realities involved in the Energy East Pipeline project include its sheer size due to having to traverse across Canada to the Eastern provinces in order to reach coastal waters in New Brunswick and the St. Lawrence River in Quebec. Since the distance between Alberta and New Brunswick is so vast, the Energy East Pipeline will require 4,500km of mainline pipeline (TransCanada, 2014b). The spatial size of the project can be best realized in

comparison to the recently approved Enbridge Northern Gateway Pipeline that will connect Alberta to Northern British Columbia at a distance of 1,177km (Enbridge, 2014).

Proximity to Markets

The implications of the location of the Alberta tar sands are significant in understanding the oil transportation infrastructure. One of the factors that play into the shaping of the transportation systems are where the resources are located in terms of the location to the markets that are looking to purchase the resource. Simply looking at a map of Canada it is clear to see that Alberta is surrounded on either side by two other provinces (British Columbia and Saskatchewan) with its southern border connected to the United States. The geographic placement of the Alberta tar sands, encompassing the Athabasca, Peace River, and Cold Lake, has two major impacts on the proximity to markets. The first is that the continental U.S. has historically been the largest export market for Canadian oil, the second impact is that Alberta itself does not have access to tidewaters in order to directly transport resources across the ocean to other countries.

The United States has long been the destination of Canadian resources, especially energy resources. Due to their proximity, Canadian oil is easily transported continentally into the U.S. making Canada the top foreign supplier of crude oil to the United States (CAPP, 2013). The relationship between Canada and the U.S. in terms of its energy markets has been described as integrated and interdependent since the mid-1980s (Gattinger, 2010). With statements made such as “Canadian energy decisions are almost always simultaneously American decisions” (Doern & Gattinger, 2003, p.23).

However, the relationship with the U.S. concerning its market for oil is changing. With the increased production of U.S. shale oil reserves, the United States is looking for its own

energy security in terms of domestic supply. A recent report issued by the International Energy Agency (IEA) concludes that the U.S. is moving steadily towards energy self-sufficiency, and will be able to meet all of its energy needs from domestic resources by 2035 (International Energy Agency, 2013). Furthermore, U.S. demand for oil imports is expected to decline from fifty percent of total consumption to thirty-five percent within the same time period (Dawson & Bartucci, 2012). Due to the foreseeable future of U.S. declining demand for Canadian oil imports the search for markets beyond the United States has become a focal point of tar sands promoters. In addition to the increased U.S. production there is also a mounting trend to oppose “dirty” Canadian tar sands oil in the U.S. due to its climatic consequences (Gattinger, 2010). Climate change issues have been at the top of the political debate regarding a decision to approve the Keystone XL pipeline in the U.S. with President Obama focusing on curbing carbon emissions³ (Koring, 2014).

If the pace of development in the tar sands is to continue and increase, new markets need to be explored for Canadian exports. China and India are two of the fastest growing economies globally, and as such, their demand for oil is tied to their economic growth (CAPP, 2013) making these markets ideal targets for Canadian exports. Yet while Chinese interest may exist for Canadian tar sands oil, there are mounting frustrations in China regarding the delays in being able to access the oil (Wheeler, 2012). As mentioned previously, Alberta has no direct access to coastal waters, thus market diversification ultimately rests on infrastructure that can transport Alberta tar sands bitumen to one of the Canadian coasts, with the intention of shipping the oil to the growing Asian markets. As stated by Angevine (2013), pipelines to Quebec and New Brunswick (referring to Energy East) “would allow western oil to reach refineries located at tidewater sites, and allow crude oil or refined petroleum products to be exported to PADD I

[U.S. East Coast], Europe, or Asia.” As such, TransCanada’s Energy East project includes the construction of two marine terminals, the Cacouna marine terminal along the St. Lawrence River in Quebec and the New Brunswick Saint John marine terminal on the Bay of Fundy (TransCanada, 2014b). The project also includes delivery points at three existing refineries in Eastern Canada including two refineries in Quebec, one in Montreal (Suncor) and the other in Lévis (Valero) (TransCanada, 2014b). The third refinery is assumed to be Irving Oil’s refinery in New Brunswick since Irving Oil is one of the listed proponents of the project (TransCanada, 2014b); however, there is no direct mention of this refinery in the project description. Based on TransCanada’s description, the assumption is that the crude will be refined at the three Eastern Canada locations and then the value-added products will be transported via tankers from the two marine terminals to world markets, or used to provide resource security to Eastern Canada. However, the refining capacity in Eastern Canada to handle large volumes of western heavy crude oil is questionable, as will be explored in the subsequent section.

Transportation/Distribution of Resources

As previously mentioned there is an unequal distribution of natural resources across Canada, especially in terms of oil. This distribution heavily influences the transportation systems and infrastructure that is used in moving the resource from one place to another. With the concentration of oil in the Alberta tar sands region, it is not surprising that the concentration of transportation infrastructure, especially oil pipelines is also heavily populated within the region as well. Furthermore, another element to consider when discussing the distribution of resources related to the tar sands is the distribution of refining capacity to transform the heavy crude into products that can be used for consumption.

One of the most common ways to transport oil across Canada is by continental oil pipeline. As mentioned previously, a majority of the pipeline systems connect Alberta to the United States, with little pipeline capacity installed to transport oil solely throughout Canada. The question for industry and government quickly becomes, is there enough pipeline capacity to meet demand. A report released by the National Energy Board in 2008 looked to answer this question by reporting on the Canadian pipeline transportation systems and revealed that there was some spare capacity on some pipeline systems, yet the “market’s view is that additional capacity is required to accommodate growing supply and to provide greater market flexibility” (2008). The growing supply is due to an intensification of tar sands development and unchecked expansion that is outpacing the existing infrastructure.

The “market’s view” is based on the apparent pipeline bottleneck that is occurring. The bottleneck has been claimed to forgo \$50 million a day in profits on the Canadian oil that exported to the U.S. (Leach, 2013). According to the oil industry, the bottleneck is said to occur because oil is being transported into landlocked areas (such as Cushing, Oklahoma) with limited capacity to move the oil to the coast, to access tidewaters, where it could be sold at world prices (Spears, 2013). The “glut” in the Midwestern U.S., where a majority of Canadian crude is transported, results in a persistent price differential between prices in Western North America (reflected in the West Texas Intermediate (WTI) index) and international oil prices (reflected in the Brent Crude index) (Hoberg, 2013). Thus, if Canadian oil supplies could be transported to areas with access to tidewater the rationale is that Canadian producers would be able to achieve world prices, thereby maximizing profits.

The Energy East Pipeline is targeted at alleviating the infrastructure bottleneck and transporting western crude east, rather than south into the already saturated United States. In

addition to the pipeline, the Energy East project also includes the construction of two marine terminals. The Cacouna marine terminal will be located along the eastern shore of the St. Lawrence River in Quebec, and the second terminal will be in Saint John, New Brunswick on the western shore of the Bay of Fundy (TransCanada, 2014b). The two marine terminals will facilitate the export of Canadian heavy crude to global energy markets.

In addition to transportation of oil by pipeline, oil is also moved around North America through extensive rail networks. Recently, rail is becoming a more popular transportation option with 13,000 car loads of oil per month in 2013, double the monthly average during the 2000 to 2010 period (Angevine, 2013). One of the reasons why railroads are becoming increasingly relied upon is cited as being a lack of available pipeline capacity and the need for rail infrastructure to contribute to the transportation of oil (Vanderklippe, 2013a). Not only is a lack of capacity increasing rail traffic of oil products, but rail has its own inherent advantages. The advantages of rail include the fact that the railroad network throughout North America is extensive and rail lines already run close to refineries and shipping terminals, new rail infrastructure can be built more quickly than pipelines, and there is less financial risk to shippers due to not requiring long-term contracts (Angevine, 2013). Typically transporting oil by rail is more expensive than shipments made by pipeline; however, the cost differential between rail and pipeline may become less significant as the cost of moving oil on Canadian pipelines increases (Lewis, 2014a). In five years the cost has risen sixty percent (Lewis, 2014a), whereby a barrel of diluted bitumen is transported at a cost of \$7 via pipeline, compared with \$6 to \$8 via rail (Hussain, 2012). The rise in pipeline costs is mostly attributable to system expansions that are becoming more expensive (Lewis, 2014a).

However, transporting oil by rail is accompanied by a whole set of safety and spill risks. The Lac-Mégantic rail disaster from last summer in Quebec still stands out as a reason to cause pause to the expansion of rail transportation of hazardous materials, including oil. The train involved in the Lac-Mégantic disaster was carrying 7.6 million litres (L) of volatile crude oil when it derailed and exploded on July 6, 2013, killing forty-seven people (Cheadle, 2013). The Lac-Mégantic tragedy was the catalyst for a larger critique of the safety of the transportation of hazardous materials via rail. Although according to Winfield (2013) a series of failures on the part of railway operators and the safety regulator, Transport Canada, had been occurring for years and some form of major rail accident was virtually inevitable. The series of failures that culminated in the Lac-Mégantic disaster included Transport Canada failing to respond to the major change in the kinds of traffic moving over the railway network associated with the increased shipment of petroleum products, failure to address well-known issues around the safety of older tank cars being used to carry the bulk of the increased shipments, and general long-term failures to ensure that adequate regulatory controls were in place to make sure that trains carrying dangerous goods were operated safely and parked securely (Winfield, 2013).

In addition to casting light on the regulatory failures of rail transportation, the disaster served to encourage commentators to use the tragedy to advocate for the expedited approval of pipeline projects (Scott, 2013b). However, according to Dayna Scott (2013b) the federal government itself created the conditions under which rail companies could cash in on the pipeline bottlenecks, and instead of using the disaster to promote pipelines she advocates for using the disaster to highlight the need for a national oil-transport plan, one that weighs the risks and benefits associated with different infrastructure choices and routes. So while rail may be a

viable option for oil transportation it too is subject to the same concerns of safety risks and spills that face pipelines, as well as the larger debates around tar sands expansion.

A final aspect to explore in terms of the distribution of resources is the available refining capacity to create the value added goods that are sold on the markets. The Canadian distribution of refining capacity is divided between Western and Eastern Canada with a total capacity of nearly two million bpd of crude oil (CAPP, 2013). In 2012, Canadian refineries processed 897,000 bpd of heavy western crude, while the remaining seventy-two percent of available supplies were exported (CAPP, 2013). The distributional differences lie in the type of crude that is refined. In Western Canada, the eight refineries refine oil that is solely sourced from Western Canada, while in Eastern Canada, western crude accounted for only twenty-nine percent of total refinery demand (CAPP, 2013).

As for the Energy East Pipeline and its intended end points, a recent report published in partnership between the Council of Canadians, Ecology Action Centre, Environmental Defence, and Équiterre suggests that Energy East is destined as an export pipeline; not for domestic refinement as suggested by TransCanada (Council of Canadians et al., 2014). Their analysis reveals that the three refineries along the pipeline path have a combined refining capacity of 672,000 bpd, of that total a projected 550,000 bpd are already available from sources such as United States imports, Eastern Canada offshore supplies, and the newly approved Enbridge Line 9B Reversal and Line 9 Capacity Expansion Project (Council of Canadians et al., 2014). Taking into account the existing supply of crude that is available to these refineries, a mere 122,000 bpd is the remaining capacity of the Eastern refineries, leading to the ultimate conclusion that the remaining 978,000 bpd from the Energy East Pipeline will be available for immediate export in raw form (Council of Canadians et al., 2014). Solidifying the result of the report, a plant manager

from Irving Oil has stated that the capacity of the pipeline is “way more than we would ever use at this refinery, so the bulk of it would all be exported” (Lewis, 2013a). Due to the characteristics of the western heavy crude that is coming out of Alberta more complex refineries are required, refineries that have the ability to process heavy crude oil (Canadian Fuels Association, 2013). This complex refining capacity is not located along the proposed pipeline route. Therefore, it is expected that the heavy crude transported through Energy East will be destined for areas that have heavy crude refining capabilities.

Canada's Location in the Global Economy

It would be misleading to not include a brief discussion of how Canada fits into the larger political economic relationships on a global scale, for these processes play a role in shaping the transportation destination of resources across the country. Glen Norcliffe (2001), in examining how Canada's relations in the global economy have been socially construed, emphasizes that Canada's engagement with the global economy began five centuries ago as a minor element of European imperial strategies. Indeed, the nation still remains highly involved with the global economy today as it was in the past with immigration, trade, and foreign direct investment statistics indicating that few nations have been integrated more profoundly into the global economy than has Canada (Norcliffe, 2001). In the global economy Canada's role, as it was historically, is as an exporter and producer of natural resources demonstrated through being one of the largest exporters of natural resources throughout the twentieth century (Hessing, Howlett & Summerville, 2005).

A large majority of Canadian natural resource exports include energy such as oil; in so much as in 2003 the country had a trade surplus of \$41.3 billion from energy exports alone (Hessing, Howlett & Summerville, 2005). This export mentality has been engrained in Canada's

global relations dating back to 1988 with the Canada-US Free Trade Agreement and subsequent North American Free Trade Agreement (NAFTA) (Gattinger, 2010). While NAFTA has been the most important trade agreement in the past due to the U.S. being Canada's largest trading partner, changes in the global economy may see the rise of other arrangements (Dawson & Bartucci, 2012). Canada is currently negotiating the Trans-Pacific Partnership (TPP) that will provide opportunities to negotiate new market access with Asian countries; in effect providing Canadian energy producers to growing markets for export (Dawson & Bartucci, 2012). With such a heavy reliance on exports, that is projected to continue based on Canada's new trade negotiations, transportation infrastructure geared towards moving energy products out of the country in order to continue to contribute to the export orientation of the nation is paramount. According to environmental groups, Energy East is intended as an export pipeline with most of the pipeline's oil to be exported unrefined to global energy markets (Council of Canadians et al., 2014). Therefore, the Energy East Pipeline, if built, is one such project that will serve to maintain the export-driven resource exploitation model of Canada within the global energy political economy.

B. Normative Factors

Distribution of Risks and Equity

The dominant idea surrounding the distribution of risks and equity is tied up in the larger utilization of interests. As Doern and Toner (1985) point out, ideologies and dominant ideas are "central to the very definition of both the *ends* and the *means* of energy politics" (p.17). In the case of oil transportation the ends include the final destination of the oil and the market price that can be fetched for the product. Meanwhile, the means encompass the route of transportation, the various communities along the path, and the type of transportation infrastructure that is chosen.

Inherent in a transportation system, not a bus or a train that serves customers along the route, but a static entity such as a pipeline is that the infrastructure serves the interests of those at either end of the pipeline, and provides very little benefit for those in the middle. Specifically, a pipeline serves particular oil producers at one end and refineries or distributors at the other end (Makholm, 2012). More often than not, the approval or support for a given project will be based upon the weighing of the risks against the rewards, and justifying whether the benefits exceed the costs. From a political economic perspective it is valuable to assess the distribution of risks and the perceived equity of the relationships between those who benefit, and those who suffer regarding oil transportation decisions.

When examining the Energy East project in terms of the distribution of risks and equity it is vital to identify the various stakeholders and their relation to the project. As such, TransCanada has identified a preliminary list of potential stakeholders in reference to the Energy East Pipeline. This list includes 491 municipalities within the provinces of Alberta (38), Saskatchewan (92), Manitoba (57), Ontario (99), Quebec (174), and New Brunswick (31) (TransCanada, 2014b). In addition to the municipalities, 155 Aboriginal communities and organizations have been identified as being affected by the project (TransCanada, 2014b). The Aboriginal communities are distributed all along the pipeline route: Alberta (12), Saskatchewan (23), Manitoba (19), Ontario (63), Quebec (22), and New Brunswick (16), with communities being located within 0.0 to 320.3km from the Energy East mainline (TransCanada, 2014b). It is these municipalities and communities that are being placed at immediate risk in the event of a pipeline spill, rupture, or leak. Furthermore, there are countless other areas that will also be affected through upstream and downstream effects of the project that TransCanada has not included in its list of stakeholders. According to the National Energy Board, it is the requirement

of the regulated companies to communicate with, and involve the public and Aboriginal peoples, as well as the responsibility of landowners and other affected people or groups to make their concerns known to the company as early as possible and stay involved in the company's consultation process (National Energy Board, 2014a). To the extent that individuals and groups are not included in the list of stakeholders or have not self-identified as affected by the project, the Board does not actively engage in its own stakeholder identification process. The fact that TransCanada, the project proponent, identifies who is considered and not considered stakeholders illustrates the imbalance of power and the pursuit of corporate interests.

