Where Power Comes to Matter: The Energy East Pipeline and the Politics of Determinacy

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A Thesis
in
The Department
of
Sociology and Anthropology

Presented in Partial Fulfillment of the Requirements
for the Degree of Master of Arts (Anthropology) at
Concordia University
Montreal, Quebec, Canada

August 2018

CONCORDIA UNIVERSITY
School of Graduate Studies

This is to certify that the thesis prepared

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Entitled: Where Power Comes to Matter: The Energy East Pipeline and the Politics of Determinacy

and submitted in partial fulfillment of the requirements for the degree of

Masters of Arts (Anthropology)

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Abstract

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Concordia University, 2018

This thesis is about the controversies that engulfed TransCanada's Energy East pipeline project from the moment it emerged into the public sphere in 2013, and which led to its ultimate demise in 2017. As such, it is an investigation into how power, sovereignty, and agency were mobilized in the negotiation of a pipeline project in Canada. In the contemporary political and environmental climate, pipeline projects have had a rough go of it. Sweeping changes made to the legislative and regulatory framework by the Conservative federal government in 2012 were intended to expedite their approval but appear to have had a contrary effect. Rather than provide certainty to proponents, the changes further undermined the decisional infrastructure and distribution of constitutional authority. In this context, the contest has been less about substantive deliberation than infrastructural determination, as normative decisional frameworks became further unsettled. The controversy opened up a wide range of questions, such as: Who had power to decide? Which jurisdictions applied? How should democratic participation be delineated? Who was the public that the regulator purportedly spoke for? How were decisions justified? What counted as evidence? In other words, it was as much about which projects might be considered as being in the "national" interest as it was about the procedural and epistemological channels through which this determination should be made.

My observation has been that stuck between growth imperatives, vested interests, democratic expectations, and a growing recognition of impending environmental crisis, governments and companies like TransCanada prefer determinate power relations: a clear and exclusive allocation of decision-making authority. They also prefer indeterminate substantive guidelines, writing as much discretionary power into the law as possible and leaving open the *possibility* of strict environmental protections in general while allowing for exceptions in the specific. Environmental assessment reformists, on the other hand, prefer indeterminate power — a shared and inclusive distribution of decision-making power — and determinate substantive

legal guidelines. What substantive indeterminacy combined with centralized, exclusive power makes possible is framing contingent transgressions of overall political goals as exceptional. In the controversy over TransCanada's pipeline project, the public was not just pushing back against oil and its potentially devastating effects. They were also pushing back against a regulatory infrastructure which evacuated too much of its political agency and normalized the particular interests of some as the inevitable future for all.

Acknowledgements

I want to thank the participants who agreed to donate hours of their time and passion to the benefit of my education and understanding. Their generosity baffles me to this day. I am deeply grateful to my supervisor, Kregg Hetherington, who's profound insights, intellectual rigor, pedagogical proficiency, and theoretical affinities initiated an intellectual revolution for me that I continue to grapple with. His particular blend of collegial amicability and critical ruthlessness has provided just the right amount of whiplash to force me out of analytic complacency. Lastly, I want to thank the interlocutors I have had the benefit of exchanging with over these past few years, especially within the Infrastructure and Environment Workgroup at Concordia, who's own research has provided a lasting source of inspiration. I am grateful for their patience and forbearance through my continued attempts at shedding more layers of discursive obfuscation than I am comfortable to acknowledge.

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Introduction: Pipeline Woes

This research is about the Energy East Pipeline Project and the controversy that arose around its formulation and regulatory assessment, especially in the province of Quebec. In this introduction, I will provide an overview of this controversy, contextualize the project within its broader economic and political trajectory, provide some sense of the analytic framework and methodology that have informed my research, and give a brief summary of how this thesis is structured. In the following chapters, I will return in greater detail to all of the elements discussed below. So while the scope may seem dizzying at first, I encourage the reader to let familiarity build through the successive iterations built into my narrative, rather than attempt to construe and maintain a cogent picture from the start.

Energy East and the oil market

Energy East was a project proposed in 2013 by TransCanada — a North American energy infrastructure company — to carry oil from delivery points in Alberta and Saskatchewan to refineries in Montreal and Lévis, in the province of Quebec, and to a refinery and export terminal in Saint John, New Brunswick. Overall, the pipeline would span some 4600 km, and its 42-inch diameter pipe would have a carrying capacity of 1.1 million barrels of crude oil per day. To put this in perspective, the Alberta Energy Regulator estimated oil sands production in 2014 to have reached 2.3 million bbl/d,[1] with total proven reserves of 166 billion barrels. According to the Canadian Association of Petroleum Producers, total oil production in Canada for that year — i.e. of tar sands and conventional, lighter crude combined — was 3.7 million bbl/d. An oft-cited forecast vehicle, the National Energy Board's (NEB) *Canada's Energy Future*, predicted in 2016 that oil production would grow to 4.9 million bbl/d in 2020, and to 6 million in 2040.

It is interesting to put those numbers in context as well.[2] 2014 was the end of a 12-year climb in oil prices that had a profound impact on the hydrocarbon economy. The West Texas

[1] bbl/d is the common abbreviation used for "barrels per day." One barrel is equivalent to 159 litres, or 42 gallons (BusinessDictionary.com 2018). A common explanation for the double b abbreviation is that it stands for "blue barrels," the color Standard Oil used to paint its barrels. Some have challenged this, pointing to the presence of the abbreviation on documents prior to the oil industry. See the post "History of the 42-Gallon Oil Barrel" on the site of the American Oil & Gas Historical Society: https://aoghs.org/transportation/history-of-the-42-gallon-oil-barrel/

[2] Drawn from Macrotrends for detailed data, and InflationData for yearly averages adjusted for inflation. Accessible, respectively, here: http://www.macrotrends.net/1369/crude-oil-price-history-chart and https://inflationdata.com/Inflation/Inflation_Rate/Historical_Oil_Prices_Table.asp

Intermediate (WTI) — the North-American barrel of reference for oil prices — started the 2002 year at $27 per barrel. Adjusting historical prices for inflation, this was a few dollars above average for the period between 1946 and 1973. The OPEC oil crisis of 1973 doubled the price in one year and more than quadrupled it by the end of the 80s. 27$ per barrel was just a few dollars under average for the ensuing period between 1986 and 2001. But between 2002 and 2008, prices soared again, to an exalting $155 in June of 2008. Aside from the 1-year dip caused by the financial crisis, prices fluctuated around the $100 mark until the fall of 2014, when it began its dramatic descent to below the $30 mark in January 2016.

So TransCanada's proposal came at a time when oil prices were reaching unprecedented heights, and tar sands producers in Alberta were chomping at the bit for better access to market for the landlocked resource[3]. The Northern Gateway pipeline project and the Keystone XL pipeline project, aiming for West Coast tidewater and southern U.S. refineries respectively, had been mired in various kinds of opposition. Energy East was TransCanada's eastward solution to the problem of Albertan oil's difficult mobility. Depending on the venue, it was touted as a boon to national energy security by providing "local," ethically produced oil to Eastern refineries; or as a boon to our economy by providing jobs and Atlantic access to overseas markets, where Alberta's bitumen would purportedly fetch a better price than the currently discounted rate it was getting from U.S. customers. The extra carrying capacity would allow for the projected doubling of tar sands production by 2020[4] (Government of Canada 2013) and take pressure off of the rail infrastructure which was being pushed to its limit — with the added benefit of providing a safer alternative to rail transport. The July 6, 2013 Lac Mégantic tragedy, where the explosion of a derailed crude oil shipment led to the death of 47 people, only served to emphasize this point: since oil was going to move anyway, might as well move it through a "state-of-the-art" pipeline.

But pipelines had their own checkered history. The 2010 spill in Michigan, where Enbridge's Line 6B pipeline breached and released more than 3 million litres of diluted bitumen into the Kalamazoo river, served as a case in point to those who wanted to highlight the

[3] "Market" is a black-box used widely to various discursive purposes. Here it implied flexible access to global markets, so specifically to non-U.S., overseas markets.

[4] These were Natural Resource Canada's 2011 numbers, that estimated Canada's proven reserves at 173 billion barrels (98% of which lay in Alberta's oil sands) and calculated total production for that year at 1.6 million bbl/d. Projected growth for 2020 varied between 3.2 and 3.7 million bbl/d.

disastrous potential of oil pipelines. No matter how minute the statistical chance of a spill boasted by proponents, accidents visibly did happen, and when they did the impacts were severe.

Bitumen

The diluted bitumen itself, product of the Alberta tar sands, was also demonized as a "dirty" oil, as much for the havoc its extraction wreaks on local environments and communities (Huseman and Short 2012) as for its heavier environmental toll thereafter (Nikiforuk 2009). Between 2005 and 2014, oil production in Canada increased by 50%, with practically all of that growth coming from so-called unconventional sources in Alberta's oil sands. There is little doubt that anyone reading this will already have some familiarity with the oil sands, but it is worth taking some time here to briefly explain[5] the difference between conventional and unconventional sources, given the crucial role it has played in recent pipeline controversies.[6]

Oil sands consist of bitumen suspended in a mix of sand, clay, and water. For the most part, this highly viscous oil is qualified as a "heavy" crude — or bitumen — because of its longer carbon chain. Hence the "tar" sands appellation. Whereas conventional, lighter crudes can be pumped relatively effortlessly to the surface, oil sands require a more heavy-handed approach. There are two methods of extracting bitumen. When deposits are within 250 ft. of the surface they can be mined — dug up and mixed with large quantities of warm water to separate the bitumen from other substances. When inaccessibly deep — which applies to 80% of known reserves — the ground needs to be drilled and injected with steam (called "in-situ" operations), which after a couple of weeks separates the bitumen and pushes it to the surface. Once extracted, bitumen can either be "upgraded" into a synthetic crude by removing carbon (which produces a by-product called petroleum coke) or by adding hydrogen; or it can be diluted with lighter hydrocarbons (and other proprietary, hence secret, chemicals) to make it *behave* like conventional oil. This is what is often referred to as "dilbit," the substance that sank to the bottom of the Kalamazoo river in 2010 when Enbridge's Line 6B pipeline burst open.

While proponents argue that dilbit behaves exactly like conventional oil — as TransCanada has — the truth of it, as is usually the case, is tied to contingencies and

[5] Adapted from the above-cited, somewhat promotional, Government of Canada (2013) brochure. View it here: http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/pdf/eneene/pubpub/pdf/OS-brochure-eng.pdf

[6] While oil sands/tar sands is often used interchangeably, Gordon (2015) notes that "oil sands" tends to be used by those who wish to downplay its controversial qualities (like the government), and "tar sands" by those who wish to emphasize it. Gordon opts for geological accuracy by calling it "bitumen," "to avoid the politically loaded tar/oil debate" and "rectify" our relationship to the resource (xxxvii).

qualifications. The problem with dilbit is that while, once spilt into the environment and exposed to the elements, it might behave more or less like its lighter counterparts, the lighter oils which bitumen is mixed with evaporate in a matter of days — a process called "weathering" — after which it tends to "become denser and stickier," "coating the vegetation" and sinking to the bottom where it "gets into the sediments." This was one of the conclusions that the U.S. National Academies of Science came to in a December 2015 study (NAS 2016). The study also found that "regulations and agency practices do not take the unique properties of diluted bitumen into account, nor do they encourage effective planning for spills of diluted bitumen."[7]

As mentioned, oil coming out of the tar sands is what critics often refer to as "dirty" (see Nikiforuk 2008; Khalfan 2015; Winfield 2013) or "extreme" oil (Pineault 2016b). They do so for a number of reasons. Tar sands extraction is a resource intensive and environmentally expensive resource. Depending on who you ask, the Energy Return on Investment (EROI) for a barrel of bitumen is anywhere between 1:1 and 10:1. In other words, in the worst-case scenario, when taking into account "the tar sands' full life cycle — including transportation, refinement into higher quality products, end use efficiency and environmental costs," oils sands production requires as much energy as it produces (Nuwer 2013). Accordingly, it is expensive to produce. For the most expensive operations, after royalties, taxes, and revenue to investors have been added to extractions costs, one barrel of bitumen can cost between $80 to $100 to produce (Desjardins 2015). More importantly, tar sands operations have devastating ecological impacts on their surroundings — they underlie 142 000 km2 of boreal forest, prairie and muskeg — and on the Indigenous communities living in the region (Huseman and Short 2012). Depending on the method of extraction, it takes between one and four barrels of water to produce one barrel of bitumen, water which then has to be contained in vast, toxic tailings ponds. "Environmental inequities" are also delivered to those living in the airsheds of refineries that process tar sands — like the Aamjiwnaang near Sarnia — whose emissions contain higher levels of "sulfur dioxide, nitrogen oxide, hydrogen sulfide, mercury, cadmium, and lead," associated with "increased rates of cancer, heart disease, reproductive disorders, and respiratory diseases" (Scott 2013b: 46).

[7] See the press release here: http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=21834

Pipeline politics and a legislative fix

The Natural Resource Defense Council (NRDC, a U.S. based environmental group) teamed up in the mid-2000s with environmentally concerned groups[8] and communities for a "dirty fight over Canadian tar sands oil." The original thought had been to stop the tar sands' environmental and social devastation by "disseminat[ing] the facts" to a US audience, which they thought had the power to "effect change." Keystone XL — the southern pipeline route to export markets proposed by TransCanada in 2006 — soon became the focus of their attention, given how it "promised to strengthen the tar sands industry, put America's public safety at risk, and lock the United States into a dirty energy future." The tar sands it would ship to the Gulf Coast "isn't your grandfather's typical oil," said NRDC policy analyst Danielle Droitsch, "it's nasty stuff" (Denchak 2015).

By partnering with Canadian groups, the NRDC also sought to fight the tar sands on their home turf. The opposition came to a head in 2012 at the joint panel review for the Northern Gateway pipeline. As previously mentioned, Northern Gateway was Enbridge's solution to Alberta's landlocked resource, proposing to take it westward to the coast through British Columbia. But the project became iconic of the tension between pipelines and the environment, in part because it charted its course through BC's Great Bear rainforest. The regulatory hearings, which began in January 2012, had been flooded by applications to participate, and brought the Harper government's frustration to a boil. On the eve of the hearing, then Natural Resource Minister Joe Oliver made a sortie in an open letter, declaring that, "Those groups threaten to hijack our regulatory system to achieve their radical ideological agenda."

Despite its pro-hydrocarbon development leanings, the Harper government, since its election in 2006, had been unable to bring a single pipeline project to fruition. The foreign intervention in Canadian pipeline politics, like the funding of Dogwood's "mob the mic" initiative by US charities (Savage 2016), combined with the glut of land-locked oil that was purportedly "costing producers up to $50 million a day" and the province of Alberta "up to $8.5 million a day in royalties" (Scott 2013a: 28), proved too much for the Conservative government. Frustrated by pipeline projects getting bogged down at the evaluative stage by an excess of citizen

[8] Such as energy and environment think tank Pembina Institute, Greenpeace Canada, and a number of First Nations Communities.

participation, the Harper government, ostensibly in collaboration with industry (De Souza 2013), introduced sweeping legislative and regulatory changes in that same year through 2 omnibus "budget" bills, Bills C-38 and C-45 (see Stendie and Adkin 2016), which drastically reduced federal environmental protections and streamlined regulatory processes. Perhaps Harper's dream of Canada as "a new energy superpower," as he described it to the Canada-UK Chamber of Commerce a few months after coming to power in 2006 (Taber 2006), could finally come to fruition.

Energy East — framing a pipeline

But politics proved complicated, and rather unpredictable. My interest in the Energy East pipeline as a research topic began with a political irony: while Harper's legislation meant to facilitate and expedite resource development projects, it seemed to have the reverse effect, by further delegitimizing federal regulatory processes and the agencies that oversee them. At the heart of the controversy was the National Energy Board (NEB), the federal agency tasked namely with evaluating and regulating pipelines crossing provincial and national boundaries. Bill C-38 introduced key changes to how environmental assessments were conducted, how the NEB reviewed pipeline projects, and how decisional power was distributed. Among these changes, "scoping" was "perhaps the most significant" (Doelle 2012: 11).

Scoping refers to the range, or scope, of both the evaluative process and what aspects of the proposed project fall under consideration. Public participation was now limited to those "directly" impacted by the project or with relevant expertise. This meant that a farmer whose land was in proximity to the pipeline's right-of-way but not directly intersected by it would not have *a priori* access to the NEB's hearings. More widely, it excluded generally concerned citizens — whether inhabitants of communities traversed by the pipeline, unmobilized Canadians with an opinion on their country's future development, or mobilized environmental activists — from the review process.

Equally controversial was the NEB's exclusion of upstream and downstream impacts from its review of the project, which would consider only the pipeline itself. For many, at a time when national economies needed to urgently transition away from their reliance on fossil fuels, failing to include in the review the wider ramifications of the pipeline seemed a staggering transgression of common sense. To outline this perspective, consider the following. A decade ago, George Monbiot suggested that rather than "prevaricate over climate change" and discuss more efficient

light bulbs, global leaders could instead realize the simple truth that "if fossil fuels are extracted, they will be used" and decide to leave them in the ground (Monbiot 2007). The proposal found increasingly solid ground in arguments that to maintain global temperatures within 2 degrees Celsius, humanity would have to keep to a "carbon budget" (Meinshausen et al. 2009), which the IPCC (Intergovernmental Panel on Climate Change) estimated in 2013 in its "very high GHG emissions" scenario at roughly 1000 gigatons of total CO2 emissions by 2100 (Pachauri et al. 2015: 8-9) — more than half of which had already been spent. Calculating what the implications of such a global target would be, two British researchers found that for Canada this meant that 85% of its known oil sands reserves would have to "remain unburnable" (McGlade and Ekins 2015: 7). Feeling the window begin to close, a group of scientists released a statement on Earth Day in 2015 claiming that to keep to the budget 3/4 of known fossil fuel reserves needed to stay in the ground (Vaughan 2015). Their statement was meant to underline the price of complacent inaction before the UN Climate Change Conference in December of that year.[9] The leave it in the ground argument is far from marginal but has been taken up for example by the International Energy Agency, who advocated for a "bridge strategy" in the energy transition during the Paris conference.

It is along this line of reasoning that the Pembina Institute produced a report in February 2014, finding that, "The crude production needed to fill the Energy East pipeline would generate an additional 30 to 32 million tons of carbon emissions each year — the equivalent of adding more than seven million cars to Canada's roads." This statistic would become an argumentative signpost in the following years for many who wanted to highlight what seemed to them an obvious contradiction between "climate leadership" — as Liberal politicians in Canada and Quebec liked to call it — and the expansion of tar sands production. For example, at the public consultations held by the Montreal Metropolitan Community in the fall of 2015, the David Suzuki foundation would use it to point out how this increase in CO2 emissions was double the province of Quebec's targeted 1990-2020 emissions reduction.[10] This tension, between Canadian

[9] Newly elected Liberal Prime Minister Justin Trudeau, celebrating the defeat of Harper after almost a decade in power, declared enthusiastically in Paris that "Canada is back" and willing to "take on a new leadership role internationally" (Fitz-Morris 2015). Speaking at a different venue, in Houston in March 2017 where he had flown to receive an environmental leadership award at an oil and gas industry conference, Trudeau reassured his audience that, "No country would find 173 billion barrels of oil and just leave it in the ground" (Zimonjic 2017).

[10] This points to one of the difficult problems with scoping specifically, with climate change in general, and with market logics dictating state public policy: to what extent should localities be responsible for activities occurring outside of their own territory (as with environmentally-sound-Quebec's resistance to the "Canadian petro-state"),

policy and Quebec socio-political ethos, became one of the important points of articulation of the controversy, that played on Quebec's purported cultural and political distinctiveness.

Similarly, at the other end of the pipe, there was some frustration in New Brunswick about the NEB's exclusion of what happens after the oil leaves the pipe, for instance increased tanker traffic in the unruly waters of the Bay of Fundy and its impact on local biodiversity and endangered species like the North Atlantic right whale. The previously mentioned NRDC (U.S.-based National Resources Defense Council, scourge of Harper's bituminous dreams) brought this logic to its full potential in its July 2016 report titled "Tar Sands in the Atlantic Ocean."[11] They argued that the "nearly 300 supertankers per year" would in effect form a high-risk "waterborne pipeline [...] down the entire U.S. Eastern Seaboard, from the tip of Maine to the Florida Panhandle, around Florida's peninsula, and on to refineries along the Gulf Coast," threatening species, local economies, and "emblematic regions" throughout. Qualifying the scope of Energy East's environmental review by Canadian authorities as "sorely lacking," the NRDC recommended that the federal government amend Harper's newly minted Environmental Assessment Act and that the U.S. get involved in the regulatory process. Their estimate of Energy East's total contribution to global warming was "at least 256 million metric tons of greenhouse gases, equivalent to the annual emissions from nearly 54 million cars."

Energy East — formulating a research

To the ears of a first-year graduate student excited by recent posthuman (e.g. Haraway 1991), material semiotic (see Law 2009), and other ontological turns (see Carrithers et al. 2010; Pickering 2017), scoping sounded a lot like enactments of particular realities in the service of interested political agendas, giving me the opportunity to observe a species of "ontological politics" (Mol 1999): different practices producing different objects and subjects (rather than simply different ways to *think* about or order them) (Mol 2013; Trombley 2014). As with any sociotechnical controversy, world-making was in flux and visible to the naked eye, and success depended on the reliable mobilization of a wide breadth of human and non-human actors. It seemed to me that the Harper government was not only trying to enact, through political and

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and to what extent can progressive measures elsewhere compensate for one's own failure to "decarbonize" one's economy (as with not-so-environmentally-sound-Quebec's appropriation of Californian emissions reductions through carbon market exchange)?

[11] You can find the report here: https://www.nrdc.org/resources/tar-sands-atlantic-ocean-transcanadas-proposed-energy-east-pipeline

regulatory instruments, more accommodating and expeditious objects (e.g. nature as unrealized wealth rather than complex ecology; pipelines as stand-alone economic artifacts rather than social projects), it was also attempting to mold more accommodating subjects: citizens as rights-holding landowners rather than empowered constituents of a polity; activists turned saboteurs of the collective interest; and environmentalists turned agents of foreign powers — all of which could be more easily disciplined under these new arrangements.

My preliminary observation being that the stakes of large-scale infrastructure projects were as much about negotiating political agency in the present as they were about the kinds of futures a nominalized collectivity like Canada could plan for itself, I formulated my research around the following question: How is political sovereignty and agency being framed, enacted, negotiated, and contested in the controversy over the Energy East Pipeline? With the important sub question: What kinds of collectivities do these imply, anticipate, and perform?

Originally focusing on the limits imposed on the NEB's evaluative and regulatory process, I soon found myself engulfed in a myriad of delineations: some more overtly "political," like the tense contest over jurisdiction and overlapping competency between federal, provincial, and municipal governments; some more administrative and procedural; some more epistemological, like how do you measure risk, determine future demand, establish the ecological range of a pipeline, or distinguish between technical and Indigenous knowledge. The more I looked, the more it was difficult to pin down any prior, baseline reality that actors might then make competing claims about: political bodies, legal frameworks, statistical measurements, down to the very behavior of materials seemed to exist only through their contingent mobilizations. And indeed, I ultimately found that most of the objects, entities, collectivities, and relational frameworks mobilized during the controversy were not "naturally" pre-existing but normatively constituted. Importantly, their normative constitution was not just the result of some calcified historical choices but had to be reconstituted in the present through a variety of instruments. Resolving the controversy had less to do with reliable proof than with social choice. Politics had much to do with how normative commitments were determined, naturalized, and reproduced.

So I set out to investigate the politics of hydrocarbon pipelines in response to two problems: the institutionalized naturalization of arbitrary delineations; and the discursive closure of objects that occluded their complicated and heterogeneous constitution. Ironically — or fittingly, given that delineations became my principle object of research — it proved increasingly

difficult for me to delineate the scope of my own research. Attempting to understand what forces were at play, what the significance of the current controversy was in various historical trajectories, how climate change was influencing politics at all levels of government, what the range of actors was and what the stakes were for them posed a difficult methodological challenge and had a significant impact on the shape of my research.

This was compounded by my relative ignorance of hydrocarbon politics. There seemed to be an endless flow of "contextual" information that I needed to obtain before I could formulate an informed research plan. Appel et al., in their introduction to the edited volume *Subterranean Estates: Life Worlds of Oil and Gas* (2015), note that, "To enter into this world as a scholar, or indeed as a layperson, is an unsettling and, in some respects, a deeply confusing experience. Immersion in the world of oil and gas tends to produce a profound sense of intellectual vertigo" (6). This is due in part to the secrecy and centralized power that prevails there, to its pervasive "epistemological murkiness" (6) — the slippery indeterminacy that seems to permeate available data — and to the sheer vastness and depth of the industry's capillary reach.

I ended up dedicating the first months of research in the early spring of 2015 to fleshing out this context, sketching increasingly wider concentric circles around Energy East's multiplying controversies. I was inexorably drawn into the politics of hydrocarbon development in Quebec, where the government was conducting a series of strategic environmental evaluations[12] of its hydrocarbon potential, to get a wider sense of the provincial tension between hydrocarbon development, environmental concerns, and political legitimacy. I was also drawn into more general debates over the hydrocarbon economy and climate change because, for many of the groups involved in the Energy East controversy, general and site-specific issues tended to mix and inform their general political objectives. Following their concerns pulled me in a number of directions, from the 2010 pseudo-moratorium on shale gas development in the St. Lawrence, to alliances with Indigenous resistance to pipelines, to prospective fracking on the island of Anticosti, to the tar sands' dramatic ecological effect, and to municipal sovereignty over territorial development. By the time the expected 4 months of fieldwork were over, I was still trying to get a sufficient grasp on the context to write a project proposal. I decided to extend my research by a year, categorizing the first year of research as the preliminary work allowing me to

[12] *Évaluations environnementales stratégiques*, or ÉES

construct a scaffolding of sorts from which I could construct a sounder and better-informed investigative edifice.

The timing of my research also played an important role in how my perspective took shape. TransCanada announced publicly that it was moving forward with its Energy East Pipeline Project in August 2013 and filed its first 30,000-page regulatory project application with the NEB in October 2014, also filing documents with Quebec's environment ministry[13] for the Cacouna marine terminal and storage facility that was initially part of the project.[14] To keep the scale manageable, my original intention was to use the regulatory hearings as a "site" where I would be able to observe how competing claims were negotiated, delving deeper from there into each position and the regulatory form itself. Given the chance, I would also analyze how federal and provincial processes interacted.

In the spring of 2015, when I began the research, the NEB was still deliberating on whether TransCanada's application was sufficiently complete to initiate hearing proceedings, and Quebec was still trying — rather sheepishly according to critics — to compel TransCanada to comply to its full impact assessment procedure.[15] On June 8, 2015, Quebec Environment Minister David Heurtel gave a mandate to the province's *Bureau d'audiences publiques sur l'environnement* (BAPE), but under a different article of the law, leading to what many called derogatorily a "*BAPE au rabais*" — a discounted assessment[16]. These hearings, however, only began in March of 2016, and were interrupted mid-way when TransCanada suddenly decided to file the required documents to initiate a full provincial assessment. Quebec's Environment

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[13] Founded in 1979, it received its current (2017) name of *Ministère du Développement Durable, de l'Environnement et de la Lutte contre les Changements Climatiques* (MDDELCC) in 2014 after a number of iterations since the 90s, arguably as the government attempted to position itself relative to the rise of "sustainable development" and a wider understanding of what constituted an "environment." See Baril (2006). For clarity, I have chosen to use "Environment ministry" throughout.

[14] The Cacouna kerfuffle is a thesis unto itself. TransCanada had planned an export terminal in Cacouna, situated on the St-Lawrence estuary. As it turns out, the projected terminal was to be situated right in the middle of a Beluga whale nursery. After considerable commotion and litigation, TransCanada eventually abandoned the idea altogether. I will devote some space to this in chapter three.

[15] As set out in article 31.1 and ss of Quebec's *Environmental Quality Act* (*Loi sur la qualité de l'environnement*, or LQE), for which any pipeline longer than 2 km is subject to an impact assessment and requires a certificate. Article 6.3 of the LQE gives the government the opportunity to mandate non-binding, "generic" evaluations meant to study the potential risks and benefits of development sectors. I describe the differences and implications in more detail in chapter four, explaining how Quebec's enactment of its jurisdictional authority became the site of a tense tug o' war.

[16] The BAPE is Quebec's independent environmental impact assessment agency operating from a sustainable development perspective. It was created in 1978 and tasked with evaluating projects, holding public consultations, and reporting advice back to the government. I will discuss in some detail the negotiations and implications of Quebec's impact assessment in chapters three and four.

ministry proposed an expedited timeline to synchronize with the NEB hearings, scheduling the new BAPE hearings for October 2016.

As for the NEB, TransCanada submitted an amended version of the project in December 2015, which the NEB only deemed complete in June 2016. The NEB hearings finally began in August 2016, but almost immediately foundered under virulent protests and allegations of bias that the NEB could no longer dismiss. Within a week, the panel members had recused themselves and the process was suspended. Now that the pressure was off, Quebec started taking its time. When I began writing this thesis, in July 2017, a new NEB process for Energy East had just been started; and the Quebec government still considered incomplete the impact assessment submitted by TransCanada a year prior.

The details of all these developments will naturally come in later chapters. My point here is to highlight how these repeated postponements prolonged the contextual feel of my research. Rather than observe deliberations over a pipeline within the regulatory space, most of the data I was able to produce was about the contest over the rules of engagement, over the form of engagement — in a sense, about the infrastructure of democratic deliberation. Unsurprisingly, then, my arguments revolve around the aspirational quality of the pipeline, the indeterminate quality of politico-legal assemblages, and the contested relation between social imagination and democratic infrastructures.

In the end, the period of active fieldwork lasted from the spring of 2015 to the end of 2016. Most of my primary data came from public sources: regulatory and government documents, briefs, transcripts, media coverage, reports, letters, conferences (organized by activists, environmental groups, and university departments), consultation hearings (some on Energy East, some involving broader EA and legislative reform), press releases, print and web-based advocacy material, published first person accounts, meeting minutes. I also had to examine and study a range of secondary documents pertaining especially to constitutional and environmental law, and to pipeline history in Canada. I conducted a total of eight extensive semi-structured interviews between November 2016 and the winter of 2017 with seven people who played an important public role in the controversy: two central figures of Quebec's citizen mobilization, one director of a watershed management organization, one general manager of an environmental coordination and consultation organization, a lawyer and president of an

environmental rights organization, a farmer and president of a local chapter of the biggest farmer's union in Quebec, and the director of the NEB's Montreal office.

A note on theory

My constructivist inclinations should be clear by now. I take most of my theoretical cues from work conducted within the general STS tradition,[17] which refers to a body of work since the 80s that has challenged the explanatory separation between science, technology, and society (Callon 1981), showing that no phenomenon can be explained by appealing to any isolated domain of activity and that these domains themselves are not coherent and discrete wholes but normatively established and enforced categorical divisions.

For work conducted in the history and sociology of technology, this meant mostly looking for non-technological reasons for why certain technological forms prevail over others. The volume edited by Bijker et al. (1987) is a landmark effort to invert the explanatory causal sequence prevalent in the history of technology. Whereas technological success had traditionally been taken by historians as itself the explanation for the emergence of a given technology, the authors here argued that "the success of an artifact is precisely what needs to be explained" (Pinch and Bijker 1984: 406). This view challenged teleological interpretations of success as the predictable victory of the "best" and more functional technology that rationalized out all of the other factors that might play into one outcome prevailing over other possible outcomes.

A more extreme constructivist proposition (Callon and Law 1982; Callon 1987), which came to be known as Actor-Network Theory (ANT), suggested that researchers needed to "flatten" *any* prior distinction and rather trace the networked associations through which artifacts were assembled (Latour 2005). Perhaps the most novel proposition here was the radical redistribution of agency beyond human actors. If artifacts were produced by a range of non-technical factors — economic, political, social — then maybe non-human factors and entities as well had a significant role to play. Law (1986) provided a classic early example of this proposition, where he argued that to explain the imperial success of Portugal in the 15th and 16th centuries, one had to look well beyond the agency of "kings and merchants" and consider "sailors and astronomers, navigators and soldiers of fortune, astrolabes and astronomical tables, vessels and ports of call, and last but not least, the winds and currents that lay between Lisbon and

[17] STS stands in for Science and Technology Studies, and sometimes Science, Technology, and Society. Broadly, see Latour (2000); Law (2008); Braun and Whatmore (2010); De la Cadena et al. (2015).

Calicut" (235).[18] But if success depended on the mobilization of so many diverse entities and forms of agency, then the *stability* of networks equally needed to be explained — how were these alliances maintained through time? In short, with a lot of work, power, and chance. As Law (1987) put it:

> […] the stability and form of artifacts should be seen as a function of the interaction of heterogeneous elements as these are shaped and assimilated into a network. In this view, then, an explanation of technological form rests on a study of both the conditions and the tactics of system building. Because the tactics depend, as Hughes has suggested, on the interrelation of a range of disparate elements of varying degrees of malleability, I call such activity *heterogeneous engineering* and suggest that the product can be seen as a *network* of juxtaposed components (113, emphasis in the text).

Whereas historians of large-scale systems like Hughes (e.g. 1983) might have emphasized the successful integration of heterogeneous elements into sociotechnical systems, Law (1987) points out that a network approach emphasizes conflict, because

> [...] successful large-scale heterogeneous engineering is difficult. Elements in the network prove difficult to tame or difficult to hold in place. Vigilance and surveillance have to be maintained, or else the elements will fall out of line and the network will start to crumble. The network approach stresses this by noting that there is almost always some degree of divergence between what the elements of a network would do if left to their own devices and what they are obliged, encouraged, or forced to do when they are enrolled within the network (114)

To be clear, in this theoretical language, stability refers in large part to the more conventional sociological concern of "social order," but without having to appeal to the strictly "social" or implying that "order" is indeed achieved (Law 1990). In other words, it provides for a different way of speaking to power and politics. I will return to this below. For the moment, I will only emphasize one implication: if the human world is not constituted by the increasingly stable ordering of compliant objects but rather through the constant negotiation between heterogeneous agencies, then we can assume neither the prior existence of objects nor the nature of their relations. What this means for a study like this one is that reified objects like Canada, the NEB, or the Energy East pipeline are neither entirely pre-existing historical entities nor the necessary outcomes of institutionally prescribed legal, political, and technical norms, but need to be constantly explained for how they negotiate their existence at any given moment. Though this thesis is far too ambitious in scope to adequately apply this principle, I have tried throughout to

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[18] See also Callon (1986) for an oft-cited influential example.

undermine the apparent stability of networks — or, put differently, to not confuse prescription, description, and constitution.