In order to provide a citizen-centered view of the project, the Council of Canadians has developed a campaign opposing the Energy East Pipeline cleverly named "Our Risk. Their Reward." Their list of the risks surrounding the project is more inclusive of a wide range of environmental and social issues, issues that the company would rather not acknowledge. The identified risks include the risk of pipeline spills, tar sands expansion, reliance on fracked gas imports, disrespecting indigenous rights, energy shortages, climate change pressures, and detracting from investments in green energy, while "their reward" refers to the profits that will be captured from the export pipeline for "Big Oil" (Council of Canadians, 2014a). Overall, the sentiment regarding Energy East is that Eastern Canada is fronting all of the environmental risks for the economic benefit of Alberta oil interests. Not surprisingly, with the Northern Gateway Pipeline project, the Government of British Columbia (B.C.) also expressed concerns regarding the unequal distribution of the risks (BC Newsroom, 2012) and has continued to reaffirm that British Columbia receives a fair share of the fiscal and economic benefits of the project that reflects the level, degree, and nature of the risk borne by the province before it will consider support for the pipeline (BC Newsroom, 2013). According to B.C.'s Minister of Environment, on

behalf of the Liberal B.C. government, the environmental risks to B.C. included one hundred percent of the marine environmental risk and fifty-eight percent of the land environmental risk for a mere seventeen percent of the economic benefits (compared to Alberta's sixty-eight percent share) (BC Newsroom, 2012). The overall perception of the Energy East project, similarly to Northern Gateway, is that the risks and the benefits associated with the pipeline are unequally distributed and only serve a select number of interests.

There are obvious distributional differences in terms of the risk and benefits between the company and the communities along the pipeline route. In addition, there are also political and jurisdictional equity issues amongst the provinces. Obviously, there exists a distributional difference of risks and benefits between Alberta and the other provinces where the pipeline will traverse; however, within the provinces where Energy East travels these questions of equity are further established. The Energy East project includes the conversion of almost 3,000km of the Canadian Mainline from natural gas to oil service (TransCanada, 2014b). The conversion sections are located through the provinces of Saskatchewan, Manitoba, and Ontario (TransCanada, 2014b) while the new pipeline segments will be across Quebec and New Brunswick. According to a study by the National Petroleum Council for the U.S. Department of Energy, "pipelines operating outside of their design parameters such as those carrying commodities for which they were not initially designed, or high flow pipelines, are at the greatest risk of integrity issues in the future due to the nature of their operation" (Oil Infrastructure Subgroup, 2011). Thus, the provinces along the route that are subject to the conversion stand at a higher risk of spill incidents than the provinces where the new pipeline segments will be built. Furthermore, the refineries and marine terminals that are part of the project and have the potential to generate economic benefits are all located in Quebec and New Brunswick. Therefore

it appears that if any provinces are to benefit from the project it will be Quebec and New Brunswick, while Ontario, Manitoba, and Saskatchewan all bear a disproportionate burden of the risks while seeing little benefit.

The Duty to Consult

The duty to consult is a legal doctrine generally used in reference to Aboriginal rights, but for the purpose of this analysis, this paper will explore the duty to consult more generally in terms of public consultation and the opportunities to participate in decision-making processes. The duty to consult is a complex idea that encompasses aspects of other ideologies such as the distribution of risks and equity and ideas of responsible and representative government. The duty to consult also creates a mixture of relationships between various interests such as the public and government, the public and industry, industry and the government, as well as government and government. For the purpose of this section of the analysis the structure of consultation will focus on public participation, placing Aboriginal consultation to the side for a moment. When discussing ideas of consultation the most prominent issue is that there is a wide degree in variance as to what is intended to be consultation; furthermore, what is considered adequate, or meaningful, consultation.

The first relationship of consultation involves the public and government, generally in terms of a formal consultation processes. With the Energy East Pipeline project the National Energy Board will be the government body that will be responsible for the review process. Although TransCanada has submitted no official application, the NEB has already released its list of issues that it will consider regarding the project (National Energy Board, 2014b) as well as holding open houses to help anyone wanting to become part of the review (CBC News, 2014a). The NEB states that the list of issues “keeps everyone focused on the issues that are relevant to

the Board's assessment" (National Energy Board, 2014c); however, according to the Council of Canadians, deciding the issues in advance of the actual application is an act of bad faith (Council of Canadians, 2014d). It is important to note that due to recent legislative changes the formal review process has severely limited public participation in the process, while simultaneously creating a regulatory environment suited to the interests of industry. The *Jobs, Growth and Long-Term Prosperity Act*, commonly referred to as Bill C-38, is responsible for modifying public participation rules such that in order to participate, people will have to prove they will be directly affected or have relevant information or expertise, thereby excluding participants seeking to bring in "upstream" or "downstream" impacts of pipeline development (Scott, 2013a). Therefore, a citizen with a general concern related to a project is not able to participate in the formal decision-making process. Furthermore, the new legislation encompassed in the *National Energy Board Act*, s.52(4), benefits companies by expediting the decision-making process and placing time limits, such as fifteen months for the NEB to review pipeline projects, such that the review and public involvement do not slow down or in any way hinder industry progress and revenue streams.

In addition to the formal review process that will occur after the application is submitted, the Government of Ontario has engaged in its own consultation process to determine the province's standpoint on the project. Ontario's Minister of Energy asked the Ontario Energy Board (OEB) to examine and report on the Energy East Pipeline from an Ontario perspective considering four areas of potential impact: the impacts on natural gas consumers, the impacts on pipeline safety and the environment, the impacts on Aboriginal communities, and the short and long-term economic impacts of the project in Ontario (Ontario Energy Board, 2014a). According to environmental groups the hope is that the Ontario government will be able to address citizen

concerns in a more meaningful way than the NEB, since the process is much more inclusive to the broad range of concerns the public has (Leahy, 2014) as well as having the potential to make a political statement by standing up for Ontarians interests (Harden-Donahue, 2014).

Industry and the public have their own set of relationships when it comes to consultation. In contrast to the mandatory consultation that has to occur between the public and the government, industry does not have a legally mandated duty to engage in consultation. However, due to mounting opposition from public citizen groups and Aboriginal communities, companies have begun to recognize the importance of early consultation processes in order to try to harness support for their projects. As such, TransCanada began its stakeholder engagement program in the second quarter of 2013, conducting sixty-one open houses along the proposed route (TransCanada, 2014b) although the company has yet to officially file its project application with the National Energy Board. In discussing the engagement program, the company reveals that the purpose of the consultation is to provide clear, relevant, and timely information about the project; identify concerns of community leaders; answer questions; and ensure NEB engagement requirements are met (TransCanada, 2014b). Based on the perceived purpose of consultation, it is clear that the company has conceived consultation as a one-sided sharing of information lacking any real collaboration or public influence.

Responsible and Representative Government

Doern and Toner (1985) state “cabinet-parliamentary government demands both responsible and representative government simultaneously” (p.16). These two aspects, representative and responsible government, are two highly held ideologies that are expected of the various governments within Canada. Responsible government refers to the ability of government and the political executive to be responsible to the people, generally through the

confidence of the elected legislature (Dyck, 2006). Representative government, on the other hand, refers to a form of government including an assembly elected by the citizens (Dyck, 2006). The overall concepts of the two ideologies is that the government, regardless of what level: federal, provincial, or municipal, is in place to respond to the people that it represents. The intersection of these ideas of the role of government with oil transportation decision-making has shifted from a process that occurred predominately between industry and government to one in which the public has become apprehensive about the government fulfilling its duties to the citizens, and as such increasingly demands a larger input.

When examining oil transportation it becomes necessary to look at the broader development of natural resources. The decision to extract natural resources, from the tar sands, directly impacts the need for oil transportation infrastructure and the pace of development. The current federal approach is based on “Responsible Resource Development,” an initiative by the federal government under Canada’s Economic Action Plan. This initiative is meant to “maximize that value that Canada draws from [its] natural resources” through four key themes: making the review process for major projects more predictable and timely; reducing duplication in the review process; strengthening environmental protection; and enhancing consultations with Aboriginal peoples (Government of Canada, 2014). An important aspect of this initiative and larger strategy has been the *Jobs, Growth and Long-Term Prosperity Act* more commonly referred to as the omnibus budget bill, Bill C-38. Bill C-38 represents a degradation of environmental protection including changes made to the *Canadian Environmental Assessment Act* which now allows for multiple projects to be exempt from environmental review, the *Fisheries Act* removed habitat protection provisions, endangered species no longer garner the same level of protection with amendments to the *Species at Risk Act*, and the National Round

Table on the Environment and Economy has recently been disassembled (Boyd, 2012). The reason for the discussion of the omnibus Bill C-38 is to highlight the lack of democratic process in these policy changes that will impact larger decisions, including oil transportation. Since the changes were part of the budget bill, elected members of Parliament were unable to vote on specific matters, thus having to vote in favour of the entire bill or trigger a loss of confidence in the political executive, followed by an election. In addition, the omnibus bill deprived the parliamentary committee, made up of elected Members of Parliament, of its intended purpose of providing committee hearings and debates, for it was nearly impossible for the committee to properly examine and provide expertise on all of the elements of the bill within the given timeframe (Coyne, 2012).

Not only did Bill C-38 revoke much of the progress on environmental protection, but a main feature of “Responsible Resource Development” focuses on streamlining projects through regulatory processes without allowing for meaningful public discussion and debate to occur. Furthermore, opposition to new transportation infrastructure centers on spill risk, but also on the larger issue of the expansion of the tar sands. The number of protests to these new projects, the Line 9 rallies in Toronto (Bonnar, 2013) and the vote against the Northern Gateway Pipeline in a Kitimat plebiscite (Rowland, 2014), indicate the inadequacy of Canadian governments to act in accordance to the people it is supposed to represent. Canadians are asking government to pause and open the door to discussions on resource development, yet these discussions are being suppressed from formal venues and are left to occur in the streets. As suggested by Dayna Scott, ““responsible” resource development policy would include deliberation on a national plan to move the resources” and “would moderate the pace of development in the [tar] sands until the government puts a reasonable oil infrastructure strategy in place” (Scott, 2013b).

The public dissatisfaction with the way the federal government, behind the leadership of Prime Minister Stephen Harper, is advancing the oil sector reveals a changing dynamic in how oil transportation is addressed. The public has increasingly become aware of how oil is transported, and as such is asking to become involved in these decisions. However, rather than allowing and promoting public involvement, the government has done the opposite by restricting who can participate in decision-making processes. Instead of any concerned citizen or organization becoming involved in environmental decision-making, participation has been restricted as a result of Bill C-38 and changes to the *National Energy Board Act*, s.55(2) people will have to prove they will be directly affected or have relevant information or expertise related to the project. As well, joint review panels have been eliminated; as a result, the environmental implications of major energy projects will be evaluated only by the energy regulator (Ecojustice, 2012). As such, those interested in participating in the NEB process with regards to Energy East are already expressing frustrations with the procedure (CBC News, 2014a). These limitations on public participation serve to reflect upon the distancing of government from its role as representative and responsible to the people.

National Interests

Probably one of the most contested ideologies that exist in Canada's current political economic landscape is that of the "national interest." The core idea of the national interest is that the decision at hand, or the chosen path, is selected based upon the belief that it will benefit the nation as a whole. The reason for its contestation is that there are multiple ideas about what constitutes the national interests based on individual perceptions and collective interests. For instance, there are two polar opinions on the development and expansion of the Alberta tar sands. One opinion is that developing the tar sands is in the national interest, as it can provide a source

of economic benefits and growth. On the other hand, the opposing view is that putting a stop to tar sands development based on the urgency to reduce the negative climatic and environmental implications of its operations and its effects on climate change is in the national interest. It is thus the existence of these competing views of the national interest, and who is promoting their vision of national interest that come to shape and justifies certain decisions.

The national interest has played an important role in natural resource decision-making by governmental bodies. The Royal Commission on Energy, known as the Borden Commission, during the Diefenbaker government, which coincidentally was responsible for deciding on the Alberta to Montreal Pipeline (the Commission rejected the pipeline), saw their responsibility not only as recommending policies that would serve the national interest, but as in fact defining the national interest (Doern & Toner, 1985). Furthermore, in reference to the Commission an observer noted that “the key question here is: whose interests were eventually to be taken by the commission to constitute the national interest?” (Doern & Toner, 1985, p.76). Arguably, little has changed in terms of how the national interest is defined from the decision in the late fifties to reject the Alberta to Montreal Pipeline during the Diefenbaker era to the future decision regarding the new proposal of an Alberta to New Brunswick pipeline, Energy East.

When discussing national interests and oil infrastructure in Canada one cannot complete an analysis without looking into the role the National Energy Board (NEB) plays as a regulatory body. The NEB was established in 1959 and has been concerned with public interest regulation of interprovincial pipelines and also the level of exports and imports of oil in gas in the national interest (Doern & Gattinger, 2003). According to the amended *National Energy Board Act*, s. 12(1), the Board has jurisdiction “where it appears to the Board that the circumstances may require the Board, in the public interest, to make any order or give any direction, leave, sanction

or approval that by law it is authorized to make or give.” However, critics argue that the “public interest” clause should be called into challenge in light of the recent approval of the Line 9 Pipeline amidst public protests calling the approval invalid because the NEB failed in its mandate to protect the public interest (Flegg, 2014).

In terms of Energy East, TransCanada has employed various strategies in attempts to frame the project as being in Canada’s national interest and garner more support for the pipeline. One tactic the company has used is the comparison of the Energy East Pipeline with historical nation-building ventures such as the Canadian Pacific Railway or the Trans-Canada Highway, in efforts to entice Canadians’ sense of patriotism in order to garner support for the project (Krugel, 2013a). At a news conference, TransCanada CEO Russ Girling, when speaking about the pipeline, furthered the national interest rhetoric by stating that he has a “strong belief that building critical infrastructure ties our country together, making us stronger and more in control of our own destiny” (Krugel, 2013a). New Brunswick Premier David Alward is also in support of the pipeline for national reasons stating, “this pipeline will be as important to our nation’s economic future as the railway was to our past” (Alward, 2013). The project from this standpoint will create economic opportunities, including jobs and market diversification for increased exports while also increasing energy security. Much energy has been devoted to building up a case around the “national interest” of the Energy East pipeline. Not surprisingly, those whose idea of national interest is supported by the pipeline are those related to industry and government.

However, just as there are those who are in support of Energy East there coexists another perception of the national interest that opposes the project. The opposition stems from the view that constricting, rather than expanding the tar sands is in the national interest. Energy East

would represent a one-third increase in the capacity of the pipeline systems (Demerse & Flanagan, 2014) and with expected tar sands development set to increase Energy East would serve as an important piece of transportation infrastructure. Energy East also has a direct relationship with the tar sands in terms of its upstream emissions. A report released by the Pembina Institute calculates that the Energy East Pipeline upstream greenhouse gas (GHG) emissions will total between thirty and thirty-two million tonnes of annual emissions (Demerse & Flanagan, 2014). Furthermore, the economic benefits that are said to stem from refining western crude in Eastern Canada have been called into question. Canadian refineries along the pipeline route, as mentioned previously, do not have enough refining capacity to meet the needs of the pipeline, leading to the conclusion that a majority of the oil transported through the pipeline will bypass Canadian companies and be available for marine export (Council of Canadians et al., 2014). Therefore, depending on how the national interest is perceived, the argument for or against the Energy East Pipeline will differ. Identifying which actors' conception of the national interest is promoted reveals a lot about the political economy of Canada concerning oil transportation and the future of the tar sands.