Before fleshing this out a little more, I would note that there are two sides to the constructivist perspective I am discussing here. On the one hand, by challenging nature as a distinct order of life, STS[19] has played a significant role in challenging the "naturalness" of natural sciences (Hacking 1983) and in showing that knowledge construction is exactly that — a constructive process channeled contingently through a variety of more-than-technical practices and instruments (Knorr-Cetina 1981, 1999; Latour and Woolgar 1986). Importantly, constructing knowledge does not imply that it is necessarily false or "fake," only that any claim is the result of multiple acts of creation, translation and circulation, some deliberate and methodologically scientific and some not. Equally important, from this perspective, given that knowledge is an artifact, truth and exactitude in dialogical encounters becomes less a function of correspondence to a prior reality than a measure of the visibility of epistemological transformations (Latour 1999).

On the other hand, by radically deconstructing agency, ANT has popularized a method and style of argument by which reality itself is understood as being constituted through performative enactments. Law (2009) describes ANT as follows: "Actor network theory is a disparate family of material-semiotic tools, sensibilities, and methods of analysis that treat everything in the social and natural worlds as a continuously generated effect of the webs of relations within which they are located. It assumes that nothing has reality or form outside the enactment of those relations" (141). Tracing associations, as opposed to generating typologies for example (see Müller 2015), has been part of an overall return to "materiality" (Law and Mol 1995; Bennett 2010; Coole and Frost 2010) as a way to situate explanation within the localized practices and relations that generate them rather than on the reified plane of theoretical tropes, and as a way to emphasize the significance of the outcomes of these relations (Blaser 2013). Put simply, if reality is enacted through constitutive relations, then choices matter. This is why some have opted to use the term "ontological politics," to emphasize the stakes (e.g. Mol 1999;

[19] Here STS is a shorthand for research also conducted under other rubrics, such as the Sociology of Scientific Knowledge, Social Studies of Science, or Feminist Technoscience. The shorthand is a bit of a post-scripted conflation of interesting differences, but for the purposes of the present narrative they will remain more or less black-boxed. See Roosth and Silbe (2009).

Pickering 2011; Pellizzoni 2015; see McCreary and Milligan 2014 for an application to pipeline politics).

It is worth noting here how a general turn to a relationally constituted materiality has opened up new fascinating avenues of anthropological analysis. Kohn (2013) is one example of what can happen if we take material semiotics seriously, where he attempts to bridge the gap between representational processes and material relations, suggesting that if we consider *any* exchange between entities as representational — symbolic or otherwise — then "life and thought are one and the same" (16). In this interpretation of reality, even forests can be broadly understood as "thinking." The ultimate conclusion from this is that if networks of associations think according to identifiable semiotic precepts, then their contingent arrangements can be interpreted as generating delineated patterns of possibility. This is what Kohn refers to as "form."

My principle reason for mentioning Kohn here is that by blurring the line between thought and material relations, his contribution clearly undermines the distinction between the two kinds of constructionism noted above: the construction of knowledge and the constitutive enactments of material reality. While governments and proponents in pipeline politics seek to reinforce the deliberative authority of official procedure by appealing to qualitative and exclusive differences between "science" and "politics," I make the argument throughout this thesis that similar constitutive dynamics are visible as much in what we strictly understand as knowledge production as in the most pejorative version of "politics" that circulated in this context: the mobilization of democratic resources to the furtherance of particular interests.

But perhaps more to the point, their appeals to legitimate authority have little to do with science or politics proper but rely on reifications of these domains' perceived general categorical qualities: that which is natural and pre-normative on the one hand; and that which is inflected through partial, situated, and interested subjectivities on the other. What proponents and the federal government would naturalize are the formal qualities of political engagement that locate and arrange procedural channels of power and substantive contributions in a particular order. It is in response to such attempts at naturalizing certain patterns of political relation that I emphasize in this thesis the contingent constitution of both the political infrastructures themselves and the knowledge claims circulated to reinforce them. Where Kohn's concern is strictly with the semiotic quality of all material relations, in the simplest iteration of my arguments I emphasize their political quality — i.e., the role they play in mediating agency.

To refocus this discussion, I would posit that the central theoretical question in this context is: what happens when centralized administration meets heterogeneous, indeterminate, and contingently constituted life? If we take ANT's constructivist arguments seriously, then any form of management is faced with the unavoidable problem of epistemic manageability: how can this excessive world be cut down to manageable size? To become knowable and communicable, the world has to be apprehended through epistemic transformations by which heterogeneous entities and phenomena are patterned, reduced, synthesized, categorized, generalized, etc. (Bowker and Star 1999).

Knowability is one thing, manageability is yet another. Agency is as much a function of power and capacity as of the kinds of visibilities that one can generate. There is an abundance of literature on the rise of bureaucratic management which, in its attempts to rationalize the administration of large populations and territories, also ends up creating its own novel realities and rationalizing life itself.[20] This is one of the many sites of co-constitution between knowledge and politics. But it is important to specify that the constitution of the social through forms of knowability and administration does not imply the predictable engineering of social life through the unproblematic materialization of prior vision, but rather an unpredictable iterative process (Mitchell 2002) — hence the "co" in co-constitution.[21] Given that to act upon the world, especially in ways that seek to subdue and control it, requires a prior reductive framing of it, then action is always effected upon a world that is excessive of its prior formulation. So action inevitably has unintended and unpredictable consequences.

In sum, what I want to emphasize from the above are two fundamental ingredients to political analysis: prior indeterminacy; and the loci and quality of agency. In a sense, this observation takes us back to Pinch and Bijker's inversion of causality in technological innovation: no outcome is the inevitable result of objective intrinsic properties and predictable processes. From this perspective, explaining any phenomenon requires tackling it through its contingent

[20] This tradition usually begins with Weber (1947). Foucault's work has of course been transformational for a reconsideration of the loci of constitutive state power (see Foucault et al. 1991). For recent work on the material effects of the bureaucratic and epistemic management of life, see Riles (2006); Lampland and Star (2009); Hull (2012); Gupta (2012).

[21] Co-constitution is a pervasive notion that figures in a number of theoretical perspectives to express the simple observation that the world is not populated with pre-existing objects that bump into each other but with relationally entangled entities whose being is shaped through the contingencies of their existence. See for example Duranti (1993); M. Jackson (1998); Ingold and Pálsson (2013); c.f. Haraway (2008); Jasanoff (2006b). For some of the ethical implications, see Stengers (2005); Nelson (2001); Puig de la Bellacasa (2012).

and often less visible constitutions. This type of argument provided the starting point for a now well-established turn to infrastructure as a site to foreground elements of collective life that are often left in the background of social analysis.[22] Where Actor-Network Theory has sometimes been criticized for the apparent apolitical effects of its methodological challenge to absolutes and prior distinctions (but see Law 1999), the infrastructure literature has applied ANT's insights to explicitly political concerns such as the normative commitments that infrastructures naturalize (G. Hughes 2015; Galloway 2004), the unseen work they mobilize (Harvey and Knox 2015; Mains 2012), the promises they symbolize (Hetherington 2014; Schwenkel 2015), or the unequal possibilities they generate (Star 2002; Anand 2017).

Most importantly, in terms of the relation between indeterminacy and the infrastructuring of possibilities, is the observation that pre-existing arrangements are not deterministic but participate in recursive constitutive dynamics. In other words, "the recursive shaping of infrastructure, society, economics, and politics offers an image of relations that are *a priori* underdetermined and thus subject to experimentation" (Harvey et al. 2016b: 12). This is the point of departure for my analysis of the Energy East controversy. And indeed, given that many of the infrastructures I researched were in large part aspirational, the experimentations I recorded ended up challenging the figuration of infrastructure as distinct from the enactments they purportedly ordered. Neither the political and legal infrastructures nor the actors that used them were determinate or constant in any prior, essential sense; relations and outcomes were neither fully determined nor entirely plastic but enacted within a range of possibilities.[23] Importantly, these possibilities were influenced as much by pre-existing infrastructure as by the compelling force of their enactments. What I mean by this is that as far as political (constitutional), legal, and regulatory infrastructure were concerned, form seemed the result of contested enactments as much as the outcomes purported to flow from them were.

Both the infrastructures and their substantive negotiations they claimed to contain were indeterminate enough to become the crucible of political commitments.[24] In other words, prevailing in the contest over differential outcomes involved prevailing in the enactment of the

[22] For a useful recent iteration, see Harvey et al. (2016a). For influential landmarks see Star (1999); Edwards (2010); Larkin (2013).

[23] While the infrastructure literature attends to a unique brand of material politics, this general constitutive argument about the relation between entities and their environment, the particular and the general, etc., features widely in other avenues of anthropological analysis. See e.g. Ingold (1995); Jackson (1998); Thayer and Non (2015).

[24] (Wolf 2001) would refer to these as "structural" and "strategic" power, respectively.

democratic infrastructures that afforded their materializations. The politics were over the ability to situate and determine both form and substance in relation to power and visibility — to collapse potentiality into naturalized, convenient infrastructure. The perhaps surprising observation that I made was that these two types of negotiation often occurred simultaneously.

Though this is my overarching argument, I am not going to press the point here, as it is far too theoretical at the moment to clarify much aside from my theoretical allegiances. I will mention two further points before moving on. First, what rendered historically (and momentarily) settled regulatory and economic infrastructures particularly contestable and hence indeterminate at the time of research were the sense of impending climate crisis on the one hand, and a perception of political and economic inequities on the other (Malm 2016). This is one role that the environment has been playing in the challenge to entrenched patterns of development (Newell and Paterson 2010), which have had to press towards more autocratic and expedient modes of regulatory approval and political legitimacy. But there was a limit, it seems, to how far the Canadian government could expedite its priorities, as Harper discovered.

Second, the subtle point about social life being contingently constituted is that while a wide variety of objects and categorical distinctions — nature, the economy, science, the state, etc. — are in a sense invented, they are real in two senses: first, there is really something *there* outside of our imagination of it, just not exactly what we think; second, our enactments bring about their existence (Callon 1998) but in unpredictable, iterative ways (Mitchell 2002). So the world is excessive, both of our attempts to know it (Poovey 1998; Clark 2005; Voss and Freeman 2016) and of our attempts to control it (Bowker and Star 1999; Tsing 2011). Importantly, what we choose to leave out of both of these endeavors has profound performative effects (Jasanoff 2006a; Taylor 2010).

So I set out with the preliminary assumption that any *thing* — from TransCanada itself to the provincial and federal governments, the pipeline, the market, "Canada" etc. — did not exist as such outside of their enactments but had to be made present, mediated in some way to our attention. We can experience them either as a metonym — a jutting part taken to represent the whole — or as a formulated, curated idea, a reification. There is a spectrum of tangibility for objects whose existence we speculate about, from the very material sludgy blob of diluted bitumen floating down a river to intangibles like "the national interest," or "risk of future spill."

Importantly, the instantiations of these objects are in constant flux. Yet all manner of objects like these are brandished with vivid realism, as if stable and constant things that pre-exist the operations or relations through which they are materialized.

These operations become especially visible in the regulatory, quasi-juridical space, where the anecdotal is in constant tension with generalized, modelled, and speculative claims about reality. In other words, "unscientific" prior experiences stemming from situated encounters with reality clash with other modes of engagement and representation. Any act of representation can be understood as fictive in the sense that it is an act of creation, a phenomenon in its own right that delineates an epistemic space where predictability and judgement can be generated according to specific logics. Allan Pottage, exploring what STS's brand of constructivism might do to our understanding of law, notes that, "According to the modern doctrinal understanding of proof and procedure, fictions and presumptions are devices which assist in making decisions in conditions of uncertainty" (2004:11). This is one irony of investigative procedures like NEB hearings: rather than uncover the "underlying truth" of a matter, as the phrase "evidence-based decision-making" implies, procedural determination and certainty are mostly an outcome of prior epistemological delineations and restrictions (Law and Lodge 1984).[25]

I am not implying that these operations necessarily indicate cynical and manipulative dishonesty about the "true" nature of reality out there. It is important to again note that such restrictions are the *necessary* channels by which scalar interventions are mediated — regardless of prior intentionality or pragmatic ethical quality. A difficult distinction to make is that, on the one hand, the moral evaluation of actors and the epistemological requirements of scale should not be conflated; but, on the other, the differential operationalization of epistemological necessities are ultimately ethical and political — that is to say, because they delineate and order the world in specific way, they *do* have ethical import (see Puig de la Bellacasa 2012; Nelson 2001). So knowledge, morality, and politics mix, but in very specific and often contingent ways. One way around the problem is to simply recognize, from the start, the untenable distinction between knowledge and ethics, or between matters of fact and matters of concern (Latour 2004, 2005) — a recognition that I would argue is much easier to effect if, in such a context as public deliberation on development projects, we abandon individual morality as a factor of analysis.

[25] How to deal with uncertainty and indeterminacy is an open question in environmental planning scholarship. See e.g. Leung et al. (2015); Duncan (2013); Shackley and Wynne (1996).

If I have an ultimate prescriptive argument it is that acknowledging the reified quality of sociotechnical deliberations would help make explicit precisely *what* it is that is being debated at any given moment: products of chains of variously sedimented reference (Latour 1999). Being a little less quick to confuse epistemological models with reality would do much to help everyone parse through the murk with more precision, consistency, and indeed — in Latour's sense of truth — honesty. In public settings, the proponent's attempts at rendering invisible the scaffoldings of its knowledge claims were a site of constant battle.[26]

Operations of scalar management are "performative" in the sense that they do not just make claims about what is out there, they also participate in shaping what these contingent objects will become. Harper's legislation was not just about facilitating resource development by removing regulatory duplication, it was also about making pipelines a different sort of object, and about disciplining the citizenry into a different sort of subject. Limitations brought to the NEB Act by Harper's government had deep implications for the pipeline's existence as a *res publica* — a public matter (see Colas and Kharkhordin 2009). In what follows, I provide an overview of the controversy as it arose in Quebec — of how the pipeline became a contested public artifact.

Quebec and hydrocarbon development

I discussed earlier critiques of tar sands production and of its attending infrastructure that "locks us into" certain patterns of social development that are fundamentally at odds with the transitional imperatives of climate change. A couple of years into the controversy, economist and sociologist Éric Pineault published a book (2016a) titled "The Energy East Trap," the argument being that Energy East was not simply a pipe but the conduit for a whole way of life that we must leave behind in order to safeguard our future. Pineault was one of many academics who got involved publicly against the pipeline and played a crucial role in supporting citizen information and mobilization. He is part of a collective called the *Collectif scientifique sur la question du gaz de schiste*,[27] which in 2011 brought together 170 scientists from different disciplinary fields to keep a critical eye on the development of the shale gas industry in Quebec, in the wider context of the province's energy and resource management. They gradually expanded their purview to include hydrocarbon production and transport in general.

[26] See Duncan (2013) for a similar argument about what kinds of visibilities would be useful to deal collectively with indeterminacy.

[27] Which translates as Scientific Collective on the Shale Gas Question.

The trajectory of this collective matches that of the *Regroupement vigilance hydrocarbures Québec*[28] (RVHQ), which became one of the most important vehicles for citizen and municipal mobilization in the Energy East controversy. The group was formed in 2010 under the name *Regroupement interrégional sur le gaz de schiste de la vallée du Saint-Laurent*[29] to rally against exploratory fracking that had begun in the St. Lawrence valley. Importantly, its mandate included all fracking activity as its object of contention. In September 2013, they expanded their mandate to include all hydrocarbon activity. Today, the group federates more than a hundred citizen committees across the province.

There are two things I want to emphasize. First, I want to underline the significance of the collaboration between the scientists mentioned above and concerned citizens. According to RVHQ founder and coordinator Jacques Tétreault, the extensive work conducted by citizens to gain knowledge on the issues they are facing and to coordinate and mobilize towards giving these concerns political purchase needs to be conducted in large part to compensate for the failure of government to come through on both of these fronts: timely, proactive, and transparent dissemination of information; and meaningful consultation of citizens before projects are presented as a *fait accompli*.[30]

This is important because it explains some of what the pipeline felt like for people living along the pipeline route and the manner in which localities mobilized. The sense that politics and large-scale development is something that is made to happen *to* citizens from removed seats of power was echoed in most of my interviews. Even for those in quasi-governmental groups like the 2002 *Politique-nationale-de-l'eau*-created *Organismes de bassins versants*[31] (OBV), the Energy East pipeline materialized from word of mouth through citizen networks.[32] This will be part of my overall argument, both in the general sense of how democratic power is negotiated, and as a specific commentary on the Energy East pipeline controversy. From the start, pipeline proponents and advocates worked to enact the pipeline as a solely federal object, on which no other jurisdiction had political power. I'll say more on this later, and on how this mode of enactment went beyond federal constitutional arguments.

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[28] Quebec Hydrocarbon Vigilance Collective.

[29] Interregional Collective on Shale Gas in the St. Lawrence Valley.

[30] Personal conversation, February 9, 2017.

[31] These are provincial watershed based administrative units aimed at safeguarding water resources through the integration, coordination, and consultation of "water actors" within a territory.

[32] Jean-Pierre Gagnon, director of OBV Zone Bayonne, personal conversation, November 14, 2016.

So the first thing I wanted to emphasize above is both the powerlessness that citizens can feel when facing down giant corporations like TransCanada, especially when the legal and political apparatus seems skewed in their favor, and the importance of knowledge-sharing networks and collaborations. For those citizens who decide to devote significant amounts of their time and energy researching and mobilizing against development projects like Energy East, those networks can have a profound influence on how they come to understand the stakes at play. This was true for RVHQ's Jacques Tétreault, who traveled to other communities across North America to investigate the untold ramifications of fracking on affected communities, just as it was for Odette Sarrazin — coordinator of the Lanaudière RVHQ committee — who was central to organizing and facilitating opposition to Energy East in that region. Pipeline projects seem to particularly encourage this kind of cross-pollination given how they easily transport one's imagination up- and downstream to industrial practices, consumer habits, broad environmental impacts, and countless affected communities. For anti-pipeline activists, as I observed it, the mingling of distributed localized concerns with wider, more "global" issues seemed par for the course.

This is the second thing I wanted to emphasize about the RVHQ. Since the group's reorientation towards hydrocarbons in general in 2013, their mandate reads: "Our ultimate objective is to inform and raise awareness among the population as to the greatest challenge humanity has ever faced: climate change."[33] The Energy East pipeline — and indeed oil pipelines in general — have become emblematic of the systemically entrenched practices that have dangerously co-opted social development. As an economist, the above-mentioned Éric Pineault was particularly sensitive to how the patterns of investment return on pipelines demand the continuation of current practices well into the future, over the span of decades, a timeline which is overtly at odds with greenhouse gas emissions (GHG) reduction targets set by both provincial and federal governments (Adkin 2016).

Palen et al. (2014) concur that pipeline infrastructures create a "'lock-in' that commits society to decades of environmental degradation" (466). They lock-us into GHG emissions which, according to Environment Canada, increased 244% between 2000 and 2012. In 2014, the entire oil and gas sector accounted for 26% of Canada's 732 megatons of GHG emissions (McKeown et al. 2016). The increase in oil production in Alberta's tar sands led to a tripling of

[33] See https://www.rvhq.ca/historique/

fuel oil shipments by rail between 2005 and 2014 — with most of the increase occurring between 2012 and 2014 — and to an increase in crude oil deliveries by 58% through the enhancement of existing pipeline capacity. The increased rail traffic was one of TransCanada's central arguments for its pipeline, arguing that since resources had to be moved anyway, pipelines would be a safer alternative. For TransCanada, the 2013 Lac Mégantic disaster — where a train carrying oil derailed and blew up, killing 47 people — was a case in point. Just as it was a case in point for opponents of the pipeline of the dangers of oil production in general.

So in 2014, Alberta was bursting at the seams with oil, and there were high levels of anxiety about getting it to market — on the one hand because of competitive pressures from shale oil development in the U.S., which had historically been Canada's principle export destination; and on the other because of fears that the transportation infrastructure was nearing capacity and could not accommodate projected future growth. Ironically, even after oil prices started tumbling towards the end of 2014, slumping to below the $30 mark in January 2016, arguments in favor of pipelines remained as insistent as before — "ironically" because the downturn had ostensibly been caused by *too much* oil on the market.[34] The tone coming from the oil industry and governments of producing provinces progressively grew less insistent and more pleading, at times exasperated and other times vociferous — especially as Quebec municipalities became increasingly vocal about their opposition to Energy East. The thousands of laid off oil workers who bore the brunt of corporate downsizing after the slump became iconic of the senseless cruelty demonstrated by environmental activists and municipal officials who opposed pipeline development.

Quebec and the Energy East pipeline

Quebec environmental NGO Équiterre cited the NRDC report on Energy East as a waterborne pipeline in its own plea for an expanded review of Energy East, emphasizing not only the pipeline's geographic extension but also its temporal one. Équiterre was not only concerned with the impacts of the project as it figured at the time but pointed out how its planning left the door open for future projects, such as the expansion of port facilities in Montreal, Sorel-Tracy or

[34] OPEC producers met regularly during the price crash to try and come to a collective argument on how to constrict the flow of oil that was hurting everyone, a difficult feat given that Iran, with sanctions against it lifted, was eager to regain the market share it had lost. OPEC producers, despite the downturn, for a time even increased production to try to wrest market shares from American and Russian shale producers, whose higher operating costs made them more vulnerable (Canadian Press 2015b).

Lévy to accommodate the loading and exporting of Energy East's oil. The potential increase in tanker traffic on the St. Lawrence river would pose further threat to the drinking water of almost half of the province's population.

This argument points again to the wider concern that infrastructure beckons infrastructure and reinforces certain practices over others. Équiterre's concern was not only with the impacts of Energy East as formulated at the time, but with how it might mold future common sense. Getting a gargantuan project like Energy East through the approval process, with or without political will to back it up, was an ordeal for proponents. Gaining approval for upgrading port facilities to accommodate the shipment of already transiting oil could conceivably be a mere regulatory afterthought.

There were a few scandals that broke out along the way which brought the project to wider public attention. One of them concerned the projected marine terminal in Cacouna, one of two points of access to overseas markets. In March 4, 2014, TransCanada submitted an *avis de projet* to Quebec's Environment ministry solely for the terminal, all the while stating that it was doing so "voluntarily" and that any subsequent participation in evaluative hearings would be equally voluntary. TransCanada emphasized that their cooperation "was not mandatory. We want to be transparent" (Cayer 2014). This remained TransCanada's position throughout the controversy, even when, a couple of years later, it finally accepted to submit the pipeline to a full provincial environmental review.

The reason the Cacouna terminal became so controversial was that it was to be situated right in a Beluga whale nursery, a species considered at risk at the time. The projected hydrocarbon terminal in Cacouna became iconic of the wider development ethos that protestors were resisting. As the Cacouna terminal became the locus of a legal battle between a Quebec environmental rights group[35] and the company, it also became iconic of the constitutional ambiguities that pipelines are subject to and of the nature of sovereign power within the Canadian Confederation.

A second scandal that contributed to making the Energy East project somewhat infamous in Quebec erupted when a public relations plan for Quebec mandated by TransCanada was leaked by Greenpeace in November 2014. The document revealed strategies like the

[35] This is the *Centre québécois du droit de l'environnement* (CQDE), which features prominently in this story. The CQDE's mission is to further the juridical protection of the living environment through legal intervention, promotion of citizen access to justice, and education on environmental rights.

manufacturing of "grassroots" support, the recruitment of paid experts and highly influential community members, and the preemptive attack on environmental groups to distract them and hinder their activities (Gerbet 2014). TransCanada of course quickly distanced itself from Edelman and its plan (Rocha 2014) but the damage was done. The very same groups that the plan intended to discredit naturally seized on the opportunity to vilify the company. During the following years, there would be a constant contrast between TransCanada boasting an impeccable safety record, above industry standards, and faultless corporate responsibility, and the picture painted by opponents of a shady, self-serving company with a culture of non-compliance and managerial expediency.

It didn't help that one of its material engineers, Evan Vokes, blew the whistle on what he saw as irresponsible prioritization of financial returns and project completion over safety and compliance. Vokes, who after repeated attempts to break through to management eventually alerted the NEB and got fired in the process, received the Council of Canadians' 2014 "Whistleblower Award." In his acceptance speech,[36] Vokes explains that engineers, like doctors and lawyers, are bound in their work by the "duty of care," because "the average member of the public cannot defend themselves against these decisions" where sound practices have "been supplanted by corporate interests." For him, "What happened at TransCanada was illegal, it was immoral, it was certainly not in the interest of public safety, yet when I approached the RCMP, the department of justice, all of these people, to bring criminal charges against TransCanada — it has not been done. TransCanada has fought me 'till the ends of the earth to avoid releasing information related to the public safety, and — if you want to do something in your activism, stick to the engineering, they have no defence against it."

As for the provincial government, Quebec (and Ontario) showed very measured displays of autonomous agency. Ontario, from the outset, commissioned its Energy Board to investigate the pipeline project and hold public hearings in order to inform the position it would take at the upcoming National Energy Board (NEB) hearings. Their report — which found that risks outweighed the benefits — came out in mid-July 2015. Quebec, which thrice had timidly asked TransCanada to comply to its environmental laws in 2014, mandated in June 2015 its bureau of public hearings on the environment (BAPE) to conduct a non-binding study of the project which would inform its own arguments at the NEB. Prime Minister Couillard, relative to hydrocarbon

[36] You can view the speech here: https://www.youtube.com/watch?v=K0fdQ7haAw4

development, had been inconsistent at best since taking office. Usually green and forward-looking when traveling abroad (Associated Press 2015), and pragmatic and accommodating at home (Shields 2015c).

Quebec's opposition party, however, seized on the opportunity. After losing power in the 2014 provincial election to the Liberal Party, the Parti Québécois (PQ) — Quebec's nationalist party — returned to a more principled and idealist stance on hydrocarbons and aligned itself with popular sentiment to oppose Energy East, framing it as a sovereignty issue. There was an amusing bit of political awkwardness in June 2015 when Quebec businessman and political neophyte Pierre Karl Péladeau, one month after winning the party's leadership, made an impulsive statement he then had to retract. On June 16, two influential members of the party — Martine Ouellet and Sylvain Gaudreault (PQ spokesperson for the environment) — made a public statement of their party's opposition to the Energy East pipeline. Péladeau, in response, declared that it was only their position as individuals, not the party's, and that the situation was too complex for such a simple assessment. He stated that, anyway, his own position did not matter because the project was under federal jurisdiction (Canadian Press 2015a). The following day, Péladeau retracted his statement, now stating that the issue was a perfect example of how the constitutional law of 1867 robs the Québécois people of the power to decide on matters as "decisive for our nation as oil transport is."

A motion tabled at the National Assembly a year later, in September 2016, provided another example of how the pipeline was framed by some as a nationalistic issue in Quebec.[37] PQ MP Alain Therrien proposed that the Assembly declare itself unanimously opposed to the Energy East project, which he considered "a very eloquent example of this double solitude"[38] that Quebec had historically been confronted with. He noted how Québécois, relative to the rest of Canada, are disproportionately against the project. Pointing out that British Columbia said no to the Northern Gateway pipeline and that the U.S. said no to Keystone XL, he argued that Quebec should do the same: "The rest of Canada is threatening us, […] we are being treated like colonized people, […] people with no backbone." In his closing remarks, Therrien expressed disbelief at the very notion that his motion was meeting resistance. For him, there were visibly no

[37] You can consult the video at http://www.assnat.qc.ca/fr/video-audio/archives-parlementaires/travaux-assemblee/AudioVideo-68997.html, and the transcript at http://www.assnat.qc.ca/fr/travaux-parlementaires/assemblee-nationale/41-1/journal-debats/20160921/179077.html.

[38] I have provided all English translations from the original French.

advantages for Quebec in a project like Energy East. " Mr. President, we are not masters in our own home, it is the stranger […] who will decide for us. The NEB, who is in bed with TransCanada, will decide for us. […] Canada's only economic policy is 'drill, baby, drill,' while we are hoping to embrace transport electrification, to get rid of oil, to take measures to become world leaders of the clean economy."

Power, sovereignty, and political agency

From the start, the sense that their future development was being decided for them, and mostly by a corporation with its own interests at heart and in cahoots with a captured regulator and complicit politicians, fostered a deep sense of unease among Quebec municipalities who quickly began asking how their interests might be protected, and by whom. This began with an appeal to the Quebec government that it enforce its environmental laws by compelling the company to comply with the province's own evaluative procedure. Quickly, however, municipal and regional actors became disabused with their ineffectual representatives, choosing to take matters into their own hands. The initial push by citizens to mobilize expertise, disseminate the information, gather supporters, and flood council meetings payed off as municipal officials began commissioning their own environmental impact assessments of the project and holding their own public consultations — eventually declaring, in growing numbers, either their unequivocal opposition to the project or their rejection of it in its present form.

Not that it necessarily mattered, in principle. In 2013, TransCanada marched into Quebec with brazen confidence, and according to municipal actors not a little arrogance. What the company was trying to enact was twofold: an unquestionable corporate expertise whom all should be happy to delegate the complicated details to; and a centralized, top-down version of federalism at odds with the more cooperative model generally favored by Quebec jurists (A. Gagnon 2015). This is where things get a little complicated, in part because jurisdictional authority is an indeterminate, evolving, and murky affair, and in part because legal frameworks never stand apart from political determination. I will devote considerable space to this issue in the next chapter. For now, I will only mention the core *problematique*: interprovincial pipelines are a federal jurisdiction regulated by the National Energy Board. But what this means depends on who you ask.

For pipeline proponents and ardent supporters of the project, it means that at the most a province might engage in whatever deliberative and consultative processes it chooses, but that its

ultimate sovereign recourse is to present its position at the NEB hearings. The final decision over the project rests with the Governor in Council.[39] For the Quebec jurists who got involved in the controversy, it meant that while a municipality could not legally obstruct the project, it could impose conditions as long as these did not impinge on the project's feasibility. But *politically*, as one jurist pointed out to the Montreal commissioners, who could say? It also meant another thing: that procedure, regardless of final authority, made a difference. *Sound* procedure — and sound *use* of procedure — even more.[40] Just as tensions had risen over how new hydrocarbon infrastructure would orient the country towards a bituminous future, tensions arose over how the regulatory infrastructure was locking citizens out of fair and inclusive democratic deliberation.

As mentioned above, throughout the whole controversy the company systematically maintained that only the NEB and the federal government had a say on its pipeline project, framing whatever cooperation with the province as "voluntary." TransCanada's gambit was, in a sense, very similar to Harper's: excise the procedural opportunity for resistance to gain better control over future outcomes. It did this through "expertise," which compels delegation; and through authority, which also compels delegation. Here, democratic participation was understood as little more than co-presence in specific places, which can thereafter be pointed to as due diligence. As with Harper's, however, TransCanada's gambit backfired: at first a source of intimidation, its chauvinistic bombast quickly provided fuel to indignation.

Another important piece of my argument is this tension between technical/scientific matters and political ones. The distinction comes down to whether the world is considered a natural order that can be read, predicted, and accommodated, or whether it is one that can be shaped, manipulated, and hence *imagined* prior to action. Regulatory bodies like the NEB are in this sense ambiguous bodies in that they occupy an administrative grey zone between the technical and political deliberation. On the one hand, it is tasked with delivering "public utility" certificates, which rest on the NEB's determination of the public interest. But public interest is not plucked in the wild like some perennial flower. It is wrought in the burning crucible of competing and shifting interests. How some interests are valued over others is more a matter of government policy than technical determination. This is one way in which the NEB's

[39] The Governor in Council, or GIC, is the executive branch of the Canadian government, i.e. the prime minister and cabinet. The title is a remnant of Canada's colonial constitution, that vested ultimate executive authority in the Queen through her representative in Canada, the Governor General.

[40] This point was emphasized to me by one of my interviewees, CQDE founder and now former president Michel Bélanger. I will relate his interventions and arguments in detail in chapter three.

independence from parliamentary politics is perpetually undermined by its very mandate, given that it is necessarily influenced by governmental policy which *precedes* its evaluative processes. Which is problematic because its legitimacy is premised on the factual and scientific nature of its deliberative process, purportedly *insulated* from "political" argument. This is a claim that was made upon its creation in the late 50s, and one that was made in 2017 by Prime Minister Trudeau.

One of the arguments I will be making is that this troubled relation between the world as a pre-existing, naturalized order, and the world as a speculative one conjured through valuation and heroic mobilization is everywhere, and consistently challenges the boundary between fact and fiction. Importantly, it also shapes the kinds of agency polities are expected to deliberately exercise upon their future. To provide a binary representation of what I mean, there is one form of political administration which attempts to predict what the future will be and purports to accommodate it. For example, the NEB's 2016 report *Canada's Energy Future* estimated that oil production in Canada would almost double by 2040, a calculation which was then appropriated as a *fait accompli* by pipeline advocates (within and without the governmental apparatus) to justify the need for future pipeline capacity. This kind of divination imagines the future in terms of the perpetuation of past arrangements. A second kind of polity, however, deliberates on what the future *should* be — for example one with reduced greenhouse gas emissions — and finds ways to directly act upon the world to bring this future about. Arguably, the apparent success of liberal democracies in the 2 decades following the so-called "neoliberal revolution" of the 80s consolidated the expectation that a range of deliberate political determinations could be delegated to the workings of the market.[41] Depending on the framework, the question of whether a pipeline should be built is understood either as a technical or a political question, with deep ramifications for political agency. This is important because naturalized fiction is the necessary ingredient of de-politicized development, one in which future opportunities are carefully curated. It is one of the ways in which authoritativeness is generated in Canadian liberal politics.