Sustainable Development

Sustainable development is an ideology that has been made popular by the United Nations Report of the World Commission on Environment and Development (WCED) titled *Our Common Future*, more commonly referred to as the Brundtland Commission or Brundtland Report. The main concept of sustainable development “is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987). The notion of sustainable development is conceptualized as a driving ideology of development paths, in so much as nations should be basing decisions on sustainability criteria

and choosing activities that are in line with the idea of sustainable development. Similarly to the ideology of national interest, there are many and wide ranging interpretations of what sustainable development looks like in practice and how to achieve sustainable development. From a political economic standpoint, evaluating oil transportation from a sustainable development lens requires an examination into who benefits and who is left disadvantaged by abiding by, or disregarding, sustainable practices.

There is much to be analyzed in terms of sustainable development of oil transportation systems, and the larger context of tar sands development in Canada. Robert Gibson has developed a sustainability assessment evaluative tool that employs eight core generic criteria that can be applied to decisions or policy. The criteria include: socio-ecological system integrity; livelihood sufficiency and opportunity; intragenerational equity; intergenerational equity; resource maintenance and efficiency; socio-ecological civility and democratic governance; precaution and adaptation; and immediate and long-term integration (Gibson, 2006). While the current analysis cannot go into detail analyzing each criterion regarding oil transportation in Canada, the criteria are helpful in framing the overall ideology of sustainable development and exploring the competing interests and power relations inherent in the criteria. For the purpose of the current analysis, two aspects of oil transportation and the tar sands will be explored in terms of sustainability, expansion of the tar sands and air quality standards.

As mentioned previously, any discussion of oil transportation must take into account where the oil is coming from and why the transportation infrastructure is required. In Canada, the scheduled expansion of tar sands development and exploitation (6.7 million barrels per day by 2030) rests on the assumption that transportation capacity can grow in order to accommodate the increase in supply (CAPP, 2013). Alternatively, new transportation infrastructure, once in place,

requires expansion in the tar sands to justify the sunk costs (Scott, 2014a). From a sustainable development perspective, the Brundtland Report in discussing fossil fuels states, “the rate of depletion should take into account the criticality of that resource, the availability of technologies [for] minimizing depletion, and the likelihood of substitutes being available” (WCED, 1987). Furthermore, after assessing the world’s remaining recoverable reserves, the report concludes with, “the world should immediately embark on a vigorous oil conservation policy” (WCED, 1987). Indeed, the trend in terms of the Alberta tar sands has been the opposite of conservation. Since the release of the Brundtland Report development in the tar sands region has continued to grow, in 2012 production increased to over 3.2 million barrels per day, with production forecasted to reach 6.7 million bpd by 2030 (CAPP, 2013).

One of the main implications of continued and accelerated tar sands expansion are the dire climatic consequences, especially air quality standards. Greenhouse gas (GHG) emissions from the tar sands are especially troublesome with emissions having tripled from seventeen megatonnes (Mt) in 1990 to fifty-five Mt in 2011, with absolute emissions from the tar sands projected to be 127 Mt by 2030, a 250 percent increase from present levels (Environmental Defence, 2014). Oil transportation infrastructure contributes to the associated air pollution by providing an outlet for the product and encouraging further development. Furthermore, a report by the Pembina Institute calculated the upstream emissions of the Energy East Pipeline and concluded that the pipeline will carry an upstream GHG impact of between thirty and thirty-two million tonnes of annual emissions, the equivalent of adding seven million cars to the road (Demerse & Flanagan, 2014).

Based on the ideology of sustainable development, the total emissions from tar sands operations and the expansion of the tar sands should be limited to within standards that work

towards achieving sustainability. With respect to emissions, the federal government announced in 2011 that it would begin working on GHG emission regulations for the oil and gas sector with regulations finished by the end of 2012; however, as of yet no regulations have been established (Paris, 2013a). Alberta has been working to develop provincial regulations surrounding GHG emissions from the industry with a proposed 40/40 target, a plan that would demand industry to reduce greenhouse gases by forty percent per barrel and charge \$40 per tonne of carbon dioxide (CO²) above that level (Paris, 2013b).

However, while GHG emission regulations are warranted under sustainable development ideas, there are very strong interests stemming from industry that oppose regulation. Internal documents retrieved from an Alberta Freedom of Information request show that industry is resisting even the weakest of the proposed regulations (Environmental Defence, 2014) and is encouraging a further delay of putting the regulations into effect (Paris, 2013b). Industry is promoting a twenty percent intensity reduction of emissions and \$20 per tonne of CO², half of the proposed regulations of the provincial government (Paris, 2014b). The delays from the federal government in establishing any regulatory framework at all also hints at maintaining the status quo in which industry is favoured over citizens and does not consider the implications on future generations. Therefore, it can be concluded that an ideology of sustainable development is one that is not promoted by those actors who benefit from the oil industry, whether it be direct tar sands investment, or transportation of the resource.

Market Liberalism

The term liberalism, when used in a political sense, is an ideology based on the belief of maximizing individual freedom, liberty, and self-fulfillment (Dyck, 2006). When discussing market liberalism, sometimes also referred to as economic liberalism, the main notion is that the

market is the dominant driver. The role of government in a liberal market is to be minimal and let markets dictate actions. The idea is that the state inhibits individualism and the role of the state should be minimized to allow capitalist market forces to determine the distribution of power and wealth (Dyck, 2006). These market forces generally refer to simple supply and demand curves. The degree to which the state employs the ideology of market liberalism has implications on the structure of power and how interests are pursued. Within a market-based policy model, private capital rather than Canadian governments are seen to be the most influential in determining the nature, location, scale, and pace of energy resources development (Winfield, 2012b). Increasingly in Canada, market processes direct the oil sector with oil transportation infrastructure also serving these larger market forces. As such, two influential market forces are at play regarding the Energy East project, changing market dynamics in terms of demand and supply, and secondly crude oil pricing.

In terms of market dynamics, as mentioned previously, the relationship with the United States regarding oil imports is changing. The U.S. demand for Canadian crude products has stagnated (Hoberg, 2013) and yet the existing oil transportation infrastructure heavily relies upon serving this declining market. Not only is there pressure from industry to diversify the market, but the market itself is changing. The potential growth of crude production from the tar sands exceeds the demand growth of the entire North American market, while demand in the Asia-Pacific countries has become the fastest growing worldwide (CAPP, 2013). According to market principles, you sell product to where the demand is; in this case China, India, Japan, and Korea become desirable targets. Thus the desire of industry is to create transportation links between Canada and Asia. The Energy East project serves to make this link possible by connecting the

Alberta tar sands with the Atlantic coast via New Brunswick where oil tankers can transport the crude across the ocean to meet the growing Asian demand.

The second market principle at play with the Energy East Pipeline is associated with the pricing of Canadian bitumen compared to other sources of crude. Due to the competition of both Canadian sources of oil and U.S. crude sources being sold in the U.S. midcontinent region Canadian oil is being sold at a discounted price (Angevine, 2013). Due to the price discounting, calculations suggests that producers are losing out on \$50 million a day in profits on the Canadian oil that exported (Leach, 2013). The loss in profit due to selling Canadian crude into a saturated market explains the pressure by industry to secure access to tidewaters. The rationale for reaching tidewaters is that in addition to serving markets with higher demands for product, Canadian crude would be able to fetch a higher price, closer to world prices. Although it is important to remember that heavier crude, such as Alberta bitumen, generally fetches lower prices than lighter crude due to the additional processing that is required during refinement (Angevine, 2013). As with accessing Asian markets to meet demand, in order to receive a higher price on Canadian oil, transportation infrastructure needs to be available to service these markets.

The push for oil pipelines to access tidewaters, such as the Northern Gateway Pipeline and the Energy East Pipeline, illustrate the adherence to a liberal market ideology. One such strategy that was attempted in Canada that was not market driven and impacted the oil industry was the Trudeau government's 1980 National Energy Program (NEP). The NEP was intended to change the structure of power between the federal and provincial governments, as well as the power between the federal government and the oil industry (Doern & Toner, 1985). The goals of the NEP were for Canada to seize control of their own energy future through energy security, to offer Canadians the opportunity to participate in the energy industry, and to share in the benefits

of industry expansion recognizing the requirement of fairness (Doern & Toner, 1985). It is clear that these three objectives were not market-based in principle and illustrate the ideological shift since the 1980's to market liberalism in the oil industry. Furthermore, if the Energy East project were designed with Trudeau's ideological view on the power relations between the government and industry it can be expected that the pipeline would serve to promote Canadian energy security, public participation opportunities would be expanded, and the benefits would be shared equitably across Canada rather than benefiting the interest of those who focus on market principles and are directly associated with the profits of oil exports.

C. Institutional Factors

Cabinet-parliamentary Government

Various institutional factors, cabinet-parliamentary government, federalism, and Aboriginal rights, provide the structural basis of power for the key interests involved with oil transportation in Canada. The reason the various interests involved with oil transportation have the capacity to exercise power is the existence of these institutional factors (Doern & Toner, 1985). In terms of cabinet-parliamentary government the basis of power resides predominately in the executive branch of government. The executive is comprised of the Governor General, the Prime Minister, and Cabinet that are advised by the bureaucracy (Dyck, 2006). The reasoning behind concentrated power in the executive is that it facilitates government action, as opposed to the presidential-congressional system of the United States that can tend to inhibit government action (Dyck, 2006). In a cabinet-parliamentary system, the executive branch of government is provided with a large degree of autonomy, ensuring that the interests of the executive become law (Hessing & Howlett, 1997). While a concentration of power in the executive does promote government action, the exercise of power also needs to be kept in check. Too much power in the

executive level of government takes away from the role of Parliament and the elected representation that is meant to respond to the citizens of Canada in a democratic way.

Canada's current Prime Minister, Stephen Harper, enjoys a majority government that was elected into power in 2011. Under a majority government, Parliament may criticize or propose amendments to legislation; however, a majority of the Members of Parliament (MPs) belong to the same party as the Prime Minister and rigid party discipline can ensure that the actions of the Prime Minister are supported (Dyck, 2006). Therefore, the opposition parties may initiate conversations and debates surrounding issues, yet with a lack of voting power in Parliament there is little room for opposition to force meaningful changes to proposed legislation. Relative to Members of Parliament (even those belonging to the governing party), increasingly the power of the Cabinet, especially in the Prime Minister's Office (PMO) is being concentrated (Howlett & Brownsey, 2008; Ibbitson, 2013). The increased concentration of power allows the Cabinet and Prime Minister to enact legislation that directly favours their interests with little or no opposition. The use of this power has been wielded and its impacts are quite evident when examining new legislation geared towards oil transportation and natural resource development in general (De Souza, 2012). In the case of oil transportation, there has been a trend in the current federal government's approach towards weakening environmental regulations in order to have new transportation infrastructure projects approved (Suzuki, 2014a). This is done in the name of "streamlining" the regulatory process and demonstrates a clear intention of the wishes of the Harper government to accommodate energy development (Harris, 2014).

One of the most illustrative examples of the changes to legislation to promote oil transportation infrastructure has been the *Jobs, Growth and Long-Term Prosperity Act*, (S.C. 2012, c. 19), otherwise titled the omnibus Bill C-38. While reference has been made to Bill

C-38 in previous sections, it is important to highlight the implications of the legislation, especially in terms of executive power, and its effects on shaping the oil transportation systems in Canada. The *Jobs, Growth and Long-Term Prosperity Act*, while actually a budget bill, served to place more power into the hands of the executive regarding energy and resource matters by including a host of non-budget related amendments. The first major change under Bill C-38 was the politicization of the amended *Canadian Environmental Assessment Act*, s.14(2); the changes make it such that instead of projects automatically requiring an environmental assessment, the Minister of the Environment is responsible for designating a project for assessment. Since the Minister chooses whether or not a project requires an environmental assessment the process has become a political decision that will no doubt be subject to heavy industrial lobbying and influence (David Suzuki Foundation, 2012). It is speculated that only a handful of projects will be designated for an environmental assessment, a major benefit to industry that will have one less regulatory hurdle to maneuver and less environmental constraints to appease.

Furthermore, as stipulated in the amended *Canadian Environmental Assessment Act*, s.42 (9) and s.50, in the event that an environmental assessment is to be conducted, strict time limits will be enforced and the Minister of the Environment now has the power to terminate the process and reassign an assessment from an independent panel to an in-house assessment conducted by the Canadian Environmental Assessment Agency if he or she suspects the assessment will not be completed on time. Moving projects in-house for assessment will only add to the ability of politics to intrude in what is to be a non-partisan process. In addition to the imposed time limits and politicized designation process, if an environmental assessment is completed for a given project the Cabinet has the last say and can overrule decisions according to the *Canadian Environmental Assessment Act*, s.52. The ability to overrule decisions reduces the credibility of

the process and makes the procedure meaningless, reducing a once positive step in mediating environmental and economic goals to a mere smoke screen. Along these lines, Cabinet has also been granted power over pipeline decisions being able to decide to reject or approve a pipeline application; furthermore, Cabinet has also been granted authority to reverse decisions made by the NEB under revisions made to the *National Energy Board Act*, s.52(4). The new revisions have ultimately placed the future of oil transportation into the hands of Cabinet, a collection of politicians hand-picked by the Prime Minister himself. Moreover, these legislative changes hidden as part of Bill C-38 do not even begin to address the countless environmental amendments that make energy projects such as new oil transportation infrastructure possible, but rather reflect the intensification of power in the Cabinet and a distancing from the parliamentary aspect of government, resulting in oil transportation decision being made in the absence of political debate.

While the cabinet-parliamentary government structure of Canada does enable government action, the concentration and intensification of power in the executive is damaging to democracy and leads to a monopolization of decision-making power. Michael Ignatieff, the former federal Liberal party leader, has remarked “the [P]rime [M]inister’s capacity to dictate House business, put together omnibus bills and ram them through, while imposing party discipline, has concentrated executive power at the expense of the legislature” (Ibbitson, 2013). The implication for oil transportation projects, such as Energy East, is that under the new *National Energy Board Act* the veto point that previously could be employed by the NEB in terms of the regulatory body rejecting a project has been completely eliminated, such that the Harper government has concentrated the approval process of pipelines under its direct control and made the NEB’s decision a mere recommendation (Hoberg, 2013). With Prime Minister

Harper and previous Minister of Natural Resources Joe Oliver actively promoting the project (Hoberg, 2013) it will come as no surprise if the Cabinet utilizes their executive power to ensure that the Energy East Pipeline is approved. Therefore, the power and interests at the executive level of the federal government have already played an influential role in clearing the path for new oil pipeline projects and its continued support for such projects will only ensure that the tar sands sector is able to expand as scheduled.