Conclusion

In Quebec, between the time in was announced in 2013 and the moment it lost significant institutional foothold in late 2016, the Energy East pipeline became mired in more

[41] See (Fukuyama 1989) for a now infamous iteration of this argument. See e.g. (Held 1996) for a critique.

controversies and contestations than is practical to count. In this thesis, I trace a number of these to draw a picture of political agency in contemporary Canada. While much of the contest was focused on future outcomes, arguments depended on competing scripts of the present and of the past. These scripts were more than discursive but were mediated through institutionalized procedures, modes of calculation, technical standards, etc. In other words, much of the controversy was over how social imagination was mediated through a variety of instruments, norms and practices in the present, and how these provided certain kinds of purchase over social futures. In this sense, the controversy was deeply infrastructural, not only because it was about pipeline infrastructure, but because it involved the social, political, legal, and technical infrastructure through which the collective is imagined, mediated, and made tangible. This is why the controversy was as much about the pipeline project itself as it was about the formal processes through which the collectivity is channeled, enacted, and carried into the future.

Part of my argument is that in the current political ethos in Canada, where "social licence to operate" — or *acceptabilité sociale* in Quebec — is acknowledged as a necessary pre-requisite for industrial development by governments and corporations alike (Forrester et al. 2015), power moves through naturalized form. On the one hand, this is done through the displacement of "substance into form" (Stendie and Adkin 2016: 440, citing Rodríguez-Garavito 2011). When the tension between large scale hydrocarbon development and environmental risk becomes too cumbersome for the market's temporality, the federal and provincial governments can be seen to "substitute procedural rules […] for meaningful discussion of difficult issues" (Stendie and Adkin 2016: 440), thus naturalizing arrangements once open for debate. On the other hand, more "progressive"[42] substantive objectives — such as sustainable development goals — follow an inverse direction as they are displaced towards *in camera* spaces of discretionary decision-making, often legitimated through appeals to scientific and technical expertise and procedural rigor. Even as the federal government and TransCanada lauded the expansiveness of their democratic engagements, they operated through the systematization and naturalization of more expedient forms of collective consent and through the loosening of binding substantive requirements.

In other words, power in Canadian democracy is exerted through the naturalization of particular political arrangements, where social choices can be treated as matters of pre-ordered

[42] The word "progressive" is of course fraught with dubious connotations. I use it here as an index for "not conservative" and generally oriented towards social justice. economic parity, and environmental protection.

fact, rather than malleable matters of concern. This was Harper's gambit, by narrowing the scope of a project's definition, its evaluation, and processual accessibility. It was the company's strategy, by insisting on public leaps of faith over public debate. And it certainly has been the Trudeau Government's stand, stating that decisions on pipelines are made on the basis of "science, facts, and evidence," adding that they "have not been, and will not be, swayed by political arguments" (Tasker 2016). One of the assumptions here is that determining the "national interest" — which is a cornerstone of NEB decisions — is not a political question but a naturalistic one. If we consider the implied presumption that economic growth is the polity's first and necessary imperative, then determining the national interest indeed becomes easier to parse. From that perspective, the government's response to pipeline opposition makes sense: find ways to regain public trust and generate social license rather than rethink both the substantive nature of development projects and the processes through which they are conceived, formulated, planned and implemented. In other words, facilitate development projects rather than politicize their social life.

If I was to generalize my argument, I might say that caught between environmental pressures and economic imperatives, liberal democratic politics of hydrocarbon development in Canada are demanding difficult and as yet uncharted contortions of its political leaders and infrastructures: how near can politicians get to enacting progressive environmental and deliberative democratic ideals without relinquishing decisional power? The tide of environmental concern seems to be challenging their ability to do so through traditional means, forcing them to reform the governmental apparatus tasked with generating project social licence. And indeed, this is exactly what the Trudeau Government has been doing since they came to power in late 2015, through a complete "modernization" of the Canadian environmental assessment framework.

But nobody seemed duped by this purportedly inclusive liberal mode of political expediency: TransCanada's numerous consultations were criticized for being empty performances, if anything designed to intimidate and co-opt more than inform and engage in meaningful dialogue; the NEB was repeatedly attacked for its numerous procedural exclusions, prior bias, and lack of transparency; the new Trudeau Government was systematically challenged to live up to its inclusive and "green" rhetoric; and the Quebec government was

similarly pressured to be consistent with its environmental discourse as it attempted to develop the hydrocarbon potential of its own territory. The prevailing critique was that each of these bodies were performing expected democratic rituals while sterilizing their transformative potential.

In chapter one, I unpack a partial history of pipeline development in Canada to give a sense of the politics involved and of the shifting role that the environment came to play in them. Chapter two tells the story of the Energy East controversy in relation to the NEB. In chapter tree, we revisit the chronology, but this time from the perspective of municipal and provincial concerns. In chapter four, I return to the question of environmental sovereignty by unpacking the controversy that arose around the 2016 BAPE hearings in Quebec.

Chapter 1: A Brief History of Pipeline Development

> "TransCanada on n'en veut pas!" A big man rushes the panel, wrestled by security guards, the crowd joins in, clapping, "TransCanada on n'en veut pas! ONÉ congédié!" Some join the front, one carries a child, the guards stop wrestling. Things quiet down, then another chant: "ONÉ nous rit au nez!" [...] I hear the audience around me [...] clapping, shouting various slogans, "Annuler l'audience!", "Destituez les commissaires!" [fieldnote excerpt]

Introduction

The interrupted hearing drew its last breath when, after less than an hour, someone spoke into a microphone: "I am Jean-Denis Charlebois: we are forced to cancel today's hearing, consult the web site" (my translation).[43] This was August 29, 2016, the first and last NEB hearing in Quebec on Energy East. An NEB press release,[44] later that evening, declared:

> "The National Energy Board is postponing tomorrow's Energy East Panel Session scheduled to occur in Montreal. This decision was made in light of a violent disruption in the hearing room this morning which threatened the security of everyone involved in the panel session. The goals of these sessions are to provide a first informal opportunity to intervenors to ask questions about the Energy East application and share what matters most to them. The Board remains fully committed to these goals.
> "Therefore, the NEB will provide more information tomorrow about how it will hear from Montreal intervenors. Our first priority is the safety of everyone involved."

Reading the press release, I felt it exaggerated the threat of violence.[45] Apart from the initial charge, which must surely have been intimidating to the panel members sitting at the front, the whole affair was rather cordial despite the assertiveness of the protest. Footage from the scene, published in a CBC article about the event (Shingler and Smith 2016), complicates the NEB's depiction. In it you see the initial charge intercepted by a guard within inches of the commissioners' table, and the protestor's subsequent shrugging off of the four guards trying to usher him away. He holds his ground, gesturing to other activists to join him and take the floor,

[43] Jean-Denis Charlebois was an NEB director overseeing the Energy East review. He was directly embroiled in the latest of a string of controversies that led to the panel's recusal.

[44] As with many other NEB and TransCanada documents, this press release is no longer accessible in its original location, nor has it been stored in the internet archive.

[45] An intervenor in the Energy East review, PhD candidate Sarah Rotz, wrote a letter to the NEB offering similar impressions. She wrote: "[…] it is disheartening and deeply concerning that the NEB responded to public interventions and non-violent displays of non-confidence (the protestors did not show any intention to hurt anyone) during the Montreal panel with vilification and resistance, rather than consideration and self-reflection." Her letter is available here: https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2540913/2797619/2998110/3028144/A79286%2D1_Sarah_Rotz_comment_on_recusal_motion_%2D_A5E9H2.pdf?nodeid=3028145&vernum=1

at which point the guards — on cue from NEB staff — give up trying to control the situation. You then see the protestor step over to the table where the panel members had been sitting and snatch up a binder that had been left there. A comparatively much smaller NEB employee promptly appears behind him and tries to retrieve the binder. The protestor pulls it back confidently as she recoils and moves away. But after turning around and seeing her, he leans over with a smile and hands her the binder, saying: "Voilà, Madame." He then turns back to the crowd and resumes chanting.[46]

During my research into the controversy over the Energy East pipeline, I witnessed many such disjunctures. Irruptions of protest into well calibrated and regimented settings such as this one always feel like matters out of place. Or perhaps more accurately, they create a disruption in the manufactured coherence of the procedural setting, threatening in a sense its integrity as a rationally apprehendable object.[47] In those times, it is not just the irruption but also everything else that seems somewhat out of place, as if suspended in a state of plural potentiality. What such disjunctures make visible is the state of the world before it is collapsed back into linear, coherent trajectories. The NEB's press release is such a collapse. It tames the complicated heterogeneity of conflictual public encounters and collapses it back into a manageable narrative: unreasonable, self-serving environmentalists once again interfering with democratic due process and the smooth shepherding of economic development, for instance. These narratives, if convincing and powerful enough, can obtain and maintain social purchase and political force. They are true in the sense that they are enacted and experienced, institutionalized, legalized, historicized, not in the sense that they necessarily correspond to and encompass some putative singular, stable, *prior* reality. To paraphrase Annemarie Mol (2002), they constitute a fragment of the body politic multiple.

This is a thread that I will be following throughout this thesis — the contest between alternatives, and the way in which power runs through different modes of engagement. The

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The NEB's communications officer responded to my own inquiry about how they evaluated the threat to "the security of everyone involved" with the following statement: "I'm glad you felt safe at the hearing. Unfortunately, not everyone felt the same way. Our first priority is always safety. This includes the safety of our staff, Members, hearing participants and everyone who attends our hearings. I hope this answers your question."

[46] NEB Chief Operating Officer Josée Touchette, at the end of the debrief meeting following the event, reportedly noted "how Canadian it was for the protestor to give back a binder of NEB materials to a staff member while he was resisting security" (De Souza 2016e).

[47] Or, as Hetherington (n.d.) might put it, challenging its coherence as a successfully manufactured synthetic object.

Energy East pipeline controversy was from the outset strictly constitutional in the sense that provincial and municipal governments in Quebec challenged the distribution of power and responsibility implied in the statement, "Interprovincial pipelines are an exclusive federal jurisdiction." But it was also constitutional in a more general sense. It made more visible the negotiated constitution of a range of other objects we easily take as existing prior to political encounters and therefore as setting the limits of these encounters and informing their outcomes. What I have found is that the relation of prior form to outcomes is a lot more complicated. The following chapters will unpack this relation by telling the story from four different sites of negotiation and decision-making: the National Energy Board's evaluation of the project; Quebec provincial environmental law; municipal and citizen self-determination; and the constitution of facts and evidence.

The aim of present chapter is to situate the Energy East controversy within the wider arc of post-war energy development in Canada. This historical account is of course very selective and focuses only on those aspects which form the interpretive framework from which my arguments emerge. The portrait of the pipeline project itself will emerge gradually over the next three chapters. I have chosen to present my arguments in this way because the pipeline project itself was indeterminate from the start and led much of its social life as more of a general idea than a detailed plan. While first suggested in 2013 and submitted in 2014, the project application was only deemed complete by the NEB in the summer of 2016; and even then, the degree of completeness — or more accurately what should count as completeness at that stage in the procedure — was contested.

The ideational status of the pipeline also gave it a shifty morphology, adaptable to changing contexts. Even as different actors came to grasp specific aspects of the pipeline by engaging in various mediating processes — e.g. open-house consultations, private meetings between company representatives and municipal safety officials, regulatory hearings, etc. — the pipeline still retained much of its initial elusive character. And beyond this, this thesis is not about "hard numbers" but about the contest over the constitution of this "hardness," concluding ultimately that "hardness" is contingently asserted much more than it provides some sort of stable prior against which "political" contestation, in its pejorative form, might be contrasted.

One of the principle ways that power moves in controversies like this one is through naturalized form, which relies on a matter-of-fact division between nature and politics, and hence

between "science" and politics — where science stands in for the impartial conveyance of stable observable truths and politics stands in for the battle between competing *situated* interests. This distinction is important, because the federal governmental apparatus does not convey its determination of the "national interest" as political. Somehow, the hermeneutic and institutional processes by which particular interests are transmogrified into general, national ones are not deemed political. Through some kind of arcane democratic alchemy, they acquire naturalistic qualities.

By the end of this chapter, we will be better equipped to understand some of the recurrent tensions that inform the politics of energy development in Canada. We will also have better footing to situate how the NEB's evaluation of Energy East crumbled in the way that it did. I hope the reader will bear with me. This research was conducted on an "awkward scale" (Comaroff and Comaroff 2003). There was a dizzying array of actors and institutions involved and of sites of contestation. The controversial aspects were many, and each contained important complexities and ramifications. The *problematique* — of hydrocarbon development, liberal politics, and environmental crisis — is entangled in almost every aspect of collective life, from routine day to day life to international geopolitics. In order to not overwhelm the narrative, I have tended to make extensive use of footnotes, which are meant both to convey important contextual information and gradually introduce the reader to the many actors and issues at stake. I also hope that they can somewhat break the artificial linearity that the written word imposes on a story's dynamic ecosystem.

In the beginning…

TransCanada Pipelines Limited (TCPL) and the NEB are both contemporaries of the infamous "great pipeline debate" of 1956 over the building of the TransCanada Mainline, built to bring natural gas from Alberta to the eastern provinces. It is 3,000 km of pipeline assets from this Mainline that TCPL was now proposing, in 2013, to convert from gas to oil, with a 1,600 km extension of new pipeline into Ontario, Quebec, and New Brunswick.

TCPL was incorporated in 1951. The corporate shell was given effect in 1954 through the merger of two competing proposals to transport Albertan gas. One proposal favored an "all-Canadian" route north of the Great Lakes through the Canadian Shield.[48] The other group

[48] Encyclopedia Britannica describes the Canadian Shield — or Laurentian Shield — as "the largest mass of exposed Precambrian rock on the face of Earth" (Lotha, Raferty, and Pallardy 2018).

considered this plan economically unfeasible and proposed to dip down after Winnipeg to Emerson, Manitoba, on the US border. The gas would there be sold to a Nebraska company, and Ontario would receive its gas from Texas. Ironically, the all-Canadian route was spearheaded by a Texan, Clint Murchison, and backed by American interests,[49] while the U.S. route was proposed by a company called Western Pipe Lines Limited, backed by Canadian financial institutions. The merger of both projects was orchestrated by the federal Transport minister of the time, C.D. Howe. A central issue for both companies was the question of financing. While the American group maintained that the project should be financed equally by both parties, the Canadian company argued that since the Americans had more means, they should assume a majority of the costs. In the end, Howe organized a 50-50 merger to which all parties eventually agreed.[50]

From the 1951 incorporation, it took eight years to build the pipeline. There were a number of challenges. For one, it took four years of hearings to convince Alberta that it had enough gas to spare. I'll say more about this in a moment. And while Howe championed the all-Canadian route — emphasizing its nationalistic character and the promise of cheaper energy for Ontario consumers — producers and the Alberta government favored the American route because it would get higher prices and royalties (Gray 2000: 6).[51]

But the real shit hit the parliamentary fan after Howe proposed a pipeline bill to parliament in 1956 to incorporate a Crown corporation that would build the challenging Ontario section of the pipeline[52]. The government would provide an $80 million loan to TransCanada and publicly finance the Ontario section to the tune of $118 million. TransCanada would pay rent for this section of the pipeline and eventually repurchase it from the

[49] Confusingly, the company proposing the Canadian route was called Trans-Canada Pipe Lines, a wholly-owned subsidiary of Murchison's Texas gas company.

[50] See Kilbourn (1970) for a detailed account.

[51] To throw a further wrench in the smooth wheel of nationalist figuration, this debate had a precedent with similar fault lines. In 1949, two pipeline projects were being debated to bring Albertan oil to the Great Lakes. One prioritized economic viability by charting a shorter course south from Manitoba through Wisconsin; and one emphasized national control at all cost. In this debate, CD Howe favored the economic U.S. route, which was built by Interprovincial Pipe Line Company (Enbridge today) and became operational in December 1950. The line would later be extended to Sarnia in 1954 and ultimately to Montreal in 1976. The "Canada Firsters" who opposed Howe on the US route later opposed him on the all-Canadian route for the TransCanada pipeline (Gray 2000: 5; see also Enbridge 2018).

[52] As noted above, the pipeline had to be laid across the Precambrian Shield, an engineering challenge as much as an economic one.

government.[53] But what caused the ultimate and lasting scandal was the use of parliamentary closure[54] by the Liberals between May 15 and June 5, 1956. It had taken considerable time and effort to obtain financial backing for the pipeline project, which was still on shaky grounds (Kilbourn 1970). The Liberals, worried that the project would be jeopardized if construction was delayed another year (Harrison 2012: 765), chose to expedite the parliamentary process — a move which allowed the bill to pass but which reputedly contributed to end the Liberal 22-year hold on federal power at the hands of the Diefenbaker Conservatives in the 1957 elections (Gray 2000: 5).

As for the NEB, which was constituted in 1959, it is useful to put the above developments in a slightly wider context. The post-war era in Canada saw a massive shift in the energy landscape. At the time, "energy security" was a primary federal concern, not only because energy policy had to contend with potential scarcity, but because World War II had emphasized the importance of securing reliable supply for crucial industrial and military activity while sheltering it from geopolitical threats.[55] As a result, the federal government had strong incentives to actively promote exploratory ventures.[56] Aside from encouraging the growth of the energy sector, the federal government also had a keen interest in maintaining some degree of control over it for a variety of reasons, such as ensuring the distribution of gas and oil to non-producing provinces and protecting consumers from price and supply fluctuations. These concerns became particular salient after the discovery of oil at Leduc,[57] Alberta, in 1947, which commentators generally point to as a major turning point for hydrocarbon production and energy use in Canada, and which Gray (2000) identifies as initiating the path towards the NEB's constitution.