Federalism

Federalism is a system of government characterized by two levels of authority and a division of power between the two levels, such that neither level is subordinate to the other (Dyck, 2006). In Canada these two levels of authority are divided between the federal government and the provincial governments with the division of responsibilities dictated by the *Constitution Act, 1867*. However, “the environment” was never explicitly mentioned in the division of responsibilities in sections 91 and 92; therefore, no level of government has direct power over the environment. This in turn creates a patchwork response for the environment, where the provinces cover different aspects of the environment while others fall into federal hands (Hessing, Howlett, & Summerville, 2005). The patchwork approach of environmental responsibilities also branches into energy matters where there is a constitutional division of powers between the provinces and the federal government, yet at the same time there are controversial areas of overlapping and unclear jurisdiction (Doern & Toner, 1985). In terms of oil transportation, the relevant responsibilities of provincial jurisdiction include resource exploration, development, and management within provincial borders; regulation and legislative framework as it pertains to energy supply; intraprovincial movement of energy and goods; property and civil rights; and environmental issues associated with land use planning (Dawson &

Bartucci, 2012). The relevant federal jurisdiction for energy and environmental matters include trans-boundary environmental impacts; interprovincial and international movement of energy and energy goods; and policies in the national interest (including economic development and energy security) (Dawson & Bartucci, 2012). The divided jurisdictional responsibilities creates a unique institutional experience when oil transportation infrastructure transcends provincial boundaries thereby making the project a matter of federal concern, yet having immense impact on the associated provinces. In terms of federalism and oil transportation, an examination of the varying interests of the provinces and federal government, as well as how their interests are pursued is required. In addition, examining the power struggles between the provinces provides valuable insight into competing interests across Canada and how these diverse interests are reconciled.

Doern and Gattinger (2003) note “divided jurisdiction means that energy policy-making is always a process of federal-provincial bargaining” (p.24). The issue becomes even more complicated when transportation of energy is added into the equation. Due to the aforementioned spatial and geographic realities, when oil is the energy source, transportation more often than not involves traversing provincial or national borders. Once transportation crosses any boundary the jurisdictional responsibility becomes that of the federal government due to the division of roles set out in the constitution. With the Energy East project traversing multiple provincial borders from Alberta across Canada to New Brunswick there is no question that the federal government has the jurisdictional authority over the project and will exercise such authority through the National Energy Board. Furthermore, the project entails a level of trade, shipping crude from the two new marine terminals to international markets, again a responsibility of the federal

government. Yet while the federal government has a large degree of authority over the pipeline project there are several provincial factors at play that influence the project.

While the project falls under federal jurisdiction, provinces still retain authority over provincial lands and resources meaning that while the project itself will be decided at the federal level, a significant number of provincial approvals will also be required if the project is to go ahead (Hoberg, 2013). This has been made clear in the way that Premier Clark of British Columbia has added five separate provincial conditions that Enbridge must meet before the provincial government will approve the Northern Gateway Pipeline (Hunter, 2014). TransCanada itself has highlighted some of the various authorizations under provincial legislation that may be necessary for the construction and operation of the project (TransCanada, 2014b). Each province has its own legislation pertaining to issues such as wildlife, water, heritage sites, forests, highways, and provincial resources. For example, the relevant Ontario legislation that may be affected by Energy East includes the *Conservation Authority Act*, *Ontario Water Resources Act*, *Ontario Endangered Species Act*, *Fish and Wildlife Conservation Act*, *Public Lands Act*, *Ontario Heritage Act*, *Highway Traffic Act*, and *Public Transportation and Highway Improvement Act* (TransCanada, 2014b). Although provincial approvals are warranted under certain provincial legislation, it is unclear or not whether a “defiant province could thwart a federally approved pipeline” (Hoberg, 2013). Hence one of the incongruences with federalism is that each level of government is designed such that one is not subordinate to the other, yet in the face of a conflict of interest between the two levels one will predominate. Due to the federal power of authority over policies in the national interest, as discussed previously, the expansive level of interpretation as to what constitutes the national interest means that this power can be manipulated to defend a decision that may face provincial dissent. Nonetheless, one strategy for

provinces to combat federal power is to present a clear statement of opposition to the project which would carry significant political weight and have the effect of creating a “potential” veto point (Hoberg, 2013).

A recent example of how the various aspects of federalism interact with oil transportation projects and the jurisdiction of the federal and provincial governments has been evidenced in Quebec. The jurisdictional area of contestation is Cacouna, Quebec, and the site of one of the proposed marine terminals for the Energy East project. To begin with, TransCanada received permits from the federal Department of Fisheries and Oceans to conduct seismic activity in April and drilling later in the spring to assess the nature of the seabed for the purposes of future construction (McCarthy, 2014a). Although the company has been granted federal approval marine scientists have raised concerns that the Energy East Pipeline project will threaten falling beluga whale populations in the St. Lawrence River due to seismic activity and other planned work occurring in areas and during times when belugas are suspected to calve (McCarthy, 2014a). While the federal government had granted approval it was unclear if the company had received provincial consent for these activities. As a result, four environmental groups along with a Cacouna citizen filed an injunction request in the Quebec Superior Court asking for a ten day halt in drilling activities while the groups tried to ascertain whether TransCanada had obtained federal and provincial permits for the exploratory drilling (Scott, 2014). It was revealed in court that the company had not received a provincial permit, and had only applied for one regarding drilling after the injunction was submitted (Scott, 2014). The result of the injunction has been an out-of-court settlement in which TransCanada has agreed to hold off on exploratory drilling until the time that it receives a provincial permit (Scott, 2014). The success of the injunction illustrates one aspect of how provincial legislation may interfere with industry

interests even in the face of federal approval, demonstrating the complexities of federalism in relation to energy projects.

Aboriginal Rights

The final institutional factor that influences the power dynamics of oil transportation in Canada, especially in reference to the shipment of Alberta tar sands crude is the Aboriginal peoples of Canada and their rights. There are two core institutional rights that protect the land, and activities on the land with regards to Aboriginal use. The first right is treaty rights which are Aboriginal rights based on treaties signed with the Crown (Dyck, 2006). The second set of rights, Aboriginal title, is not as straightforward as treaty rights yet have been upheld by the Canadian courts and refers to a claim to land on the basis of traditional occupancy and use rather than a treaty (Dyck, 2006). As with the environment and energy, the jurisdiction regarding Aboriginal peoples is also split between the federal and provincial governments. The federal government is responsible for Aboriginal peoples and reserves, yet the provinces have authority over public lands to the extent that land claims and settlements are often complicated and unsettled due to the divided jurisdictional responsibility (Dyck, 2006).

When it comes to oil transportation, the rights of Aboriginal peoples play a very important role, especially when the infrastructure crosses traditional lands and territories. In addition to the federal government having responsibility over Aboriginal peoples, the Crown also has an obligation to consult and accommodate First Nations when projects, such as oil transportation infrastructure, could affect Aboriginal rights and title (Hoberg, 2013). As stated previously, since many title claims have yet to be resolved there is the potential for a great deal of conflict when projects traverse lands where title claims are being disputed. Furthermore, there are structural barriers to achieving meaningful consultation with Aboriginal groups due to a lack

of capacity to participate, unsettled land claims, and a lack of a clear protocol on the consultation process (Dawson & Bartucci, 2012).

Institutionally, Aboriginal rights can provide very effective obstacles for companies trying to build and operate new oil transportation infrastructure through legal challenges. The Canadian court system has the power to veto a project if it is found that the government did not fulfill its duty to consult and if Aboriginal groups were not effectively accommodated (Hoberg, 2013). Again, there is a wide latitude of interpretation as to what “effectively accommodated” may mean; however, regardless of the court ruling, a legal challenge can severely hinder and stall a project from approval as can direct action, blockages, injunctions, and so forth. In addition to the duty to consult, in a very recent Supreme Court of Canada decision on Aboriginal title, *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, the court recognized the land rights of the Tsilhqot’in Nation (Bradley & Luk, 2014). The decision did not create a new right but recognized the Tsilhqot’in Nation’s existing title meaning that “they have ownership rights similar to any other landowner, such as occupying the land, deciding how the land is used, enjoying the economic benefits of the land, and managing and otherwise using the land” (Bradley & Luk, 2014). In terms of the consequences for resource development projects on lands subject to Aboriginal title, the Crown either requires the consent of the Aboriginal title-holder or must demonstrate “justified infringement” of Aboriginal title (Bradley & Luk, 2014). The result of this court decision in recognizing land rights has the potential to create many hurdles for government and industry wishing to engage in projects on Aboriginal land. Therefore, the power of Aboriginal rights and their interaction with other interests cannot be overlooked and provides a very unique factor in oil transportation across Canada.

As mentioned previously, TransCanada has identified 155 Aboriginal communities and organizations that may be affected by the Energy East Pipeline (TransCanada, 2014b).

TransCanada's Aboriginal engagement program involves identifying Aboriginal communities that might have interest or concern about the project, providing information, working with communities to obtain local and traditional knowledge, obtaining socio-economic information regarding the project, facilitating economic participation, and determining appropriate mitigation strategies (TransCanada, 2014b). TransCanada has controversially hired Phil Fontaine, former chief of the Assembly of First Nations, as a company representative in meetings with the various First Nations groups to inform them of the Energy East project and seek their support (McCarthy, 2014b). However, despite TransCanada's attempt to garner First Nations support for the pipeline opposition is quickly mounting. In the absence of an official application to the NEB groups are already devising strategies to oppose the project. Recently, a meeting of around seventy First Nations leaders met in Winnipeg to plan a strategy aimed at blocking the Energy East Pipeline (McCarthy, 2014b). A quote by Clayton Thomas-Muller, a Manitoba Cree, captures the essence of the opposition, "in this era of the Harper Conservative government, there is dramatic pressure that has been placed on the shoulders of First Nations peoples, with our constitutionally protected rights, to defend Canada's air, water and earth from the agenda of Big Oil" (McCarthy, 2014b).

The power behind Aboriginal rights and interests is integral in discussions of new oil transportation infrastructure in so much as the anticipated approval of the Northern Gateway Pipeline was met by a vow by First Nations leaders to challenge any approval in court and having warned of direct action if legal routes were to fail (McCarthy, 2014b). Court challenges are likely to delay the construction of the pipeline for a year or more (Hoberg, 2013) creating

major frustrations for the pipeline company and oil companies hoping to transport their product. The strong opposition that has been shown in British Columbia against the Northern Gateway Pipeline has largely been a function of the proposed route being through unceded territory (Hoberg, 2013) in contrast to the Energy East Pipeline that will pass through land that is predominately settled. Furthermore, the amount of influence that First Nations can exert over the project will depend on their ability to present a large and united front against the pipeline. As Energy East crosses six provinces there is a large degree of coordination that will be required, and a wide variety of interests that will need to be addressed and mediated. However, First Nations still have other legal remedies available in their arsenal, most notably the duty to consult which if not sufficient can lead to a court challenge against the federal government. Altogether, Aboriginal rights are an institutional element that require mediation by the different levels of government, as well as the company proponent or else can serve as a meaningful obstruction for the project both in terms of time delays and legal challenges.

D. Interests/Societal Factors

Public Opinion

Societal factors were not a part of Doern and Toner's political economic analysis of the National Energy Program, and thus their framework has been criticized for failing to differentiate between the interests of state and non-state actors (Winfield, 2012a). Societal factors, although not a direct aspect of the decision-making power of oil transportation, can play a large role in influencing the actions of the actors who do make the decisions. As a non-state actor, the public oftentimes has very different interests than state actors and even other non-state actors. When discussing "the public" it is valuable to differentiate between the public and other actors within society. First, there are state actors that operate within a circumscribed set of constitutional and

institutional rules, secondly are market-based productive actors run by private capital, the third facet that composes a society is the public, otherwise known as the citizens for which the state actors are responsible to (Hessing & Howlett, 1997). Furthermore, it is important to note that mobilization of the entire public is impossible, yet there will always be a proportion of the public that becomes involved to represent certain interests (Hessing & Howlett, 1997).

The benefit of public opinion is that it ensures a balance of divergent views on different political matters and enhances the inclusion of alternative approaches to an issue (Hessing & Howlett, 1997). As Winfield (2012a) points out, changing levels of societal concern for the environment and shifting conceptions of the appropriate role of government in this regard can be important drivers of environmental policy. Furthermore, government activity on a given issue has been shown to coincide with high levels of public concern or interest, known as the “issue-attention cycle” (Winfield, 2012a). It is this sort of raised concern by the public regarding oil transportation that has placed the issue high on the political agenda across Canada. The public therefore plays a role in framing the debate, but more so ensures that the debate occurs (Hessing & Howlett, 1997). Overall, public opinion surrounding discussions on oil transportation in Canada can place pressure on governments, one way or another, and influence the existing power relationships.

One important characteristic of public opinion is that it is not uniform spatially or temporally. Similar to the varying conceptions of the national interest, public opinion differs based on one’s own or collective ideologies and interests. In terms of oil transportation in general, a series of public opinion polls conducted by Environment Canada, Natural Resources Canada, the petroleum industry, and by the CROP polling company compiled in an internal document called *Public Opinion on Oil* produced by Environment Canada reveal that, on one

hand, Canadians think that pipelines can transport oil safely, while on the other hand people are increasingly wary of the environmental risks of shipping or exporting oil using any kind of infrastructure (McDiarmid, 2014). Furthermore, fifty-one percent of Canadians think developing the tar sands is worth the environmental risk, while forty-nine percent do not, according to an online survey of 2,070 people for the Canadian Association of Petroleum Producers (McDiarmid, 2014). The public opinion polls reflect a Canada that is clearly, yet evenly divided on the development of the tar sands and highlights a need for a larger conversation on the future energy path of Canada. Numbers aside, there is a growing wariness about the ability of the federal government to protect the environment under the Harper government's avid push for responsible resource development, such that public opinion is resulting in public opposition to new oil transporting pipelines regardless of the route. One of the reasons provided for the mounting opposition of pipelines, are not the pipes itself but the increased pressure for climate regulation, with the issue being what is flowing through the pipes (Davison, 2014).

The dramatic increase in public interest around how and what type of crude is being transported across Canada has political and economic impacts. The mounting public pressure was evidenced on the tenth of May of this year when nearly 100 communities across Canada engaged in anti-pipeline protests under the banner "Defend Our Climate, Defend Our Communities" as part of a national day of action on climate change (CBC News, 2014b). This one collective day of action illustrates the national attention and public interest in oil transportation debates, which are seen as the catalyst for future tar sands expansion and the resulting climatic consequences. Thomas Mulcair, leader of Canada's NDP party commented on public opinion and transporting oil saying that "Prime Minister Stephen Harper's efforts to construct energy infrastructure are failing because the ruling Conservatives [have not] built

public support” adding that “if you [do not] have a social license at the same time you are getting the regulatory license, nothing gets built” (Argitis, 2014). The lack of public support for new infrastructure projects continues to stymie industry that is looking to diversify its crude markets as well as creating political battles between, and within, different governments.

Efforts to sway public opinion regarding the transportation of oil as well as the economic benefits of the tar sands have been employed by the federal government, the oil industry, and TransCanada itself. The oil industry has developed television, print, and online advertisement promoting the national economic and social benefits of the tar sands, as well as attempting to battle opposition based on the risk of spills, greenhouse gas emissions, and environmental degradation (Cryderman, 2013a). The advertisements are generally geared to try to sway “the mushy middle” of Canadian public opinion (Cryderman, 2013a); those who have yet to form a concrete opinion on the topic one way or another. Along with the oil industry, the Canadian Energy Pipeline Association (CEPA) spends \$2.5 million annually on an array of advertising boasting the importance of pipelines (Cryderman, 2013a). The federal government has also taken to advertising strategies in attempts to gain support for the tar sands and its “Responsible Resource Development” campaign. Last year, the federal government spent approximately \$16.5 million on advertisements geared towards promoting its resource agenda (Cryderman, 2013a) while also increasing its advertising spending on the tar sands from \$9 million to \$16.5 million (Goldenberg, 2013). Furthermore, TransCanada has evoked its own approach to garner support for the Energy East Pipeline. The company has employed nation-building rhetoric in order to garner Canadian support, likening Energy East to “bold ventures” like the Canadian Pacific Railway and the Trans-Canada Highway (Krugel, 2013a). Historians suggest that the nation-building sentiments are a way to sidestep the environmental backlash and try to invoke support

out of Canadian patriotism rather than actually fulfilling the role of a nation-building project (Krugel, 2013a). Whether or not these strategies are effective or not will be demonstrated in the coming months when TransCanada begins the regulatory process of approval for the Energy East project.