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[53] After having paid $41 million in rent, the repurchase occurred in 1963 for $108 million. By then, Canadian ownership of TransCanada had increased to 90% (Gray 2000: 7).

[54] Closure prevents further adjournment of parliamentary debate, regardless of whether all members who so wish have had an opportunity to speak. During the pipeline debate, closure was invoked by the Liberal Government at "all four stages of the legislative process as it was then" (Canada et al. 2000: Chapter 14).

[55] The relation of oil supply to "defense" imperatives remained proximate in the U.S. into the 50s due to the Korean war (Gray 2000: 4).

[56] For example, Mackenzie King founded Wartime Oils Limited in 1943, a Crown corporation that provided loans for exploration that only needed to be repaid if drilling was successful (Finch 2008:66). Other measures introduced during the war, such as tax exemptions on exploratory expenses, were maintained and expanded after the war to cover a whole range of other industry costs (67-68).

[57] Leduc, more than simply the discovery of a new oil field, was also a new geological find. Leduc was located in Devonian-aged reefs (from the Paleozoic Era, 416 to 359 million years ago), an older rock formation than previous wells that were dug in Mississippian formations (360 to 325 million years ago) (Finch 2008: 127), which allowed for the discovery of "many new oilfields" (126).

Without rehearsing the history of the Canadian Confederation, some elements are important to bear in mind. While the Confederation was created through an act of British Parliament in 1867, it originally contained only the provinces of Nova Scotia and New Brunswick, and the southern portion of what is today Quebec and Ontario. British Columbia joined the Confederation in 1871, under the condition that a railway line connect it to the other provinces (Robinson 2010). In response to the Canadian government's interest in expanding the Dominion north- and westward, and to U.S. expansionism after American purchase of Alaska from Russia in 1867, the British government chaperoned the transfer of ownership of Rupert's Land from the Hudson Bay Company to the Canadian government (S. A. Smith 2006).[58] This led to the creation of the prairie provinces — first Manitoba in 1870, and then Alberta and Saskatchewan in 1905.

While sections 92 and 109 of the BNA Act provided for provincial ownership of public lands and resources, all provinces were not created equal. These rights were withheld from the prairie provinces by then Prime Minister John A. Macdonald for "purposes of Dominion" — namely land grants for the transcontinental railroad and Western settlement, part of deliberate policy "to strengthen Canada's east-west axis" against the "increasing north-south pull of American markets" (Richards and Pratt 1979: 15). "[O]nly after decades of protest" (16) was ownership of the public domain transferred back to the prairie provinces, in 1930, but the tension between centralized control over the "national interest" and local aspirations for sovereign autonomy — or at a minimum equal treatment — left a lasting imprint on the constitution of Canadian federalism. As Richards and Pratt explain,

> Western frontier settlers saw the alienation of their land and its resources as inseparable from their subordinate political situation, and their descendants with their strong views on provincial autonomy and control of resources, would not disagree. [...] Westerners of all classes came to perceive Ottawa as an imperial government, a complex of institutions organized by central Canadian elites for the purpose of dominating and plundering the hinterlands. The provincial administration, whatever its political colouration, became the indispensable agent for attacking political colonialism and bargaining with external economic interests (17).[59]

[58] Rupert's Land covered the Hudson Bay's drainage basin, a vast swath of land covering approximately the Northern and Western half of Canada's current territory, excluding British Columbia.

[59] In the prairies, autonomy and resource ownership was not only a matter of political ideology, but intrinsically tied to dept-fueled infrastructural development (Richards and Pratt 1979: 16-19).

Given the return of resource ownership, the boom in hydrocarbon production over the two decades that followed Leduc changed Alberta's economic status within the confederation from poorest to richest Canadian province. It also introduced a high stakes tension between provincial and federal interests and operations (Morton 2013: 3). Between 1947 and 1959, oil production in Canada increased dramatically, from 21,000 to 522,000 bbl/d (Gray 2000: 2), 95% of which was coming from Alberta and Saskatchewan (Plourde 2010). The pipeline network grew in tandem, from 670 km to 72,000 km in the same period (Gray 2000: 2). As Richards and Pratt (1979) point out, "Within the context of a changing balance of bargaining power, conflicts arise among the provinces, federal government, and the international firm over the distribution of rents, pricing, and rates of development" (9).

In Alberta, excess capacity gradually loosened provincial regulatory concerns over resource management, creating new market opportunities for producers but also introducing an entangled set of economic and political considerations as both Alberta and Saskatchewan took an increasingly entrepreneurial role in the development of their hydrocarbon resources over the following decades (9). While producers and the Alberta government became increasingly oriented towards accessing U.S. markets, the federal government became increasingly concerned about prioritizing growing domestic demand (Savage 2016:4). But more than this, as hydrocarbon fuels grew in importance in the post-war period, the federal government sought to regulate and regularize their development, and in a wider sense nationalize it. What I mean by this is that Ottawa sought to manage the political economy of oil and gas by incorporating it within a deliberate national logic, through increasingly interventionist strategies that sat in constant tension with provincial interests. By doing so, it pushed as far as it could against the centralizing limits of Canadian federalism, and ultimately failed. I will return to this.

The tensions that arose from these conflicting imperatives found expression in constitutional terms, notably between provincial resource ownership and federal jurisdiction over trade and commerce (Plourde 2010). Canada's first pipeline legislation — the *Pipe Lines Act of Canada*, passed on April 30, 1949 — introduced another channel of power by which the federal government could argue for legislative authority over provincial resource management: Local Works and Undertakings. While Local Works and Undertakings, as the name suggests, fall under

provincial jurisdiction, section 92(10)a of the *Constitution Act, 1867*[60] provides an exception by which the federal government can claim authority over works and undertakings crossing provincial or national boundaries (R. J. Harrison 1996). The text provides for federal power over "Lines of Steam or other Ships, Railways, Canals, Telegraph, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province."[61] While the text of course makes no mention of pipelines, legislators and later the courts have drawn "a parallel between pipelines and railways, both being ground systems of transport and commodities" (Roy 1982: 189).

The 1949 *Pipelines Act* did more than introduce federal jurisdiction over interprovincial pipelines. Peter Lewington, Ontario farmer and decades-long thorn in the NEB's and Interprovincial Pipe Line's (IPL) side, argues that modelling the Act on the "antiquated" *Railroad Act* was "an unmitigated disaster for agriculture and the environment" (1991: 47). Lewington was not arguing against the potential benefits of national transport infrastructure, but against the "misuse of bureaucratic powers, a myopic pipeline industry, and incredible ignorance of the significance of agriculture and the environment" (47). We'll get to some of the details of his beef with the NEB and IPL in a moment. Here, I want to note his critique of the legislative legacy of the *Canadian Railway Act* as it inspired new pipeline legislation: the "promiscuous" and abusive use of expropriation to the detriment of prior and in good faith negotiation (48-56).[62]

Another important aspect to note before moving on with this brief historical contextualization is that while federal constitutional jurisdiction over interprovincial pipelines has been a fairly uncontroversial legal statement from the outset, the observation does next to nothing to resolve the sources of tension inherent to pipeline politics. These have as much to do

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[60] The *British North American Act, 1867* (BNA Act), was renamed *Constitution Act* when the Constitution was patriated in 1982.

[61] The text is available on the Government of Canada's Justice Laws Website: http://laws-lois.justice.gc.ca/eng/Const/

[62] There is a history to how power flows through institutions. E.A. Heaman (2015) points out how the European custom of centralized rule- and decision-making impacted negotiations between Europeans and Indigenous people in Canada: "[T]he Europeans subscribed to a principle of the state that permitted them, whenever possible or feasible, to override deliberation and discussion, and to impose an already made-up policy that pursued the purported interests of the sovereign" (19-20). This overriding principle by which "the central should trump the local […] ensured that Europeans would systematically cultivate coercive rather than deliberative strategies of diplomacy and governance" (20). Two elements that figure in Heaman's observations — policy determined *prior* to deliberation, and the coercive inclinations that follow from this — remain visible today, notably in pipeline negotiations. But there is also a wider argument here, about the relation of institutional hierarchies to the (limited) potential for negotiated co-existence, which applies to corporate bodies in general. I will unpack this further in chapter three.

with the way pipeline activity involves, intersects, overlaps, and conflicts with a range of other administrative concerns and socio-economic activity, as with the gap between how the pipeline network is "cut" (Strathern 1996) and reified in institutional settings and how it materially extends and morphs into other categorical functions. As Harrison (1996) argues, "The difficulty in the Canadian context arises from determining the upstream or downstream point at which an interprovincial pipeline becomes a local work, and *vice versa*" (405). Part of why clear-cut determination needs to be made in the first place has to do with the "fact that ss. 91 and 92 of the *Constitution Act, 1867* establish mutually exclusive, rather than concurrent, legislative powers" (404).

The question of how overlapping orders of government should interact with each other is a recurrent theme in Canadian politics, with arguments oscillating between exclusive and concurrent operation. Here, Harrison is concerned with the specific problem of where the NEB's jurisdictional authority ends and a province's authority begins, expressed in terms of infrastructural extension. For example, even while the production, distribution, and consumption of natural gas became a matter of federal political concern in the 50s, the management of gas resources and pipelines had already been a going concern for provincial governments. Gas, contrary to oil, needed pipe infrastructure to be delivered directly to consumers (Gray 2000:4). As gas became a fuel of choice for domestic (e.g. heating), municipal (e.g. street lighting), and commercial (e.g. manufacturing) uses, provinces required not only an extensive pipeline distribution network but also a corresponding legislative and regulatory framework. As a result, by the time the 1949 *Pipelines Act* came along, provinces had already been trying "to expand as far as possible their legislative authority over pipeline networks" — in Quebec, this went as far back as 1939 (Roy 1982: 187).

But the tension did not only involve pipelines that pre-existed the Act, nor did it stop at regulating distribution to consumers. As I mentioned before, interprovincial pipelines are not ultimately controversial because of jurisdictional ambiguity. They are controversial because their existence as socio-political objects tends to be excessive of their constitutional and legal iterations. Some match up more easily than others. For example, the Westcoast Transmission pipeline[63], although distributing natural gas to BC residents, was "originally built as an export project and,

[63] Built by Westcoast Transmission Company Ltd — one of the five companies incorporated by the 1949 *Pipelines Act* and the first to receive authorization to export Alberta gas — it became operational in 1957 (Gray 2000: 5).

as such, came under exclusive federal jurisdiction" (Harrison 1996: 391). On the other hand, the Alberta Gas Trunk Line (AGTL), which also came into operation in 1957, although similarly distributing Alberta gas to provincial residents and to delivery points on the U.S. border, was jealously kept under provincial authority.

Indeed, the Alberta legislature, in 1954, incorporated the AGTL Company Ltd as a provincial Crown company "for the very purpose of preventing the encroachment of federal jurisdiction into the management of the province's oil and gas resources," taking advantage of the fact that Ottawa "could not tax provincial Crown corporations" (Morton 2013: 3).[64] Fighting federal encroachment also meant resisting the extension of the TransCanada pipeline network into Alberta, given how the company was "understood by Albertans to be an instrument of and spokesman for eastern Canadian business interests" (Richards and Pratt 1979: 229). Thus, the AGTL was a way to stop TransCanada gathering lines at the Alberta border, and deflect federal meddling and eastern interests from the management of Alberta's gas resources.

Harrison's (1996) observation — that a regulatory agency like the NEB is substantively limited by the extent of its jurisdictional authority[65] — can be extended in two ways. First, we can observe that logical frameworks, even when perfectly coherent, bump up against the limits of their authority, just as they can conflict with other perfectly coherent, but differentially constructed, logical frameworks. It comes down to the parameters delineating what is considered operational — or what Hughes (1987) terms "enframing."[66] Where the NEB "cuts" the pipeline is similar to how courts produce validity: truth is what remains reasonably unchallenged within

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[64] The AGTL was later renamed NOVA Gas Transmission Ltd (NGTL) in 1980. The pipeline operation of NOVA Corporation merged with TransCanada Pipelines Ltd. in 1998, resulting in a pipeline network exceeding 25,000 km in Canada and making it the "fourth-largest pipeline company in North America" (Eisler 2003). The NGTL only came under NEB — and hence federal — jurisdiction in 2009 (NEB 2017a). In 2016, the NOVA network counted 24,500 km of pipeline in Alberta. Some 40% of the 4 trillion cubic feet it delivered that year went to Alberta and BC customers; most of the rest was delivered across the US, and some to Eastern Canada (*ibid*).

[65] To reiterate: the scope of federal power limits the issues a federal agency might or can consider. The correspondence is not entirely deterministic and has varied historically, but it is still an important factor in regulatory delineation. For example, the NEB used this reason to exclude upstream greenhouse gas emissions from the Energy East pipeline review, given that oil production fell under provincial jurisdiction. Some noted the irony that while the NEB excluded upstream GHG emissions, it did not exclude upstream economic benefits. The Quebec provincial government also controversially used scoping to limit its evaluation of the Energy East pipeline's impacts to whatever pipeline activity was contained within its borders.

[66] Hughes borrows the notion from Heidegger to explain the relation of technological systems to their environment, which he explains as follows: "Technological systems solve problems or fulfill goals [... that] have to do mostly with reordering the physical world in ways considered useful or desirable. [...] This challenging of man to order the world and in so doing to reveal its essence is called enframing" (53). Enframing reveals the complicated relation between the world as having intrinsic, immutable properties and the world as ontologically artifactual.

the range of what is admitted as evidence. Delineation of what counts as evidence becomes a crucial epistemological determinant that has, some would say, "ontological" effects, constitutive of the kinds of social life afforded to people and things (see Pottage and Mundy 2004). Within these normatively asserted boundaries, institutionally established pathways of site-specific reasoning can quickly be confused for universal grounds of naturalistic knowledge, especially when contingent reasoning travels to other sites where the strict rules of reasoning disappear from view. When regulatory evaluations of pipeline projects become highly public as they have been in recent years, different forms of "common sense" will invariably clash with the procedural arbitrariness of administrative tribunals like the NEB.

The second extension to Harrison's comment is that it is not just the arbitrary and contentious regulatory delineation of the material infrastructure that is problematic, but also the distribution of so-called constitutional "heads of power." In other words, delineating discrete aspects of social life is as problematic — and probably more so — than delineating the institutional life of infrastructure. As Lucas and Thompson (2016) point out, even after an interprovincial pipeline is conceptually delineated and federal authority over it is clearly established, "there is little doubt that the most direct societal impacts of oil and gas activities, including oil sands activities, are essentially within provincial jurisdiction" (371).[67] Discrete domains of collective life may be feasibly contained within the sphere of reified reasoning but quickly become entangled in messy ways when considered as emergent activity.

So pipeline controversies cannot be resolved by the righteous swing of the constitutional axe because, even after one order of government has asserted jurisdiction over a project, the messy business of planning, negotiating, building, and operating the pipeline still involves a myriad of social, environmental, and administrative concerns that vastly exceed what might come under the purview of federal jurisdiction[68] (Oleniuk et al. 2015). When a pipeline company

[67] The differential distribution of impacts and benefits was a logical fulcrum for many critics of the Energy East pipeline, especially for institutional critics like municipal and provincial governments who needed to formulate their resistance in "reasonable" language — i.e., not seemingly constructed from ideological commitments such as environmental stewardship, which can easily be framed in counter-arguments as unrealistically opposed to economic progress and infrastructural necessity.

[68] The general consensus coming from critical minded commentators is that all regulatory interventions apply as long as they do not "impair" the project's viability. In constitutional terms, where regulations conflict, federal law prevails; where regulation overlap, federal law is paramount. Of course, there is indeterminacy there as well. As in most legal and political decision-making, there is a necessary point of articulation where subjective arbitrary judgement is applied. Be that as it may — or perhaps because of this — most commentators argue for joint reviews, especially given the entangled salience of environmental issues. For example, Lucas and Thompson (2016) argue that "[b]arring direct conflict in operation (impossibility of dual compliance), both provincial and federal

like TransCanada persists in arguing that only the federal government has authority over its project, what it means to say is not that it will not negotiate its project with all the other social, political, and administrative instances involved, but that it will do so "voluntarily" and in the way that suits them — i.e., by allocating as much arbitrary power to itself as it can, reserving the right to subtract itself from inconvenient future requirements.

I will say a lot more about this in the coming pages and chapters, so these points will get progressively clearer. My goal here is to introduce these dynamics, to gradually build my own framework of understanding, and reconstruct the sense that I have come to make of the issues I researched. Hopefully, by the end, I will have made clear both what I understand to be crucial political, social, and epistemological aspects of pipeline controversies, and how I have come to formulate them in the way that I do. So, moving on, back to my more or less chronological introduction of pipeline history.

Still in the beginning… the NEB

The 1949 *Pipelines Act* served to incorporate five pipeline companies. Of these, the first to make it out of the gates was Interprovincial Pipe Line Co. (IPL, today Enbridge), who received approval for its pipeline project from the federal Board of Transport Commissioners a mere 38 days after the legislation passed. A year and a half later, the oil pipeline stretching from Edmonton to Superior, Wisconsin was built, with tankers bridging the gap to Sarnia,[69] Ontario through the Great Lakes. The only debate at the time was whether the pipeline route should be kept entirely within Canadian bounds (Savage 2016: 4-5).

As a quick point of contrast, TransCanada filed its Energy East project description with the NEB in March 2014 and submitted a formal application for permit — constituting some 30,000 pages — on October 30, 2014. After multiple back-and-forths of amendments, modifications, clarifications, and a new consolidated application, the NEB only deemed the application complete and *ready for evaluation* on June 16, 2016. From this point on, the NEB had a

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environmental requirements should operate concurrently" (372). Perhaps unsurprisingly, this points to yet another controversial change introduced by Harper's 2012 Bill C-38: that the NEB would no longer conduct joint reviews of pipeline projects with other environmental agencies (as was previously the case) but would conduct everything in-house, this despite having little to no environmental expertise (see Doelle 2012).

[69] The area around Sarnia is today infamously known as "chemical valley," home to "[a]pproximately 40 per cent of Canada's chemical industry" (MacDonald and Rang 2007: 5), to devastating effect on the people of the Aamjiwnaang First Nation living downstream from Sarnia's refineries. D. N. Scott (2013b) argues that depicting the development of such extractive industries as a boon to the national project requires the active exclusion of downstream communities from the collective imagination.

time limit of 15 months to issue its decision. And this time constraint, such as it was, was the result of modifications effected by Harper to the NEB Act in 2012 to restrict evaluative processes, considered by critics as an attack on procedural fairness. Former NEB member (1997-2011) Rowland J. Harrison points out how "the amended Act is explicit in its intention that fairness must yield to expediency" (2012: 774). This temporal contrast alone, which of course says nothing about the great many substantive challenges the Energy East pipeline faced, indexes effectively the wide social and political changes that hydrocarbon development underwent over the past 60 years.

The call to institute a National Energy Board to regulate energy exports and advise the government on energy matters arose in a 1955 debate in the House of Commons. Two separate commissions thereafter recommended its establishment. The first was Walter Gordon's Royal Commission on Canada's Economic Prospects, mandated by the Liberals that same year. It submitted a preliminary report in December 1956, and a final report released in April 1958 (W. Gordon 1983: 66). The final report came almost a year after the June 1957 Conservative electoral victory. The report was "largely ignored"[70] (Harrison 2012: 766) by the Conservatives, who had mandated their own commission in October — the Henry Borden Royal Commission on Energy.

There were two predominant issues at the time of the Borden Commission: the economic and national management of Canada's (i.e. for the most part Alberta's) hydrocarbon resources; and the political structuring of administrative authority over this management. As far as the former is concerned, "Throughout most of the 1950s and 1960s the central problem of Alberta's oil industry was that of markets" (Richards and Pratt 1979: 168). In the late 50s, after responding to an increase in demand and price during the Suez Crisis in 1956, Alberta found itself with idle production capacity when demand and prices dropped again after Middle Eastern oil resumed its prior mobility. From 1957 through to 1959, Alberta Premier Ernest Manning exerted regular pressure on then Prime Minister Diefenbaker to impress upon him "the urgent need for action to move our surplus oil and gas to markets" (Gray 2000: 9).

[70] Though most of the report's recommendations were subsequently implemented. The commission set a wide scope for itself, but one of Walter Gordon's primary concerns — and one that was expressed throughout the hearings by intervenors — was over political and economic control of Canada's natural resources and businesses. See W. Gordon (1983: 59-70).

There were in effect 2 solutions: gaining more favorable US policy towards Canadian oil; and blocking foreign oil imports for Montreal refineries and extending the Interprovincial Pipeline to supply Montreal refineries with Alberta oil. While independent producers in Alberta "fought a lengthy battle in the late 1950s" in support of this pipeline, they eventually lost to international companies owning the refineries who preferred cheaper foreign supplies (Richards and Pratt 1979: 159). They also had to contend with U.S. political interests who wanted to keep eastern Canadian markets open to Venezuelan oil (Gray 2000: 29). The resulting compromise produced the National Oil Policy, whereby no pipeline to Montreal would be built but in exchange Ontario refineries west of the Ottawa Valley would replace their imported supply with domestic crude and increase their capacity. Exports to U.S. refineries along the border more than doubled in the first two years, though gingerly so as not to risk losing Canadian exemption to U.S. import restrictions (29-33).[71] While the policy "brought some measure of stability to the Alberta oil industry, it had the effect of tying the province into a continental oil policy. Alberta's economic prospects were intimately linked to U.S. quota politics" (Richards and Pratt 1979: 169).

For our purposes here, the specific balance of the shifting agreements between competing interests in the hydrocarbon sector matters less than the kinds of tensions they reveal. My objective here is to highlight some of these tensions that have historically operated on hydrocarbon development in Canada — notably the entangled relation between economic development and political administration — and how these have shifted in response to various contingent pressures. The move to institute a federal energy regulator was as much a response to the complexities of resource management and pricing as it was a solution to the stormy politics of their development. The *NEB Act*, based on "extensive recommendations" made by the Borden Commission in October 1958, "was tabled […] in March 1959" (Harrison 2012: 766). The report emphasized: the independence the Board should have from "any particular ministry"; the flexibility it needed to determine public interest; and the public nature of its proceedings (767).

[71] Americans began restricting oil imports in 1955 "in the interest of national defence." Part of the threat lay in the fact that having used most of its cheap oil, U.S. oil was now some 50% more expensive than foreign oil (Gray 2000: 33) Restrictions were first established on a voluntary basis, then through a mandatory import control program in March 1959 (28). The U.S. used this exemption as political leverage against Canada throughout the 60s (32-33). Voluntary compliance proved equally difficult on both sides of the border. Getting Ontario refiners to collectively give up cheaper imported oil was vulnerable to the demands of competitivity, whereby compliance was only as strong as the least compliant refinery whose breach of the NOP would compel all the others out of the agreement.

The balance of power that prevailed reflected concerns expressed in Parliamentary debates at the time that the Board not be "a stooge of the government in power" (767), while at the same time ensuring "that the decisions of the board which affect the national interest are consistent with general government policy" (768).

Already, we can see potential problems arising from decisional independence coexisting with decision-making being tethered to pre-determined policy. The report recommended two roles for the NEB. The first, as regulator, included that oil and gas pipelines under federal jurisdiction would have to obtain a "certificate of public convenience" from the NEB, which the latter would issue after taking "into account 'all matters which in its opinion are required to be considered by it in the public interest'" (Harrison 2012: 767, citing Borden et al. 1958: xii). Board approvals would be subject to final consent by the government; Board rejections would be final. Government could no longer approve gas and electricity exports without public hearings (Gray 2000: 17), and the NEB was given control over oil imports.[72] The rationale was that this would protect national interests against self-serving multinational oil companies, allow the NEB to produce statistical information, and encourage national production, distribution, and supply (15).

The second role was for the NEB to take on an advisory function, given that "there was at the time no Department of Energy in the federal government" (Harrison 2012: 769).[73] This combination of roles — advisory and regulatory — has historically put the NEB in an awkward position, at least insofar as what the public imagines an independent regulator should be doing. Harrison cites a 1977 study conducted for the Law Reform Commission of Canada that "concluded that '[a]ll agree that wide-spread suspicions generated by the combination of functions, whether well-founded or not, are extremely damaging to the NEB's credibility as an adjudicator. This in turn can reduce public as well as industry confidence in the Board and impair its ability to exercise its statutory mandate effectively'" (769). The study further found that

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The federal government eventually resorted to legislation in 1970 to regulate the movement of imported petroleum products within Canada, the constitutionality of which was later upheld by the Supreme Court of Canada (35-36).

[72] Though in order not to antagonize the U.S. who had granted Canada exemption from its impending mandatory oil import restrictions, NEB control over oil imports would be subject to a Parliament-approved order-in-council to come into effect (Gray 2000: 16).

[73] The NEB took the backbench in terms of advisory capacity after the Department of Energy, Mines and Resources was created in 1966, which by the 1980s had outmaneuvered the NEB in terms of policy influence (Fossum 1997: 37-40). Through the 70s, the NEB's advisory functions "became limited largely to technical advice, such as studies of future energy supplies and demand" (Gray 2000: 37). These studies circulate with a kind of tautological performative power, as their predictions are indexed as confirmation of current productive trends.

the GIC's[74] power to approve Board decisions is "part of a joint Cabinet-NEB policy-making process." That is, especially for "'pioneering' applications" opening "major new energy markets," NEB decisions on applications are actually posterior to Cabinet policy decisions, which themselves are posterior to advice received from the NEB itself (769, citing the study) — i.e. "the fundamental question of whether the proposed project is in the public interest will have already been determined by Cabinet" (769, Harrison's words, still citing the study).

There are at least two elements to tease out from the above for our discussion going forward. First, the NEB draws its power from its status as a quasi-judicial administrative tribunal, meaning that it has powers and investigative procedures similar to those of a court. Because of this standing, however, the NEB is beholden to principles of natural justice and fairness: it must provide parties affected by its decisions "adequate opportunity to be heard"; and its decisions must not only "be made by an independent and impartial decision-maker," but must also *be seen* to be made impartially.[75] Suspicion, therefore, is enough to invalidate an NEB proceeding.

The NEB, although expected to remain aloof and detached from ongoing social and political debates, is also functionally — and indeed ultimately existentially — tied to public opinion. To make matters worse, in its management of oil and gas mobility, the NEB has "played the roles of both judge and advocate: an advocate for the development and use of Canadian energy resources in the national, or public, interest; and a judge of whether and how this could best be accomplished" (Gray 2000: 22). This is how an impartial administrative body ends up conducting public engagement tours, at face value an odd juxtaposition that — at least in Quebec — has tended to undermine rather than improve public confidence in the regulator. Ironically, as introduced in the opening of this chapter, it is during one of these tours that the NEB met covertly with TransCanada consultant Jean Charest and discussed how the pipeline pill might better be swallowed by troublesome Quebec. The Board might on the one hand engage in the promotion of hydrocarbon development, and on the other conduct its adjudicatory duties,

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[74] As mentioned earlier, the GIC, or Governor in Council, consists of the Prime Minister and Cabinet, who is *formally* advisor to the Governor General, who herself wields executive powers on behalf of the Crown "who is Canada's formal head of state." In practice, the relation of power tends to be reversed, with the Governor General having mostly retained "the right to be consulted and to advise." See https://www.ourcommons.ca/About/Compendium/ParliamentaryFramework/c_d_rolecrowngovernorgeneral-e.htm

[75] See https://www.neb-one.gc.ca/prtcptn/hrng/prtcptngdncfq-eng.html
In Latin, the principles read as: *audi alteram partem*, or "hear the other side"; and *nemo judex in sua causa debet esse*, or "No man should be a judge in his own cause" (see Jones 1977).

but never the twain shall (be seen to) meet lest both be consumed by each other's antinomic existence.

The Energy East controversy was not the first time that principles of natural justice were evoked to challenge NEB proceedings. Jones (1977) discusses the first case where the second principle — a "reasonable apprehension of bias" (463) — was used successfully in the Supreme Court of Canada to invalidate NEB hearings. These hearings, taking place in the mid-70s, were evaluating proposals for gas pipelines from the Arctic following a major discovery of oil and gas on the Alaskan North Slope in 1968. The hearings were aborted because of NEB chairman Marshall Crowe's prior involvement with one of the companies, Arctic Gas. The NEB attempted to diffuse tensions by providing a full disclosure by Crowe before the proceedings. Interestingly, when participants were asked whether they had objections to Crowe's participation, one objection was offered not on the grounds of bias towards Arctic Gas, "but because a possible bias in favour of building *any* gas pipeline from the Arctic" (Gray 2000: 71, my emphasis). Bear in mind that the NEB hearings were being held concurrently with 2 others: one by the U.S. Federal Power Commission; and one by the famous Berger inquiry, which "recommended no pipeline — ever — on the Arctic Gas route along the coastal plain and across the Arctic Wildlife Range, and no pipeline up the Mackenzie Valley for ten years, to allow time for the settlement of Aboriginal land claims" (69). This was the beginning of a new era for pipeline development, where the Environment as such and the interests of emplaced communities began to intrude with greater effect into the expedient business of hydrocarbon extraction and shipment.[76]

This challenge to NEB hearings as a site of myopic single project evaluation — versus as a platform for the public to engage critically with wider energy development goals — prefigures the kind of controversy that would in recent years come to overwhelm the NEB and hydrocarbon development, and further highlights the second constitutive tension at the heart of the NEB: its murky relation to political decision-making. As mentioned, energy security and a concern "to

[76] The second NEB panel on pipelines from the Arctic began in April 1976, and gave its decision on July 4, 1977, two months after the Berger recommendations. Despite agreeing with Berger on the 10-year ban, the NEB authorized an 880-km oil pipeline down the Mackenzie Valley, proposed by IPL, in 1983 after five weeks of hearings. The process was part of "new streamlined procedure" fruitlessly challenged in the Federal Court of Appeal. Then NEB chair Geoffrey Edge justified the expedited timeline by dividing required information into two categories: information needed to determine the public interest, reviewed during public hearings; and details on which approval was not contingent but which needed review before construction could begin (Gray 2000: 74). As we will see in later chapters, this temporal unfolding of substantive regulatory review was a principle reason for municipal opposition to Energy East. After the recusals of the first NEB Energy East panel in 2016, the new review

shelter energy infrastructure decisions from raw politics" was central to the impetus to create the NEB, which "required turning a degree of decision-making power over to an independent quasi-judicial regulator whose decisions would not be based on political expedience" (Savage 2016: 3). This kind of figuration, although conveniently merchandisable as a democratic trope, fails to capture the complicated relation between knowledge, policy, and the messy business of administrative governance. As with most infrastructure, institutional procedures are not neutral: their design reflects prior political assumptions and commitments (Kysar 2010; see also Jasanoff 2012; Ballestero 2015) and their operations eventually involve some measure of arbitrary intervention. This is, I would argue, an important point to continue to emphasize in this era of technocratic reform and techno-optimism (see Kenis and Lievens 2014).

So the NEB was not constituted to adjudicate hydrocarbon policy: it was constituted to *inform* energy policy and to evaluate specific projects towards the advancement and proper management of the country's energy resources. It might have provided some kind of democratic visibility[77] to the tail end of development, but whatever planning lay upstream and downstream of project reviews remained safely tucked away in the recesses of corporate and governmental operations. This is another important aspect to keep in mind, as it is one of the central grievances expressed by environmental assessment reformists: involve the public way upstream in the process of project creation instead of confronting it with a *fait accompli* (Gibson et al. 2015). This observation has become something of a truism for critics of centralized development (see e.g. Otsuki et al. 2017), and was also a recurrent criticism in the Energy East controversy. This criticism reflects a generalized sense of cynicism towards consultative procedures (see Kelty 2017; Perreault 2015; Mikadze 2016), which receive a tremendous amount of lip-service but tend on the one hand to occur too late for any meaningful change to be operated, and on the other hand to offer opportunities to be respectfully heard without any real reconfiguration of decisional power. In contemporary pipeline debates, the government still struggles to find the operationalizable balance between democratic inclusiveness on the one hand (giving procedural space to citizens' concerns), and procedural predictability on the other. Understandably, companies argue that specific project reviews are not the place to hash out wider public policy.

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announced in 2017 changed this ordering of regulatory visibility, incorporating much more of the technical elaboration into the earlier, public stages.

[77] And even this visibility, as we shall see, provides no guarantee of actual public power over outcomes.

But opponents argue that one cannot determine whether a project is in the public interest without figuring these wider public goals within the framework of procedural reason.

You see the problem. In the administrative space that the NEB occupies, normative and technical reasons cannot be disentangled from each other. This is especially true today, where concerns for global environmental risks have come to occupy an equal if not higher portion of public concern. Where a farmer's concern over pipeline depth and respectful management of topsoil can be accommodated technically within the NEB's procedural realm, concerns over global warming and the irresponsible development of hydrocarbon resources cannot — they require a re-imagining of the nation's future and a reconfiguration of how democratic power is distributed. Maclean (2015) characterizes the NEB's contradictory roles as being like "oil and water," arguing that the Board's judicial functions are constitutionally antithetical to its relation to the executive branch of government (14).

Given the NEB's relation to governmental policy, it is not surprising that it has tended to get swept up in wider governmental imperatives as succeeding governments sought to adjust to shifting political and economic conditions. Also unsurprising, given that the Board's required expertise was to understand and foster hydrocarbon development, it has historically been populated by members of the industry it was tasked to regulate (Gray 2000: 24). In his discussion of attitudinal bias, Jones identifies this as "one of the weaknesses of our present regulatory system" (1977: 482), an aspect often referred to as regulatory capture, where a regulator — or indeed the whole governmental apparatus — becomes overly pliant to its industry's interests (MacLean 2016). During my research into the Energy East pipeline controversy, the NEB's proximity to industry was generally exposed in the press as a dirty little secret that would act as a smoking gun for NEB bias towards hydrocarbon development. Part of what I am doing here by contextualizing these debates within a wider historical trajectory is to simply show that far from an accidental perversion of pure regulatory oversight, the whole *purpose* of the regulatory apparatus was to *enable* the development of energy resources. As MacLean argues, what the current environmental crisis requires is a serious reflection on how a certain kind of national interest *qua* business interest is supported by the infrastructures of government.