Advocacy Groups

Advocacy groups (also known as interest groups) are groups seeking to influence government policy, or decision-making, without putting forward their own candidates during elections; furthermore, advocacy groups promote a common interest among members and act together to influence public policy (Dyck, 2006). The main difference between advocacy groups and the general public is that advocacy groups are involved in “interest articulation,” meaning that the group generally has a narrow focus and is organized around a single interest (Dyck, 2006) whereas the general public has a wide range of interests at any given time. For the purpose of this analysis three types of advocacy groups will be examined in relation to their interests around oil transportation and the Energy East project in particular. The three groups include environmental non-governmental organizations (ENGOS), First Nations groups, and labour unions.

The first classification of advocacy groups to explore in terms of their relationship with oil transportation in Canada is environmental non-governmental organizations (ENGOS). ENGOS have become more prominent in the Canadian political scene and play an important role in educating the public and representing diffuse aggregate interests. The rise of environmental groups may be attributed to a number of factors: the success of the environmental movement in specific areas, the increased education of the public concerning environmental and resource issues, better laws for accessing information, and improved organization capabilities of the

environmental groups themselves (Hessing & Howlett, 1997). One of the characteristics of advocacy groups is that they generally play a reactive rather than a proactive role in the policy process responding to specific issues and problems (Hessing & Howlett, 1997). Currently with heightened attention being placed on oil transportation this issue has also attracted the attention of ENGOs.

Several groups and organizations have focused on the Alberta tar sands and the transportation of crude, whether it is from an educational standpoint publishing reports or a more action based approach engaging directly with the decision-making processes. The one group that has become the most publically involved with the Energy East Pipeline has been the Council of Canadians, though not typically identified as an ENGO, as their mandate is more about social justice. The Council of Canadians has designed a campaign to oppose Energy East titled “Our Risk. Their Reward.” and the organization prepared a tour throughout the month of April that held public forums and events in six Ontario communities along the proposed pipeline route (Council of Canadians, 2014b). The tour stopped in Kenora, Thunder Bay, North Bay, Ottawa, Kemptville, and Cornwall and focused on why the Energy East project involves many risks for Ontarians and few rewards (Council of Canadians, 2014b). In addition to providing public education and trying to influence public opinion toward the project in areas likely to be affected, the Council of Canadians has also interjected themselves more directly in the decision-making process. Firstly, the organization added a formal submission to the Ontario Energy Board (OEB) as part of the Board’s consultation process on Energy East outlining the risks to Ontario and the lack of rewards (Council of Canadians, 2014c). The submission highlights the pipeline as being intended for the use of exports, the risk of a bitumen spill in Ontario waterways, pipeline safety, the climatic implications of the project, Ontario’s increased reliance on fracked gas imports, and

the need for provincial leadership (Council of Canadians, 2014c). Furthermore, the advocacy group has asked the Federal Court of Appeal to set aside the National Energy Board's "List of Issues" for the proposed Energy East Pipeline, saying that the list is "unfair, biased and contrary to the law" (Council of Canadians, 2014d). The backing of the appeal rests on the fact that the "List of Issues" has been determined before the application for the project has been filed with the NEB, and is tailored to the interests of the oil industry (Council of Canadians, 2014d).

Alongside the Council of Canadians, other ENGOs are present in the discussions surrounding Energy East. Environmental Defence has created documents pertaining to the risk of the pipeline. Also, in concert with the Council of Canadians, Environmental Defence along with Ecology Action Centre and Équiterre released a report on how Energy East is destined as an export pipeline (Council of Canadian et al., 2014). In addition, the Pembina Institute published a report outlining the climate implications of the Energy East Pipeline (Demerse & Flanagan, 2014). On a results-based level, the David Suzuki Foundation and Nature Québec along with two other environmental groups successfully halted drilling in a beluga whale sensitive area of Cacouna, Quebec as part of the project (Scott, 2014). It is also expected that several ENGOs will apply for intervenor status in the NEB process. The Saint John Citizens' Coalition for Clean Air has already expressed their interest in becoming part of the official process (CBC News, 2014a). The actions of these environmental advocacy groups demonstrate their interest in oil transportation infrastructure and also go to show that their actions can have an impact. The full degree of the impact has yet to be determined in the Energy East case; however, the role of ENGOs in monitoring government actions and questioning industry ensure that power is not wielded in an inappropriate way without being noticed and brought to the public's attention.

The second collection of advocacy groups is First Nations organizations. As discussed previously, Aboriginal rights are a key institutional factor as well as being a prime societal factor. The intersection of provisions governing resource project approvals with hunting and trapping rights gives Aboriginal groups a major voice in resource policy areas (Hessing & Howlett, 1997). Thus, companies hoping to construct and operate resource projects, such as oil transportation infrastructure, are required to find ways to settle the intersecting, and opposing, interests of Aboriginal groups and corporate interests. Furthermore, First Nations organizations in Canada have become much more vocal about resource development and have organized the social movement “Idle No More” to draw attention to issues facing First Nations. As Eriel Deranger from the Athabasca Chipewyan First Nations states as part of the movement, “our people and our mother earth can no longer afford to be economic hostages in the race to [industrialize] our homelands. [It is] time for our people to rise up and take back our role as caretakers and stewards of the land” (Idle No More, 2014).

As has been demonstrated with the Northern Gateway Pipeline, First Nations groups can be a major hurdle for pipeline companies. If TransCanada hopes to have the Energy East Pipeline approved with little opposition it is essential to garner support from First Nations communities. In order to do so, collaboration must occur to create opportunities to become involved in a partnership between the company and the communities (Campeau, 2014). What these opportunities may look like is unclear. However, native leaders are demanding to be treated as not just another stakeholder group but as full partners who have treaty rights that must be respected and historical grievances that must be addressed (McCarthy, 2013). In response, TransCanada has stated that there are a range of “tools” that the company offers communities, but direct payment such as royalties, tariffs or revenue sharing are not being offered (CBC News,

2014c). Support for or against the pipeline will ultimately come down to Aboriginal groups weighing the environmental risk against the potential economic benefits of the pipeline.

Labour unions make up the third and final category of advocacy groups that are pertinent to this analysis of oil transportation. Labour can occupy a powerful position among groups but requires a collective organization, such as a union, to have its voice heard in the policy subsystem (Hessing & Howlett, 1997). Unions engage with government and participate in political activities in order to shape government policies that affect them (Hessing & Howlett, 1997). Furthermore, labour unions hold concern over resource and environmental policy-making with interests that closely align with business such as preserving jobs and improving wages and working conditions (Hessing & Howlett, 1997). Most labour legislation, with the exception of the *Employment Insurance Act* (EI) that is federal, is under the jurisdiction of the provincial governments (Dyck, 2006). That being said, unions can be expected to pressure provincial governments more so than the federal government in order to pursue their interests.

With the Energy East project there is support by unions as well as opposition. The support, or opposition, to the project by unions is centred on whether or not the pipeline will serve domestic purposes and uses. Unions want to see Alberta crude refined in Canada to support local refineries and employment opportunities. For example, the Alberta Federation of Labour advocates for domestic processing and is suspicious of the domestic benefits that the project may bring, calling the pipeline “a bitumen superhighway designed to ship raw bitumen right past jobs and refineries in Canada” (Lewis, 2013a). Another union, the Communications, Energy and Paperworkers Union of Canada (CEP) also favours domestic processing and has said that they will oppose Energy East if it is not in line with their interests (Lewis, 2013b). Four CEP locals have joined forces in Quebec with a large business consortium to provide a united front on the

pipeline proposal, representing nearly seventy-five percent of manufacturing jobs in the province (Vanderklippe, 2013b). The union workers, coming from four Quebec refineries and chemical plants, actively supported Enbridge's Line 9 Reversal project because the project will provide Quebec refineries with supply, but the same coalition has warned that it will oppose Energy East if the project is meant to export oil outside of Canada (Vanderklippe, 2013b). Given the findings of the report declaring Energy East as an export pipeline (Council of Canadians et al., 2014) it can be assumed that these unions will oppose the project on the grounds that the pipeline is not intended for domestic use.

On the other hand, both the national and provincial building trades, Canada's Building Trades Unions (CBTU) and the Provincial Building and Construction Trades Council of Ontario, are eager for approval of the project based on the creation of thousands of jobs, less dependence on foreign oil, and industrial growth in jobs in Quebec and New Brunswick (CBTU, 2014). CBTU has direct interest in the project, for its members will have the opportunity to build the pumping stations, marine loading terminals, the storage facilities, and the pipeline (CBTU, 2014). Other interested unions that appeared at the OEB hearings heard throughout Ontario include the International Union of Operating Engineers Local 793; the United Association of Plumbers, Steamfitters and Welders Local 800; and the Building and Construction Trades Council of Eastern Ontario (Ontario Energy Board, 2014b). The project also has garnered support beyond Ontario in New Brunswick. The Construction Association of New Brunswick - Saint John (CANB-SJ) publically supports the project, for the association believes that the proposed work in pipeline construction is highly relevant to the local industry (Construction Association of New Brunswick, 2013). The difference between the unions that oppose and those that support the project are that the unions in support of the project are those looking at the short-

term economic benefits, those associated with the construction of the project components, in other words unions with an interest in manufacturing. On the other hand, the unions in opposition to the pipeline are interested in the long-term economic benefits that result from the operation of the pipeline.

However, it is not to suggest that unions are only focused on self-interested positions, in fact many unions representing workers across Canada are concerned not just in the fate of projects such as Energy East, but also in the larger direction of Canadian policy. Unions such as CEP, the United Steelworkers of America (USWA), the Canadian Union of Public Employees (CUPE), the Canadian Auto Workers (CAW), and many building trades are interested in the future of Canada's energy sector (Calvert & Cohen, 2011). These unions are worried about the implications of climate change on employment levels, incomes, and employment security; moreover, they have exhibited frustrations towards the government for failing to have a transition strategy to address the fundamental economic changes and challenges of climate change (Calvert & Cohen, 2011). Furthermore, unions associated with the energy sector have been critical of the shift to a market based approach raising concerns over the export orientated growth, and the negative environmental impacts of the expansion of the tar sands that are promoted by industry (Calvert & Cohen, 2011). As an advocacy group, labour and trade unions can be important in raising concerns and challenging the status quo of industry, although the degree of their influence over oil transportation decisions and policy has yet to be established.

Media

The media plays an important role in framing issues and shaping public opinion. Most of the information Canadians receive about the political process, as well as environmental and resource issues, comes from television, newspapers, or radio (Dyck, 2006). In addition to

providing information, media coverage raises public perceptions and concerns about environmental issues, but also constructs them as economic or political, social or personal, radical or conservative (Hessing & Howlett, 1997). Generally, when it comes to reporting environmental stories there is a lack of media coverage of environmental events, there is a negative portrayal of environmentalists and issues, and there exists a corporate bias in environmental coverage (Hessing & Howlett, 1997).

Media coverage of resource development, particularly the tar sands and oil transportation has become more prominent. Whether or not media coverage has increased due to public concern, or increased public concern has been the result of heightened media attention is unclear and akin to the chicken and the egg causality dilemma. Regardless of which came first, one feature of increased media coverage is that it reflects and contributes to the tar sands debate (Holden, 2013). Another feature of increased media attention is the contribution to the “issue attention cycle.” The issue attention cycle precludes that government activity on an issue will coincide with high levels of public concern (Winfield, 2012a). Furthermore, the “potential electoral benefits and risks associated with governmental action or inaction during periods of high public salience on an issue can counterbalance the normally dominant structural power of business interests relative to civil society organizations” (Winfield, 2012a).

In discussing the history of the debate over the benefits and costs of resource development, Michael Holden (2013) claims that one of the first major news stories to capture the public’s attention was the death of 1,600 ducks that landed on a Syncrude tailings pond in 2008. In an analysis of tar sands media coverage five major themes were evident: pipeline construction and market access; regional tensions and regional cooperation in Canada; government policies towards tar sands development; foreign investment and control over the tar

sands; and social licence to operate and reputation management (Holden, 2013). Moreover, the analysis concluded that with respect to media coverage, pipeline construction and market access have become the proxy issue for the entire tar sands development debate (Holden, 2013).

Not only does pipeline construction and tar sands development go hand in hand in terms of media coverage, but the media has also shaped how different types of oil transportation methods are viewed. The media has become a battleground between the merits of pipelines over rail transportation when it comes to moving crude. Recently, the media has been using train derailments to frame pipelines as the superior (and safer) transportation method. Quotes such as "a dramatic early morning derailment that caused engine oil to leak [onto] farmland west of Saskatoon underscores that pipelines are the best way to transport oil products to market" appear in news stories covering rail incidents (Cryderman, 2013b). It also appears that rail derailments have increasingly been in the news, whether a function of an increase in actual incidents or an increased attention by media is beyond the scope of this analysis. However, the dominant sentiment that the media portrays is that companies will ship products by rail unless pipelines are built, an unfavourable choice that the media has framed as a sort of ultimatum.

Another important facet of the media and the coverage of oil transportation stories is how the various groups who oppose such projects are conceptualized. It has become a common strategy to discredit the concerns of environmentalists and First Nations and frame their opposition in a negative lens, akin to being enemies of the state. Previous Natural Resource Minister Joe Oliver has been quite vocal in decrying that environmental and other "radical groups" are trying to block trade and undermine Canada's economy in order to "achieve their radical ideological agenda" (Payton, 2012). This sentiment is perpetuated in the media to the extent that "radical environmentalists" are being presented as blocking Canada's future energy

and economic path. When the media frames opposition as “anti-development” or “anti-pipeline” it fails to recognize that the discussion is actually much larger in scope, and a main reason why these groups are opposed to such projects is one way that they seek to influence broader discussions on sustainable development of the tar sands and climate change. When these groups that are viewed as a “threat” are slandered in the media it frames them as “implacable adversaries to be monitored and battled, rather than well-meaning advocates to be consulted” (McCarthy, 2012). Therefore, how the media frames such advocates can be instrumental in removing their power and shifting the power to those who have “legitimate” concerns, such as industry.

Corporate Interests

Corporate, or industry, interests also fall into the category of non-governmental actors; however, arguably corporate interests wield the highest level of power and influence of all of the non-state actors over the decision and actions of governmental actors. The Canadian state tends to give priority to big business demands for a variety of reasons chief among them being the government depends on the private sector to create jobs, corporate executives and politicians often come from the same ranks, companies have more avenues of influence available, corporate elites control the mass media to an extent, and political parties have been financed primarily by large corporate contributions (Dyck, 2006). Currently, Canada’s Prime Minister Stephen Harper reveals the deep connection between industry and politicians, as he is the son of an Imperial Oil executive, and not surprisingly has been a key promoter of the tar sands, proclaiming Canada as “an emerging energy superpower” (Nikiforuk, 2010). Another evident sign of industry’s fingers all over the government is the prominent shift to ideologies of market liberalism, as discussed previously. The general demands on policy by corporate interests seek to minimize the role of government and fashion a society that relies more extensively on private market forces (Dyck,

2006). Therefore, initiatives such as Harper's responsible resource management that focuses on making the review process for major projects more predictable and timely as well as reducing duplication in the review process are for the benefit of industry looking to not be slowed down and interfered with by government. For the purpose of this analysis, three specific aspects of corporate interests with respect to oil transportation and the tar sands will be explored. These interests are broken down into the interests of the energy and producer companies, pipeline companies, and foreign investment.

When discussing energy and transportation, the companies that are being referred to are those at either end of the transportation line. Thus the energy companies at the one end include the oil companies that are involved in extracting and producing the bitumen from the tar sands, while at the other end are the refining companies. In the past, the oil industry enjoyed a great deal of autonomy in the years prior to 1973 whereby the federal government did not challenge the fundamental power of the industry and both the government and business shared compatible interests surrounding growth of the industry (Doern & Toner, 1985). Following a hands-off approach by government, in 1980 the Trudeau government introduced the National Energy Plan with the overarching goal of changing the structure of balance between the industry and government (Doern & Toner, 1985). The NEP lasted no more than five years; the election of the Mulroney government in 1984 dismantled the program (Doern & Toner, 1985). Since that time the oil industry has regained its power and dominance, shaping Canadian energy politics around its interests.

When it comes to energy companies responsible for producing the crude in Alberta, the number one priority is to reach new markets for its increased production (CAPP, 2013). The desire to reach new markets is driven by their interest in profits. The current political economy of

the tar sands sector is that profits are being constrained by an inability to expand market access due to limited pipeline capacity, and this in turn constrains growth affecting profits and revenues, and also creates the price discount on Canadian products (Hoberg, 2013). For example, the Joslyn oil sands mine, an \$11 billion project, has been recently shelved indefinitely as a result of rising industry costs that worked against the economics of a new project (Tait, 2014). The rising industry costs are attributable to rising costs for labour and materials as well as limited pipeline access to ship oil weighing on prices (Tait, 2014). Thus the sector, meaning the energy companies, would benefit from greater access to tidewaters in order to reach these expanding markets (Hoberg, 2013). TransCanada states that the significant commercial demand by Western Canadian producers to improve access to markets in Eastern Canada and offshore markets spurs the need for the Energy East project (TransCanada, 2014b). The demand was tested in an open season that resulted in long-term shipping commitments of approximately 900,000 barrels per day (TransCanada, 2014b). Overall, producer companies are driven like all other companies by profits, and the higher a price that can be fetched on their product the better, such that companies are interested in market diversification that will reach tidewaters in order to sell their product for world prices.

The second set of interested energy companies is the refineries that are downstream of the pipeline. Refineries, unlike the producing companies, want to minimize their input costs such that cheaper, or discounted prices benefit their interests (Hoberg, 2013). Such is the reason that Eastern Canada refineries have been reliant on imported sources of crude, which are cheaper than Western Canadian sources. However, the situation with refineries can be complicated by the fact that there is a high degree of vertical integration evident in the oil industry in the sense that many producers also have substantial refinery assets (Hoberg, 2013). For example, Suncor holds

one of the largest positions in the Alberta tar sands, yet also owns a refinery in Montreal, a perceived destination point of Energy East (Suncor, 2014). Higher oil prices benefit the upstream activities of Suncor, yet disadvantage its downstream counterparts and vice versa. When examining the differences between the producer companies and the refining companies in terms of Energy East it becomes clear that the benefits are targeted at the producers who are frantic for market diversification. As the report by the Council of Canadians and colleagues (2014) points out, Eastern Canadian refineries have no extra capacity that needs filling, and as demonstrated by the sentiments of unions representing the interest of refinery workers Energy East is a project not within their interests.

While pipeline companies and oil companies have generally the same interests, transporting crude from the extraction point to market, there are some fundamental differences between the two. One debate surrounding pipelines by economists is whether and how pipelines sustain their natural monopoly position (Makholm, 2012). On the one hand, pipelines inherent economies of scale limit their number concentrating full markets around a relatively small number of pipelines, yet on the other hand pipelines are victims of geography and geology and as non-redeployable capital are left stranded and value-less if reserves or markets change (Makholm, 2012). Recently, markets have been shifting with an example of changing market dynamics reflected in the Energy East project. First, the portion of pipeline that TransCanada is intending to repurpose to oil service was originally purposed for natural gas transport; however, volumes of natural gas has been plummeting as the U.S. shale boom has undercut demand for Canadian gas (Lewis, 2014b). With oil pipelines being in demand it only makes sense for TransCanada to designate its old gas pipeline to oil service to meet the demand of the changing market dynamics instead of losing money on a no longer profitable service. Secondly, the

historical trend has been to construct pipelines connecting Canada with the United States, rather than across Canada, since the market favoured transporting oil into the U.S. due to the economic efficiency of taking advantage of the economies of scale (Doern & Toner, 1985). With the current oil glut in the United States Midwest, pipelines serving this market have become unfavourable as well. Therefore, pipeline companies are being pressured by the interests that they serve to build new infrastructure to reach new markets.

The final corporate interest that relates to oil transportation is foreign ownership in the Canadian tar sands. In 1980, with the National Energy Program, a fifty percent target was set such that by 1990 fifty percent of the oil industry was to be under Canadian ownership with preference given to private Canadian firms (Doern & Toner, 1985). Due to pressure from the U.S., the ownership incentives were removed (Dyck, 2006). Since then Canada has been open to foreign investment, cited as an important component of a competitive market (Dawson & Bartucci, 2012). The presence of foreign investment in the tar sands has implications as to which markets are desired for export.

An in-depth review of shareholder information from Bloomberg conducted by ForestEthics Advocacy reveals that seventy-one percent of all tar sands production is owned by non-Canadian shareholders (ForestEthics Advocacy, 2012). Furthermore, foreign headquartered companies represent a market capitalization of \$391 billion and control 24.2 percent of all tar sands production (ForestEthics Advocacy, 2012). The current trend of foreign ownership has been towards Chinese investment in the tar sands. China's Sinopec owns nearly ten percent of Syncrude, one of Canada's largest ventures in the tar sands (Dawson & Bartucci, 2012). In addition to Syncrude, there have been other Chinese acquisitions including the MacKay River Project and Daylight Energy Ltd. (Dawson & Bartucci, 2012). By far the largest Chinese

acquisition has been Chinese state-owned firm CNOOC Ltd.'s recent \$15.1 billion takeover of Nexen Inc. (Krugel, 2013b). With all of the new Chinese investment in the tar sands the push to access tidewater to reach Asian markets appears intuitive, especially since many of the Chinese firms are state-owned, the Chinese government wants to ensure it can meet its country's growing demand for oil.

Foreign ownership may also challenge any new initiatives by the Canadian government to implement stronger environmental regulations, such as emission standards, in the tar sands or the oil industry in general. According to Maude Barlow, NAFTA can be used by U.S. oil companies operating in Alberta to sue the Canadian government if any level of government passes a law restricting the company's profits (Zarate, 2008). In relation to Chinese-based companies, an investment deal between Canada and China has resulted in similar powers being granted to foreign-owned companies such that any decision by any state entity in Canada, including a Supreme Court of Canada decision, can be challenged by a Chinese investor, while not even the Canadian federal government will be able to sue a Chinese investor for breaking any Canadian laws (Van Harten, 2012). The implication of this power granted to foreign owned companies in the tar sands is that there is the potential for legal challenge against the Canadian government if it makes changes to regulations in the tar sands such as regulations on emissions (Zarate, 2008). The fear of lawsuit reduces the sovereign ability of Canadian governments to enact regulations that will serve to protect the environment, placing foreign owned companies profits ahead of a healthy environment for Canadian citizens.

Part IV Conclusion: The Implications for Canada

The institutional-ideological analytical framework developed at the beginning of this analysis divided the various political economic factors at play with regards to oil transportation

in Canada into four categories: material, physical, and economic factors; normative factors; institutional factors; and interests and societal factors. As my analysis of these factors demonstrates through the case of the Energy East Pipeline, there are various interests, power relationships, and inherent realities that have come to shape, and continue to influence, Canadian oil transportation infrastructure systems. These various infrastructure projects have an important role to play when it comes to expansion and development of the Alberta tar sands. An outcome of this analysis was to bring to light the complexity and interrelatedness of each factor and to demonstrate how various actors and interests interact with the various categories of analysis. In addition, through examining the Energy East case study, the link between transportation infrastructure and the expansion of the tar sands was further established. Furthermore, as a result of this analysis two conclusions are presented in terms of the implications for Canada if it continues on its current energy path as identified in this paper; however, the conclusions are tentative as the pipeline is still in its infancy of the regulatory process and much is still uncertain, yet the conclusions provide a useful ground for further discussions and analysis.

After analyzing the political economy of oil transportation in Canada using the Energy East Pipeline as a case study, it can be concluded that the debates and challenges by various actors and interests suggest a strong need in Canada for a formal debate on energy sustainability and the future direction of the tar sands. This need for a debate is perpetuated by the fact that Canada currently does not have a national energy policy in place to address such concerns. Secondly, insight into the existence of the various power relationships and the influence of interests identified throughout this analysis highlights areas where there is the potential for change and challenge to the dominant ideas. These challenges for change serve to speak to the

current energy and natural resource regime of the Harper government and could prove to be instrumental in promoting a different policy agenda.

Need for National Discussion of Canada's Future Energy Path

In 1980 the Trudeau government introduced the National Energy Program with the goals of Canada seizing control of their own energy future through energy security, to offer Canadians the opportunity to participate in the energy industry, and to share in the benefits of industry expansion recognizing the requirement of fairness (Doern & Toner, 1985). According to Mark Winfield (2012b) the conventionally accepted view is that Canada has not had a national energy policy framework since the Mulroney government disbanded the NEP in 1984. Without a national energy plan there fails to be a democratic avenue for discussion as to the direction of natural resource development, particularly of the Alberta tar sands. The current analysis of the political economy of oil transportation in Canada highlights some of these conflicts and demonstrates the desire by Canadians to engage in larger debates of an overall Canadian energy strategy using oil transportation as a catalyst for these debates to occur, as there currently is no other forum to challenge the larger development of the tar sands and Canada's hydrocarbon future.

While the Energy East Pipeline, and other projects, has as of yet been constructed, this analysis draws attention to the current political economy in which these infrastructure decisions are being made and whose interests are being promoted. The analysis also serves to raise a warning of where Canada is headed in terms of its hydrocarbon based energy path, and how new oil transportation infrastructure will further entrench Canada in this unsustainable future. As demonstrated, Canada is dependent on exporting its energy resources, has adopted the principles of market liberalism, believes that the national interest is in the economic viability of the tar

sands, has increasingly placed power in the undemocratic hands of the executive and the Prime Minister, used the media to slander environmental concerns and promote the tar sands, and is heavily influenced by corporate interests. In turn, Canada has placed a great deal of emphasis on further exploiting the bitumen resource in the tar sands leading to a variety of social, environmental, and climatic consequences and injustices (Scott, 2013; Nikiforuk, 2010). These consequences are exasperated by the current political economy of Canada and are expected to become worse if the current regime is not challenged and changed.

For starters, this analysis explored various material, physical, and economic factors, many of which are static and cannot change, such as the distribution of energy resources across Canada. One economic factor that weighs heavily on the current trajectory of Canada in terms of its resource use is its location in the global economy as an energy exporter and producer. While Canada lacks a national energy plan this results in no security of a domestic supply of resources and instead focuses on exporting the largest quantity of goods. Such is demonstrated by the negotiations of the Trans-Pacific Partnership that will provide Canadian energy producers to growing markets in Asia for export (Dawson & Bartucci, 2012). Without a national strategy that is securing resources for domestic use, future generations of Canadians may be left having to rely on imported products to serve their own energy needs, while domestic product is all allocated for foreign markets.

The position of Canada as a net energy exporter may in part be explained by the ideological approach towards market liberalism that sees government take a back seat to private capital. The minimized role of the state in turn sees private capital as directing natural resource development (Winfield, 2012). One of the main consequences of market liberalism is that capitalist market forces determine the distribution of power and wealth (Dyck, 2006). This

distribution results in inequalities and a natural resource path this is based on the exploitation of resources for short-term capital gain rather than long-term sustainable prosperity.

A second ideological factor at play is the notion of the national interest and whose conception of what constitutes as the “national interest” is being sought after and portrayed. For example there is widespread notion held by politicians and energy companies that pipelines are the future of Canada and will make this country “stronger” (Krugel, 2013a). However, support for a halting or slowing down activities in the tar sands in the name of the national interest led by environmental advocacy groups cite greenhouse gas emissions (Demerse & Flanagan, 2014) and a lack of economic benefits to Eastern Canada (Council of Canadians et al., 2014) as reasons. Furthermore, “increased pipeline capacity means more tar sands extraction, more greenhouse gas emissions, and more climate change” (Scott, 2013). The battle of the claim to the “national interest” is no more than a battle of the economy versus the environment, whereby if the economic reasons win there is little hope of slowing down future development, pipeline projects, and dire climatic consequences.

In addition to economic and ideological factors, a very important institutional factor that is leading the charge for Canada’s hydrocarbon future is the structure of the cabinet-parliamentary government in Ottawa. As illustrated, increasingly the power of the executive level of government, the Cabinet and the Prime Minister’s Office, is being concentrated (Ibbitson, 2013). The concentration of power results in the lack of ability of Members of Parliament to exercise power in the legislature, and the passing of legislation geared at seeing the interests of the Prime Minister and Cabinet fulfilled, most notably Bill C-38. With a diminished role of Parliament, the current emphasis on repealing environmental legislation for the benefit of

natural resource led economic development can continue unchallenged by those meant to represent the people of Canada.

The final category of factors examined in the political economy of oil transportation has been societal factors. The media is one such societal factor that shapes the debates and conversations surrounding oil transportation and the tar sands by constructing environmental issues as economic or political, social or personal, and radical or conservative (Hessing & Howlett, 1997). Importantly, not only does the media frame the issue, yet it also frames the groups that are involved in the issue. It has been a general trend to frame environmentalists and Aboriginal groups as “radical” and a “threat” to the Canadian economy that then discredits the need to consult with these groups (McCarthy, 2012). These “radical” groups are villainized for wanting to draw attention to the current trajectory of the federal government and the oil industry in terms of resource development and climate change. Furthermore, analysis of the media and its role in the debate over the benefits and costs of resource development finds that pipeline construction and market access have become proxy issues for the entire tar sands development debate (Holden, 2013) as there is currently no forum for this separate, yet highly important, debate to occur. As such, groups seeking to challenge the current strategy towards oil and resources in Canada will continue to be viewed as a threat to the economy and development as long as there is no other way to challenge and question the current regime.

In conclusion, another aspect of the current political economy of oil transportation and tar sands development that will continue to be exasperated without a national energy policy is the role and influence of corporate interests on governmental resource and energy policy. The National Energy Program of the eighties highlighted the interests of government in changing the structure of power between industry and government, in essence transferring power over the oil

industry back into the hands of the Canadian government (Doern & Toner, 1985). In the absence of a national energy policy, corporate interests have been able to exercise a great deal of power in shaping the path of the oil industry in Canada. The number one priority of energy companies has been to reach new markets for its increased production of oil in the tar sands (CAPP, 2013). This need to access new markets, driven by seeking higher profits for their produced products, provides an argument for the “need” of new transportation infrastructure such as the Energy East Pipeline. In addition to the push for more transportation infrastructure, the ownership of companies in the tar sands also influences Canada’s economic and environmental path. Increasingly foreign ownership makes it challenging for the government, even if it wanted to, impose stricter environmental regulations in order to address climate change due to investment treaty lawsuits brought on by companies under agreements such as NAFTA or the China-Canada Investment Treaty (Linnett, 2012). A national energy policy could have the potential to mandate emission standards as part of a larger energy strategy and could also take steps to restructure the power relationship between industry and government fulfilling, Trudeau’s goal from more than thirty years ago.

Potential for Change and Challenge to the Dominant Ideas

As of yet, the only way to challenge the dominant ideas of resource extraction in the tar sands and Canada’s future energy path has been through debates and discussions of oil transportation. According to scholars Dayna Scott (2013) and George Hoberg (2013), pipeline capacity currently presents the main brake on extraction activities in the tar sands, and as such, opponents having recognized the role of transportation infrastructure in constraining growth have sought to block the approval of new transportation projects. In terms of opponents of new pipeline capacity, this analysis highlights several institutional factors, societal actors, and

ideological elements that have the potential to change and or challenge the dominant and current political economic relationships and interests. The institutional factors include the potential veto of provincial governments and the legal protection of Aboriginal rights. The societal actors include the public, with both the media and advocacy groups influencing the opinion of societal actors. Finally, the ideological factors that could be challenged in terms of emphasis are market liberalism and sustainable development.

The first potential for change and challenge to the dominant ideas of resource extraction in the tar sands and the transportation of oil are the provinces, specifically the provincial governments. Due to changing markets dynamics and the fact that Alberta resources are land-locked on either side, the growing urgency by the oil industry to seek access to tidewaters is bringing the provinces to the table to join in on the debates. When Alberta oil producers were relying on U.S. markets for their exports, oil transportation was a conversation held between Alberta, and the two federal governments, Canada and the United States. With the present oil glut in the United States (Spears, 2013) along with the growing markets in China and India (CAPP, 2013) the need to transport Canadian oil across Canada in order to reach coastal waters has become the top priority for oil producers. However, in order to reach either coast any new infrastructure project requires traversing another province in addition to Alberta. The involvement of other provinces, which do not see direct economic benefits from the sale of oil, stirs up ideas surrounding the equity of risks and benefits and challenges to the idea of pipelines being in the “national interest.”

As demonstrated, the constitutional authority over interprovincial pipelines lies with the federal government, but the provincial responsibility over property and civil rights as well as environmental issues associated with land use planning creates a patchwork of legislation and

regulations (Dawson & Bartucci, 2012). This patchwork in essence makes it such that although the federal government makes the final decision, a significant number of provincial approvals are also required for interprovincial oil transportation projects to get the go ahead (Hoberg, 2013). While New Brunswick has expressed its support for the Energy East Pipeline it remains to be seen where other provinces stand on the project, namely Ontario and Quebec, and if they will exert their own political pressure to try and sway the project.

Other powerful actors that have the potential to challenge the direction of Canada's energy strategy include several First Nations communities. Aboriginal groups are a strong institutional factor given their protected treaty and Aboriginal title rights. Their rights, which include the duty to consult, provide the avenue for legal challenge. The successful application of such rights has recently been demonstrated in the Canadian Federal Court of Appeal, granting the Chippewas of the Thames First Nation leave to take their challenge of the Line 9 Pipeline decision to court on the issue of Aboriginal consultation (Leahy, 2014b). Furthermore, the Supreme Court of Canada very recently determined in the case *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, that Aboriginal bands may still hold title to ancestral lands, unless they signed away these rights in treaties with government or otherwise ceded title to the Crown (Fine, 2014). Furthermore, the court decision holds that Aboriginal title includes the right to exclusive occupation of the traditional territory, yet this right can be "justifiably infringed" by the government in certain circumstances, such as a "compelling and substantial public purpose" (Bradley & Luk, 2014). However, the Court has made it clear that these are intended to be high hurdles for the government to meet and the Court "cautions that projects begun without consent on claimed Aboriginal title lands may need to be cancelled, if the title claims are eventually proven and the Crown [cannot] show justified infringement" (Bradley & Luk, 2014). The

interpretation from some commentators is that the new ruling on Aboriginal title creates further obstacles to natural resource development, especially pipelines (Newman, 2014). Since Canada has no substantive environmental rights (Boyd, 2012), yet the Crown has an obligation to consult and accommodate First Nations when projects could affect their rights and title (Hoberg, 2013), the constitutionally protected Aboriginal rights are one of the only ways to successfully challenge oil transportation decisions in a legal setting.

Not only do First Nations have legal tools at their disposal to challenge oil transportation decisions, such as pipelines, but also as a collective group they have been successful at drawing public and political attention towards resource development by acting as environmental stewards. The social movement “Idle No More,” that began to become highly visible in December 2012, was the result of indigenous peoples across the country seeking to demonstrate solidarity against the federal government’s legislative agenda (Scott, 2013). The importance of the Idle No More movement has been a way to showcase growing indigenous resistance on a national scale that is centred on lands and resources (Scott, 2013). This resistance and solidarity of activism provides a united front that directly challenges the dominant regime of natural resource exploitation; furthermore, challenging the need for new energy infrastructure such as oil pipelines.

In addition to the institutional challenges to the dominant ideas surrounding oil transportation that are seen in the jurisdictional authority of the provinces and legal challenges stemming from Aboriginal rights, the public is a societal factor that also has the potential to advocate for change. The most important role of the public is in pressuring debates to occur such as has been demonstrated in terms of pipelines and the transportation of oil across the country. Changing levels in societal concern for the environment can be important drivers for environmental policy (Winfield, 2012). With increased attention being placed upon how oil is

transported and new infrastructure projects, societal concern is high. The lack of a social license, according to Thomas Mulcair, results in the failure to build new energy infrastructure (Argitis, 2014).

It is also important to note that various other actors influence how the public responds to environmental and energy issues. For starters, the media can be highly influential in providing information and also in constructing environmental issues (Hessing & Howlett, 1997). With pipelines being front-page news, the media has raised the public's perception on the issue and sparked the debates. The second societal factor that influences public opinion is advocacy groups such as environmental non-governmental organizations (ENGOS). The main role of ENGOS in relation to the public is to serve as an educator and to provide a different set of information than is provided by industry and the government. Advocacy groups themselves challenge dominant ideas, but harnessing the support of the public in these battles is integral in striking larger opposition and dissent in order to pressure for change. While public opposition has been a large part of the Northern Gateway Pipeline in British Columbia and with the Line 9 Pipeline in Toronto a united front against Energy East has yet to harness the same momentum. Since the pipeline traverses such a large area there is, as of yet, no obvious geographic battle ground, but that is expected to change once TransCanada files its official application with the National Energy Board this summer as the decision-making process gets underway.

Not only are there institutional factors and societal actors that have the potential to challenge the rampant tar sands expansion and associated oil transportation systems, there are also normative factors such as ideas and ideologies surrounding oil transportation that could change how natural resource development is thought about. The two ideologies that stand to have the most influence are sustainable development and market liberalism, specifically an

adherence and development path based on sustainable development and a challenge to the capitalist notions that markets are the best way to manage resources. Challenging market liberalism would entail a more domestic and national energy approach that is focused on Canadian energy needs, not where oil producers can capitalize on profits. The pipeline debates are currently centred on accessing global energy markets, yet if the reliance on market principles guiding Canada's tar sands development were challenged the need for such pipelines would be immediately called into question.

The second ideological factor that could come to influence how natural resources are conceptualized in Canada is sustainable development. Based upon the notion that sustainable development entails "development that meets the needs of the future without compromising the ability of future generations to meet their own needs" oil conservation should be a top priority (WCED, 1987). However, the current trend in Canada is the complete opposite, with production increasing and estimated to be 6.7 million barrels per day in 2030 (CAPP, 2013). If Canada were to adopt a natural resource strategy based on sustainable development principles then the expansion of the tar sands would be called into question, as would the development of new transportation infrastructure. Whether or not sustainable development ideologies will find a way into federal politics is not likely with the current Harper regime; however, a change in leadership could be the catalyst for a change in ideological perspective.

Energy East and debates on oil transportation come at a time when Canada is at the crossroads of its energy future. The one path takes Canada down the road that it appears to be heading where natural resources are exploited at unsustainable rates, oil transportation projects are approved in order to continue the high levels of production in the tar sands, and there is little regard for climate change and protection of the environment. On the other hand, is a path that

sees Canada take the time to develop a national energy policy, the pace of development halts or is slowed, the public becomes more engaged in directing the future, and bolder initiatives are made towards addressing climate change and promoting green energy. It is time that Canada as a whole begins to ask itself what choice it wants to make, what path it wants to go down, for it is a choice that will impact us all. As David Suzuki (2014b) says, “it's about the kind of country -- and planet -- we want to leave to our children and grandchildren.”

References

- Alberta Energy Regulator. (2014). What we do. Retrieved June 3, 2014 from <http://www.aer.ca>.
- Ali, S., H. (2009). The political economy of environmental inequality: The social distribution of risk as an environmental injustice. In J. Agyeman, P. Cole, R. Haluza-DeLay & P. O'Riley (Ed.), *Speaking for ourselves: Environmental justice in Canada* (pp.97-110). Vancouver: UBC Press.
- Alward, D. (2013) West-East Pipeline: A question of national interest. *Policy: Canadian Politics and Public Policy*, 1(2), 30-32.
- Angevine, G. (2013). The Canadian oil transport conundrum. The Fraser Institute: Vancouver. Retrieved February 20, 2014 from <http://www.fraserinstitute.org>.
- Argitis, T. (2014, May 13). Mulcair says Canada pipeline plans need public backing. *Bloomberg*. Retrieved May 26, 2014 from <http://www.bloomberg.com>.
- BC Newsroom. (2012, July 23). British Columbia outlines requirements for heavy oil pipeline consideration. Government of British Columbia Retrieved May 13, 2014 from <http://www.newsroom.gov.bc.ca>.
- BC Newsroom. (2013, December 20). BC Government reaffirms all five conditions must be met before support for Northern Gateway Pipeline will be considered. Government of British Columbia. Retrieved June 10, 2014 from <http://www.newsroom.gov.bc.ca>.
- Berman, T. (2014, June 11). The ugly pipeline debate is preventing dialogue on oil sands. *The Globe and Mail*. Retrieved July 17, 2014 from <http://www.theglobeandmail.com>.
- Bonnar, J. (2013, October 21). Hundreds rally in Toronto against Enbridge Line 9.

- Rabble*. Retrieved June 11, 2014 from <http://rabble.ca>.
- Bott, R. (2012). Evolution of Canada's oil and gas industry. The Canadian Centre for Energy Information: Calgary. Retrieved June 13, 2014 from <http://www.centreforenergy.com>.
- Boyd, D., R. (2012). *The Right to a Healthy Environment: Revitalizing Canada's Constitution*. Vancouver: UBC Press.
- Bradley, A. & Luk, S. (2014). In a first for a Canadian Court, SCC recognizes Aboriginal title for Tsilhqot'in Nation. Retrieved July 15, 2014 from <http://www.oktlaw.com>.
- Bridge, G. (2008). Global production networks and the extractive sector: governing resource-based development. *Journal of Economic Geography*, 8, 389-419.
- Calvert, J. & Cohen, M., G. (2011). Climate change and the Canadian energy sector: Implications for labour and trade unions. Canadian Centre for Policy Alternatives: Ottawa. Retrieved June 30, 2014 from <https://www.policyalternatives.ca>.
- Campeau, M. (2014, May 9). Eastbound and down: Atlantic Canada is the next major pipeline battleground. *Financial Post*. Retrieved May 28, 2014 from <http://business.financialpost.com>.
- Canada's Building Trades Unions. (2014). Energy East project one step closer to approval. Retrieved May 27, 2014 from www.buildingtrades.ca.
- Canadian Association of Petroleum Producers. (2013). Crude oil forecasts, markets & transportation. Canadian Association of Petroleum Producers: Calgary. Retrieved April 10, 2014 from <http://www.capp.ca>.
- Canadian Energy Pipeline Association. (2012). The basics of pipeline regulation. Retrieved June 3, 2014 from <http://www.cepa.com>.

Canadian Fuels Association. (2013). The economics of petroleum refining:

Understanding the business of processing crude oil into fuels and other value added products. Canadian Fuels Association: Ottawa Retrieved March 25, 2014 from <http://canadianfuels.ca>.

CBC News. (2014b, May 10). Environmentalists stage day of action to protest pipelines. *CBC News*. Retrieved May 26, 2014 from <http://www.cbc.ca>.

CBC News. (2014c, May 12). First Nations, TransCanada assess pipeline concerns. *CBC News*. Retrieved May 28, 2014 from <http://www.cbc.ca>.

CBC News. (2014a, May 13). Energy East pipeline process discourages clean air group. *CBC News*. Retrieved May 13, 2014 from <http://www.cbc.ca>.

Cheadle, B. (2013, November 26). 'Significant weaknesses' found in audit before deadly Lac-Mégantic crash. *CTV News*. Retrieved May 10, 2014 from <http://www.ctvnews.ca>.

Construction Association of New Brunswick. (2013). Keeping our members and local industry informed. Retrieved May 27, 2014 from <http://www.sjcic.ca/news.html>

Council of Canadians. (2014a). Energy East. Retrieved May 13, 2014 from <http://canadians.org>.

Council of Canadians. (2014b). Speaking tour to highlight that Energy East pipeline is all risk and little reward for Ontarians. Retrieved May 27, 2014 from <http://www.canadians.org>.

Council of Canadians. (2014c). Ontario Energy Board Energy East Consultation:

Council of Canadians written submission, part one of OEB Energy East Consultations.

Council of Canadians: Ottawa. Retrieved May 27, 2014 from <http://www.canadians.org>.

- Council of Canadians. (2014d). Council of Canadians seeks to appeal Energy East ruling. Retrieved May 27, 2014 from <http://www.canadians.org>.
- Council of Canadians, Ecology Action Centre, Environmental Defence & Équiterre. (2014). TransCanada Energy East: An export pipeline, not for domestic gain. Council of Canadians: Ottawa. Retrieved March 25, 2014 from <http://www.canadians.org>.
- Coyne, A. (2012, April 30). Andrew Coyne: Bill C-38 shows us how far Parliament has fallen. *The National Post*. Retrieved June 24, 2014 from <http://fullcomment.nationalpost.com>.
- Cryderman, K. (2013a, June 10). How Canada's big oil firms are trying to sway public opinion. *The Globe and Mail*. Retrieved May 26, 2014 from <http://www.theglobeandmail.com>.
- Cryderman, K. (2013b, September 25). Saskatchewan derailment shows need for pipelines, Premier says. *The Globe and Mail*. Retrieved May 28, 2014 from <http://www.theglobeandmail.com>.
- David Suzuki Foundation. (2012). Bill C-38: What you need to know. David Suzuki Foundation: Vancouver Retrieved May 21, 2014 from <http://www.davidsuzuki.org>.
- Davison, J. (2014, April 30). Pipeline push-back: What's behind the rising opposition to Canada's big oil pipelines. *CBC News*. Retrieved May 26, 2014 from <http://www.cbc.ca>.
- Dawson, L., & Bartucci, S. (2012). Sustaining the crude economy: Future prospects for Canada's global energy competitiveness. Macdonald-Laurier Institute: Ottawa. Retrieved May 10, 2014 from <http://www.macdonaldlaurier.ca>.
- Demerse, C., & Flanagan, E. (2014). Climate Implications of the Proposed Energy

- East Pipeline. Pembina Institute: Calgary. Retrieved May 14, 2014 from <http://www.pembina.org>.
- De Souza, M. (2012, September 26). Pipeline development was 'top of mind' in Stephen Harper's budget bill, say "secret" records. *Canada.com*. Retrieved June 30, 2014 from <http://o.canada.com>.
- De Souza, M. (2014, May 11). National Energy Board's slow responses, weak penalties raise questions about public safety. *The Toronto Star*. Retrieved June 3, 2014 from <http://www.thestar.com>.
- Doern, G. B., & Gattinger, M. (2003). *Power switch: Energy regulatory governance in the twenty-first century*. Toronto: University of Toronto Press Incorporated.
- Doern, G. B., & Toner, G. (1985). *The politics of energy: The development and implementation of the NEP*. Toronto: Methuen Publications.
- Dyck, R. (2006). *Canadian politics* (3rd ed.). Toronto, ON: Nelson.
- Ecojustice. (2012). Analysis: What Bill C-38 Means for the Environment. Ecojustice: Toronto. Retrieved May 14, 2014 from <https://www.ecojustice.ca>.
- Enbridge. (2014). Northern Gateway: About the project. Retrieved May 7, 2014 from <http://www.gatewayfacts.ca>.
- Environmental Defence. (2014). Reality Check: Climate Change and the Tar Sands. Environmental Defence: Toronto. Retrieved May 20, 2014 from <http://environmentaldefence.ca>.
- Fine, S. (2014, June 26). Supreme Court expands land-title rights in unanimous ruling. *The Globe and Mail*. Retrieved July 3, 2014 from <http://www.theglobeandmail.com>.

- Flegg, E. (2014, March 6). Line 9 approval "incredibly dangerous" failure by government, environmental groups say. *Vancouver Observer*. Retrieved June 11, 2014 from <http://www.vancouverobserver.com>.
- ForestEthics Advocacy. (2012). Who benefits? An investigation of foreign investment in the tar sands. Retrieved May 30, 2014 from <http://forestethics.org>.
- Gattinger, M. (2010). Canada's energy policy relations in North America: Toward harmonization and supranational approaches? In M. Gattinger & G. Hale (Ed.), *Borders and bridges: Canada's policy relations in North America* (pp. 139-157). Toronto: Oxford University Press.
- Gibson, R.B. (2006). Sustainability assessment: basic components of a practical approach. *Impact Assessment and Project Appraisal*, 24(3), 170-182.
- Goldenberg, S. (2013, May 16). Canadian government doubles advertising spend on tar sands. *The Guardian*. Retrieved June 2, 2014 from <http://www.theguardian.com>.
- Government of Canada. (2012). Appendix E: Profile of Railway Companies as of November 2007. Retrieved June 4, 2014 from <http://www.tc.gc.ca>.
- Government of Canada. (2014). Canada's Economic Action Plan: Responsible Resource Development. Retrieved May 14, 2014 from <http://actionplan.gc.ca>.
- Green Party of Canada. (2012, May 10). May clarifies deliberately confusing Bill C-38. Retrieved May 22, 2014 from <http://www.greenparty.ca>.
- Harden-Donahue, A. (2014, March 5). Ontario Energy Board announces first round of consultations on Energy East pipeline. *Rabble*. Retrieved June 11, 2014 from <http://rabble.ca>.
- Harris, M. (2014, June 29). Stephen Harper's Canada: The legacy of tyrants. *iPolitics*.

Retrieved June 30, 2014 from <http://www.ipolitics.ca>.

Hessing, M., & Howlett, M. (1997). *Canadian natural resource and environmental policy: Political economy and public policy*. Vancouver: UBC Press.

Hessing, M., Howlett, M., & Summerville, T. (2005). The Institutional Context in *Canadian Natural Resource and Environmental Policy: Political Economy and Public Policy* (pp.53-99). Vancouver: UBC Press.

Hoberg, G. (2013). The battle over oil sands access to tidewater: A political risk analysis of pipeline alternatives. *Canadian Public Policy*, 39(3), 372-391.

Holden, M. (2013). From dead ducks to Dutch Disease. The Canada West Foundation: Calgary. Retrieved May 28, 2014 from <http://cwf.ca>.

Howlett, M., & Brownsey, K. (2008). *Canada's resource economy in transition: The past, present, and future of Canadian staples industries*. Toronto: Emond Montgomery Publications Limited.

Hunter, J. (2014, May 19). None of Clark's five conditions for approval has been met. *The Globe and Mail*. Retrieved July 17, 2014 from <http://www.theglobeandmail.com>.

Hussain, Y. (2012, May 9). Is rail a viable alternative to oil pipelines?: S&P. *Financial Post*. Retrieved May 10, 2014 from <http://business.financialpost.com>.

Ibbitson, J. (2013, February 2). Ignatieff: Too much executive power is harming democracy. *The Globe and Mail*. Retrieved May 22, 2014 from <http://www.theglobeandmail.com>.

Idle No More. (2014). Retrieved May 28, 2014 from <http://www.idlenomore.ca>.

International Energy Agency. (2013). World energy outlook: Executive summary.

- International Energy Agency: Paris. Retrieved December 2, 2013 from <http://www.iea.org>.
- Isfield, J. (2013, October 31). Canada GDP beats forecast thanks to surging oil and gas sector. *Financial Post*. Retrieved July 17, 2014 from <http://business.financialpost.com>.
- Koring, P. (2014, May 6). Obama seeks ‘urgent action’ on global warming after dire U.S. report. *The Globe and Mail*. Retrieved May 6, 2014 from <http://www.theglobeandmail.com>.
- Krugel, L. (2013b, February 25). Nexen CNOOC takeover complete: \$15.1-billion deal closes. *Huffington Post*. Retrieved May 30, 2014 from <http://www.huffingtonpost.ca>.
- Krugel, L. (2013, August 18). Energy East Pipeline a nation-builder? Historians dubious of railway comparisons. *Huffington Post*. Retrieved March 26, 2014 from <http://www.huffingtonpost.ca>.
- Le Billon, P. (2001). The political ecology of war: natural resources and armed conflicts. *Political Geography*, 20(5), 561-584.
- Leach, A. (2013, September 19). Is Canada losing \$50 million per day on oil exports? *Maclean's*. Retrieved May 7, 2014 from <http://www2.macleans.ca>.
- Leahy, D. (2014). Ontario launches provincial public forum on Energy East Pipeline, everyone welcome to speak. Retrieved June 11, 2014 from <http://www.desmog.ca>.
- Leahy, D. (2014b, June 12). Chippewas of the Thames First Nation granted leave by Federal Court to appeal Line 9 approval. *Desmog Canada*. Retrieved July 3, 2014 from <http://www.desmog.ca>.
- Lewis, J. (2013b, August 1). TransCanada to proceed with ‘nation-building’ Energy

- East pipeline between Alberta, New Brunswick. *Financial Post*. Retrieved May 27, 2014 from <http://business.financialpost.com>.
- Lewis, J. (2013a, November 9). The Hub: Saint John end point of 'Energy East' readies for crude revolution. *Financial Post*. Retrieved March 25, 2014 from <http://business.financialpost.com>.
- Lewis, J. (2014b, March 6). Languishing natural gas pipeline from B.C. to Chicago seeks lifeline. *Financial Post*. Retrieved May 30, 2014 from <http://business.financialpost.com>.
- Lewis, J. (2014a, April 16). Cost of oil transported by pipelines up 60% in five years, NEB says. *Financial Post*. Retrieved May 10, 2014 from <http://business.financialpost.com>.
- Linnett, C. (2012, October 17). China Investment Treaty "a Straitjacket" for Canada: Exclusive Interview with Trade Investment Expert Gus Van Harten. *Desmog Canada*. Retrieved July 3, 2014 from <http://desmog.ca>.
- Lorinc, J. (2012, September 26). New oil pipelines, price bottlenecks and how Cushing, Okla., impacts Canada's economy. *Canadian Business*. Retrieved July 17, 2014 from <http://www.canadianbusiness.com>.
- Makholm (2012). *The political economy of pipelines: A century of comparative institutional development*. Chicago: The University of Chicago Press.
- McCarthy, S. (2012, February 10). Ottawa's new anti-terrorism strategy lists eco-extremists as threats. *The Globe and Mail*. Retrieved June 2, 2014 from <http://www.theglobeandmail.com>.
- McCarthy, S. (2013, December 8). Energy companies struggle with Aboriginal needs

- on pipelines. *The Globe and Mail*. Retrieved May 28, 2014 from <http://www.theglobeandmail.com>.
- McCarthy, S. (2014a, April 25). Scientists cite Energy East pipeline threat to belugas. *The Globe and Mail*. Retrieved May 24, 2014 from <http://www.theglobeandmail.com>.
- McCarthy, S. (2014b, May 20). First Nations prepare for fight against Energy East pipeline. *The Globe and Mail*. Retrieved May 24, 2014 from www.theglobeandmail.com.
- McDiarmid, M. (2014, May 6). Confidence falls in safe transport of oil, polls suggest. *CBC News*. Retrieved May 26, 2014 from <http://www.cbc.ca>.
- Ministry of Environment. (2014). Land based spill preparedness and response in British Columbia: Ministry of Environment policy intentions paper for consultation April 2014. Retrieved June 4, 2014 from <http://www.env.gov.bc.ca>.
- Moore, J. W. (2003). The Modern World-System as environmental history? Ecology and the rise of capitalism. *Theory and Society*, 32, 307-377.
- National Energy Board. (2008). Canadian pipeline transportation system: Transportation assessment. Retrieved March 15, 2014 from <http://books.scholarsportal.info>.
- National Energy Board. (2013). Our history. Retrieved May 14, 2014 from <http://www.neb-one.gc.ca>.
- National Energy Board. (2014a). Public participation and land matters. Retrieved June 10, 2014 from <http://www.neb-one.gc.ca>.
- National Energy Board. (2014b). TransCanada Energy East Pipeline Project - List of issues. Retrieved May 13, 2014 from <http://www.neb-one.gc.ca>.
- National Energy Board. (2014c). TransCanada Energy East Pipeline Project.

- Retrieved June 11, 2014 from <http://www.neb-one.gc.ca>.
- Newman, D. (2014, June 26). Pipeline prospects take a hit as Supreme Court grants land title to B.C. First Nation. *Financial Post*. Retrieved July 14, 2014 from <http://business.financialpost.com>.
- Nikiforuk, A. (2010). *Tar sands: Dirty oil and the future of a continent*. Vancouver: Greystone Books.
- Norcliffe, G. (2001). Canada in a global economy. *The Canadian Geographer*, 45(1), 14-30.
- Office of the Auditor General of Canada. (2011). Report of the Commissioner of the Environment and Sustainable Development. Chapter 1: Transportation of Dangerous Products. Office of the Auditor General of Canada: Ottawa.
- Oil Infrastructure Subgroup. (2011). Crude oil infrastructure. National Petroleum Council: Washington. Retrieved June 10, 2014 from <http://npc.org>.
- Ontario Energy Board. (2014a). The Ontario Energy Board Energy East Consultation. Retrieved May 13, 2014 from <http://www.ontarioenergyboard.ca>.
- Ontario Energy Board. (2014b). Resources. Retrieved May 27, 2014 from <http://www.ontarioenergyboard.ca>.
- Paris, M. (2013a, July 3). Oil and gas industry emission rules still not ready from Ottawa. *CBC News*. Retrieved May 20, 2014 from <http://www.cbc.ca>.
- Paris, M. (2013b, November 8). Greenhouse gas reduction called threat to oil industry. *CBC News*. Retrieved May 20, 2014 from <http://www.cbc.ca>.
- Payton, L. (2012, January 9). Radicals working against oilsands, Ottawa says. *CBC News*. Retrieved June 2, 2014 from <http://www.cbc.ca>.

- Rowland, R. (2014, April 12). Kitimat residents vote 'no' in pipeline plebiscite. *The Globe and Mail*. Retrieved June 11, 2014 from <http://www.theglobeandmail.com>.
- Scott, D., N. (2013a). The networked infrastructure of fossil capitalism: Implications of the new pipeline debates for environmental justice in Canada. *Revue générale de droit*, 43, 11-66.
- Scott, D., N. (2013b, July 10). Lac-Mégantic disaster shows Canada needs a national oil-transport plan. *The Globe and Mail*. Retrieved June 10, 2014 from <http://www.theglobeandmail.com>.
- Scott, M. (2014, May 23). TransCanada Pipelines to hold off drilling in beluga habitat. *The Montreal Gazette*. Retrieved May 24, 2014 from <http://www.montrealgazette.com>.
- Spears, J. (2013, February 7). The pipeline problem. *The Toronto Star*, pp. B1, B2.
- Suncor. (2014). About us. Retrieved May 30, 2014 from <http://www.suncor.com>.
- Suzuki, D. (2014a, June 18). Harper's pipeline decision is a blow to democracy. *Huffington Post*. Retrieved June 30, 2014 from <http://www.huffingtonpost.ca>.
- Suzuki, D. (2014b, June 17). Northern Gateway approval flies in the face of democracy and global warming. *Rabble*. Retrieved July 2, 2014 from <http://rabble.ca>.
- Tait, C. (2014, May 29). Total shelves \$11-billion Alberta oil sands mine. *The Globe and Mail*. Retrieved June 2, 2014 from <http://www.theglobeandmail.com>.
- The Canadian Press. (2014, May 14). Pipeline firms to pay all costs, damages in new spill safety rules. *Global News*. Retrieved June 4, 2014 from <http://globalnews.ca>.
- TransCanada. (2014a). Energy East Pipeline Project. Retrieved January 16, 2014

from <http://www.transcanada.com>.

TransCanada. (2014b). Energy East Pipeline Project. Project description volume 1.

Submitted to the National Energy Board. Retrieved March 4, 2014 from <http://www.nel-one.gc.ca>.

TransCanada. (2014c). The Energy East Pipeline: Benefits by province. Retrieved March 26, 2014 from <http://www.energyeastpipeline.com>.

Vanderklippe, N. (2013a, January 12). With pipelines under attack, railways lead race to move oil. *The Globe and Mail*. Retrieved July 16, 2014 from <http://www.theglobeandmail.com>.

Vanderklippe, N. (2013b, May 29). Refinery union warns against TransCanada exports of crude through Quebec. *The Globe and Mail*. Retrieved May 27, 2014 from <http://www.theglobeandmail.com>.

Van Harten, G. (2012, September 29). Canada-China investment deal allows for confidential lawsuits against Canada. *The Toronto Star*. Retrieved July 2, 2014 from <http://www.thestar.com>.

Winfield, M. (2012a). *Blue-Green Province: The environment and the political economy of Ontario*. Vancouver: UBC Press.

Winfield, M. (2012b). 'Dirty Oil,' 'Responsible Resource Development' and Prospects for a National Conversation about Energy Sustainability in Canada, *Journal of Environmental Law and Practice*, 25 J.E.L.P.

Winfield, M. (2013, July 25). The incubation of the Lac-Mégantic disaster. *Ottawa Citizen*. Retrieved June 10, 2014 from <http://www2.canada.com>

Wheeler, C. (2012, November 6). In China, growing frustration over Canada's

‘outdated’ oil sands. *The Globe and Mail*. Retrieved May 10, 2014 from <http://www.theglobeandmail.com>.

World Commission on Environment and Development (WCED). (1987). *Our Common Future*. United Nations: Geneva. Retrieved May 20, 2014 from <http://www.un-documents.net>.

Zarate, G. (2008, November 12). Oilsands companies can sue against regulation under NAFTA. *The Northern Journal*. Retrieved July 2, 2014 from <http://www.canadaka.net>.

Cases and Legislation

Canadian Environmental Assessment Act, S.C. 2012, c. 19 as amended by

Jobs, Growth and Long-Term Prosperity Act, SC 2012, c. 19.

Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3.

National Energy Board Act, RSC 1985, c. N-7, as amended by Jobs, Growth

and Long-Term Prosperity Act, SC 2012, c. 19.

Tsilhqot’ in *Nation v. British Columbia*, 2014 SCC 44.

¹ Industry executives and many Canadian politicians prefer the word oil in relation to the sands because it sounds abundant, accessible, and clean, yet the substance being extracted from the sands is bitumen and only becomes oil after extensive processing, making the expression “tar sands” more appropriate (Nikiforuk, 2010). For that reason, throughout this current analysis, the sands will be referred to as the tar sands and the word oil will be used loosely to also encapsulate bitumen, although, in fact, the two substances are more different than alike.

² The current total capacity available on Canadian oil pipelines is broken down as follows: Enbridge Mainline (2.5 million bpd), Kinder Morgan TransMountain Pipeline (300,000 bpd), Spectra Express Pipeline (280,000 bpd), and TransCanada Keystone Pipeline (591,000 bpd) (CAPP, 2013).

³ The Keystone XL pipeline is a project that would see 830,000 barrels per day transported from Alberta to the Gulf coast of the United States, destined for U.S. refineries (Hoberg, 2013).