MacLean (2015), commenting on the NEB panel assigned to evaluate the Energy East application, noted that a "reasonable person" would have no reason to perceive it as "independent, impartial, and competent" (14). He cites well-known hydrocarbon critic

Nikiforuk's description of NEB full-time members as essentially a group of similar white men whose primary qualification and mandate is "to facilitate the pipeline approval in the country" (14). Today, such bias is highly controversial, but historical context tends to complicate the observation a little: from the outset, there was never any question whether Canada might *not* want to develop its oil and gas resources. The only salient questions were how, how fast, and to whose benefit. This sentiment still circulates in comments like, "No country would find 173 billion barrels of oil in the ground and just leave them there," as Trudeau argued in Houston on March 9, 2017.[78] The question of *whether* is a posterior development, and one that grinds against established modes of decision-making. As we will see throughout, *whether* is a question politicians play a hand in but give little to no institutional purchase to.

At the time of its inception, populating the NEB with members of industry only made sense, because they were the ones with the required knowledge of the industry's inner workings and requirements. Kenneth Vollman, NEB chairman from 1998 to 2007, started his career with Mobil Oil Canada in 1965. He joined the NEB in 1973, where he spent the rest of his career in various capacities. According to him, "the Board sees itself more as a partner of the interests it oversees than as a cop giving orders," a relation supported by the fact that the NEB paid for 90 percent of its costs by collecting "charges on the companies it regulates" (Gray 2000: 82-83). Vollman, like Roland Priddle who was NEB chair before him, was later inducted into the Canadian Petroleum Hall of Fame.[79] This goes some ways towards explaining why the NEB's presentation during Quebec's 2016 BAPE hearings was in some ways so similar to TransCanada's in that it uncomplicated the question of pipeline development to the point of reflecting a polished reflection of safe pipelines and smooth regulatory management that not only betrayed what the public had come to know but its own experience of corporate non-compliance and engineering difficulties. The NEB was not only in the business of impartially evaluating

[78] You can read the transcript here: https://www.macleans.ca/economy/justin-trudeaus-speech-in-houston-read-a-full-transcript/

[79] Vollman was inducted in 2007, Priddle in 2001. See Vollman's short bio here: http://www.canadianpetroleumhalloffame.ca/kenneth-vollman.html. Hall of Fame candidates are nominated by the public in four categories, one of which is "regulation." An independent committee made up of "past and present oil industry executives" deliberate and make their recommendations to the organization's Board of Directors. Their mission is, "To honour and memorialize people from every walk of life who were outstanding builders of the Canadian petroleum industry, to record their specific contributions, to inform and educate the public about the vital role the industry and its people play in the development of our nation, and inspire others to perpetuate the legacy they established."

pipeline proposals. It was in the business of selling Canada's energy sector and regulatory procedures.

The NEB's close relation to industry on the one hand and to government policy on the other has always left it vulnerable to the charge that its decisions have been "pre-determined," from early days when impacted landowners were summarily dismissed (see Lewington 1991) to current days where charges of bias have brought down entire panels and where excessive procedural restrictions have led important intervenors to withdraw from the process in protest.[80] Most recently, investigative journalist Mike De Souza reported on revelations made to him by "government insiders" that "a high-ranking public servant instructed them, at least one month before the pipeline was approved, 'to give cabinet a legally-sound basis to say "yes"' to Trans Mountain'" (De Souza 2018). R.J. Harrison (2012), for his part, though critical of recent threats to the NEB's procedural autonomy, affirms never having witnessed direct cabinet influence during his 14-year tenure at the NEB (1997-2011). But part of what I am trying to elicit here is that the matter of agency — which involves the "what" as much as the "how" of bringing desired futures about — requires a much deeper unpacking than locating moments of deliberate rule transgression, though these certainly arise.

From nation to market, and through environmental intrusion

Now that we have seen some of the recurrent tensions that informed energy development in the post-war period in Canada, I want to cover two more general aspects before moving on to the Energy East pipeline controversy. The first concerns a major shift in governmental ethos that occurred in the mid-80s from a period of state interventionism to one of market-led development. More than simply marking a turn towards prioritizing economic success over other forms of social well-being, the 80s saw a reconsideration of the political modes by which generalized prosperity might be achieved. The deconstruction of the interventionist state was based on a different kind of promise than that brandished during the high modernist era of state-led development. Rather than being propelled by utopian visions of humanity's infinite potential to overcome the material limitations of its environment and invent its own future, the social thought that came to predominate in the 80s was premised on the delegation of some measure of both political agency and imagination to aggregated individual actions framed as natural processes —

[80] As was the case during the Trans Mountain Expansion review. See MacLean (2015).

i.e., as pre-normative, universal processes. Put simply, a better future would come about if we simply *stopped* planning our collective future and let the cumulative effect of every human (and corporate) person's quest for self-fulfilment take its beneficial course. It is from this ideologically fertile ground that "end of history" type of arguments could grow (see Fukuyama 1989; c.f Latour 1993), as some over-enthusiasts perceived (economic) liberal democracy as the end of politics and the neutral path towards equal opportunity for all, eliminating the conditions for future conflict.

The second important aspect I want to introduce here is the rise and changing nature of environmental intrusion into energy politics, which has challenged the appropriateness of political de-centralization in interesting ways. Climate change, by exerting pressure on the efficacy of political delegation to markets, is pushing against not only current political infrastructures but also the assumptions on which they are based. Pipeline politics have made this tension very visible by demanding that we re-situate the locus of political imagination to sites of concerted public deliberation, pressing once more towards some form of centralized authority to impose this collective will upon the atomized collective.[81] For pipeline opponents, it is not enough to simply trust "market forces" to eventually incentivize a shift in the material underpinnings of our industrial societies.[82] For them the problem is clear, the imperatives are clear, let's just *do* what it takes — e.g. leave the oil in the ground, or at the very least stop planning the *expansion* of the hydrocarbon industry, and mobilize the political collective towards the common goal of powering our society by ways that will not destroy it in the process. What this increasingly prevalent argument does is put pressure on the "we" that circulates with high velocity in political discourse. In terms of personified agency, this "we" is a complete fiction. On the level of logical, rational thought, the reasoning makes implacable sense. In terms of the infrastructure of political

[81] This "once more" is somewhat misleading given that the binary it implies oversimplifies decades of political negotiations. On the one hand, what I have observed during my research is that although political delegation to market principles is acknowledged explicitly in a number of ways, it does nothing to dampen the expectations that states actually can and do act heroically on their present conditions to bring about desired futures. Depending on the context, politicians or pipeline proponents will argue against undue interference in the wider scheme of economic relations; or will defend the pipeline as a nation-building project. Despite the shift towards some forms of political delegation, the state as a coherent polity has remained an active trope. On the other hand, environmentalists have never stopped demanding legal normative commitment to environmental preservation, so the recent increased demands for political action on climate change, from this perspective, is better described as an intensification rather than a return to previously abandoned expectations.

[82] Trusting market forces, as we will see, mostly materializes as trusting corporations to do the right thing. Much of the political push-back against TransCanada and the Energy East pipeline was exerted against this form of corporate paternalism that argued that calculation and reason was better left in expert hands. All that the public and municipalities needed to know were the aspirational guidelines the corporation purportedly set for itself.

agency and socio-economic relations, it is a logistical nightmare. Pipeline opponents and supporters, when they meet in the same room during public hearings, occupy very different universes.

As stated above, the 50s and 60s marked an era of hydrocarbon enthusiasm, with both its production and transport depicted in heroic terms. Coverage by the CBC from this era helps to illustrate the celebratory tone with which such engineering exploits could be touted. A 12-minute film[83] dating back to November 1953 describes the building of Kinder Morgan's "fantastic Trans Mountain Pipeline,"[84] using military language to narrate the heroic defeat of natural obstacles. The film invites viewers to appreciate the engineering challenges posed by the "many picturesque sites" along the way as the company struggles "to pass through rivers, to move mountains — to build a pipeline" with "men, and machines, and power. […] All the latest weapons employed by engineers in modern pipeline construction converge on the theatre of war. Mounting the attack, the […] company moves into position some of its heaviest armament, for victory will not be easily won." Here, clearing the right-of-way is depicted as a "daily skirmish." Images of falling trees is overlaid with the narrator's voice declaiming "the enemy, one by one, toppling to echoing cries of 'timber!'," and victoriously declaring that "the stumps lie like tombstones in a forest graveyard." The segment goes on to describe the pipeline's other "natural enemies": rocks, swamps, rivers. You get the picture. This depiction conveys well the sense of optimism that was felt towards developing the country's natural resources at the time.

This optimism was shared by investors and government alike. Gray (2000) explains that, "During its first decade the Board was, in effect, the federal department of energy, almost as eager as the energy companies to foster the development of resources that were thought to hold great wealth for the nation" (22). This eagerness was reflected in the expediency with which pipeline infrastructure was approved and built. As we noted above, "In 1950, Interprovincial Pipe Line Company built the world's longest pipeline from Edmonton to Superior, Wisconsin, in just 150 days" (Finch 2008: 147). While the company received little opposition at first — 41 expropriations out of the 2,100 involved landowners — environmental consequences to farmers'

[83] The footage can be viewed here: http://www.cbc.ca/archives/entry/trans-mountain-pipeline-to-carry-alberta-oil-to-vancouver

[84] The Trans Mountain was Canada's second major pipeline, built after the Interprovincial Pipeline mentioned earlier that trailed a course East and South to Lake Superior. The Trans Mountain charted its course West and South of Edmonton, bringing an initial capacity of 150,000 bbl/d through the Rocky Mountains and Coquihalla Canyon to the B.C. coast in Burnaby.

fields and aquifers became a gradual concern as "early pipelines created a mess" (148). "[A]t the time, getting the pipeline built was of utmost importance to the government and the oil industry," and it took years of legal battle for "affected farmers" to convince regulators and the companies to implement "more careful procedures and considerate policies" (148).

This is the trajectory that farmer Peter Lewington describes in his 1991 memoir *No Right-of-Way: How Democracy Came to the Oil Patch*, where he provides an account of his drawn-out battle against IPL (Interprovincial Pipe Line) and the NEB. He critiques deceitful corporate tactics, the revolving door between industry and the NEB, and the complete lack of environmental concern. Lewington writes:

> When Interprovincial celebrated its twenty-fifth year of business, it had still done no environmental-impact research. […] When the National Energy Board authorized the third Interprovincial pipeline in 1975, there was still no oil-spill policy in place. And perhaps the most damning indictment of all was that my wife and I, with our puny resources, had funded more research to mitigate the impact of pipelines on farming than the provincial and federal governments and the entire oil industry combined, in the entire history of pipelining (xvi).

IPL laid pipes through Lewington's farm — located east of Sarnia near the city of London, Ontario — on three separate occasions, in 1957, 1967, and 1975.

The stakes for Lewington were simple. Class 1 agricultural land,[85] as a limited resource that is crucial for Canada's future, should be carefully preserved. And yet, despite official recognition of their importance, it took decades to institutionalize harm mitigation. He describes IPL's construction practices as "making a wasteland" out of his prime farmland, blazing ahead without any regard for soil, drainage infrastructure, aquifer integrity, cleanup after construction, the safety of cattle, etc. (27). And in 1975, the *Railway Act* still supported these practices by permitting pipeline companies to obtain expropriation warrants and authorization from the NEB without environmental assessment, mitigation practices, or spill-cleanup policy. As IPL told the judge, "You shall grant us a warrant. We can go in and make a wasteland of these farms if we want to" (150). Despite clear evidence of prior damage in 1957 and 1967, the judge had no other choice than to issue the expropriation warrant.

[85] Lewington defines Class 1 agricultural lands as containing "soils that have no significant limitations for crop production" (17).

But IPL's third pipeline construction on Lewington's farm marked the beginning of a shift in regulatory and corporate practices for pipeline development.[86] Lewington's court case against Interprovincial for damages in 1976 went to the Ontario Supreme Court in 1981, where the dismissal of IPL's appeal set a precedent (203). The NEB had begun building some environmental expertise in the 70s, and when Lewington dealt with the NEB again in 1985, he found it had reformed its practices, which now promoted and enforced preservation of topsoil, protection of drainage infrastructure, and prevention of soil compaction (206-208). The NEB Act was reformed in 1983, giving more power to landowners to question routes and demand compensation (212), and the *Railway Act* was amended in 1985 (209). Lewington cites the new NEB chairman of the time, Roland Priddle, praising a balanced concern for future "'abundant energy resources and a healthy environment' in keeping with sustainable development principles" (213). New tropes had entered institutionalized development discourse. Gray (2000) describes the changes made by the NEB and pipeline companies to their landowner relations as a "quantum leap" (104) from earlier days of meting out "pretty rough justice" (103).

So as far as Lewington is concerned, after three decades of dogged resistance, he was vindicated by the institutionalization of the regulatory and corporate practices he had advocated for. Lewington (1991) did not contest Interprovincial's efficiency at building pipeline systems. He decried the fact that "farmers were not part of that system" (80), and that "hard-liners in the energy business tend[ed] to think of farmland as something between pump stations" (76). There were conflicting imperatives at work, between the business of building the wealth, power, and prosperity of the Canadian nation and the daily business of being a particular Canadian.

I don't mean to imply that this is simply some kind of a macro/micro duality. Pipeline politics are too entangled for that. For example, by the 1970s, the Medway Valley where the city of London, Ontario is situated had 10 pipelines going through it. Lewington points out that these provided more tax revenue to the corporation of the township of London than "any other source." As a result, the "gulf between farmers affected by pipelines and their municipal council grew wider and wider" (25). But as we will see in chapter three when we unpack municipal opposition to Energy East, municipal benefit from pipeline development is contingent on a number of factors, most notably what other plans the community might have made for soon to

[86] As noted earlier, IPL's third line was contemporary to the Berger inquiry into the Mackenzie Valley pipeline, which brought wider environmental issues to the fore.

be alienated land. With increasing recognition of municipal administration as the more appropriate site for reorganizing territorial occupation in a way that is more congruent with environmental sustainability, local planning and development offers a heavier counter-weight to "nation-building" rationales as a viable mode of political management.

The point I want to re-emphasize here is that, while pipeline politics are often profoundly antagonistic, it is more constructive to think in terms of conflicting imperatives and differential positionalities than to seek to attribute ill-will. A person or group does not have to be far removed from local constraints to be influenced by other kinds of pressures. In the post-war era, the promise of significant development and wealth was premised and formulated on previous nation-building efforts that had required significant centralized governmental involvement, both financial and political. And as with these prior developments, the political agency required to bring the nation forward was in part constituted by the forces and pressures it had to contend with.

The 60s and 70s were a tumultuous era for oil and gas development. We've already mentioned the Suez crisis of 1958 which played a significant role in setting up Alberta with the excess production capacity it then needed a market for once the conflict was resolved. But perhaps more notable still, in geopolitical terms, were the "oil shocks" of the 70s, when OPEC countries wrested control of their oil resources from multinational oil companies and began controlling the flow of oil for political reasons — first through an embargo by Arab countries in 1973 in response to the Yom Kippur war with Israel, then in 1979 during the Iranian revolution — that sent tremors of nationalist worry through the Western world.

Although Canada was not on the 1973 embargo list, the situation initiated a highly nationalist and interventionist period in Canadian governmental involvement in hydrocarbon development that lasted until 1984, when Brian Mulroney's Progressive-Conservative Party ended (an almost uninterrupted) two decades of Liberal federal power (Fossum 1997). Pierre Eliot Trudeau, Liberal prime minister for 15 of those 21 years, became the figurehead of federal incursion into hydrocarbon development, and hence provincial affairs, that began with his new national energy policy launched in December of 1973. According to Gray (2000), the main concerns facing the Trudeau government were: the potential wealth disparity between oil producing (West) and consuming (East) regions, energy supply for consumers, and equitable national distribution of oil wealth (48). Trudeau argued that Ontario consumers had been

subsidizing western producers "by buying high-priced domestic oil," and now it was Alberta's turn to subsidize eastern Canadians by selling below market price (51).[87] The goals of the national oil policy were ambitious: self-sufficiency by the end of the decade by creating a single national oil market and supply allocation board, by extending the pipeline network to Montreal, by establishing pricing mechanisms, and by creating a national oil company to "expedite exploration and development" and stimulate oil sands development (Fossum 1997: 33). This new national oil company, Petro-Canada, began operating in 1976 with the explicit goal of finding new, high cost sources at the technological and geographical frontiers of conventional production — i.e, in the oil sands and the Arctic. As Fossum notes of this period in general: "In adopting a neomercantilist strategy [to ensure and control energy supply in reaction to the crises], the Canadian federal state played two roles: regulator and developer" (14).

Petro-Canada served as a tool for direct federal involvement, namely through the development of the Canada Lands, land under federal Crown jurisdiction. Indirect means of control — taxes, subsidies, trade and price regulation — proved a messy affair. Federal incentives to pace production to national need in order to prolong self-sufficiency were at odds with private investor imperatives who were looking for a "relatively rapid return" on their investment (34), especially for riskier investments in non-conventional sources.[88]

As already discussed, provincial ownership of resources within their territory made federal intervention difficult, especially in Alberta that already had a tradition of resisting federal meddling in its resource sector. Be that as it may, "the somewhat ambiguous constitutional division of overlapping powers left considerable room for federal actions to influence activities within provincial bounds," and vice versa, thus having "the potential to exacerbate the problem of overload." Overload is experienced when multiple governmental instruments, such as fiscal incentives, produce conflicting effects, "especially when each level of government used the available instruments to expand its jurisdictional control" (39). Without going into too much detail, it is interesting to note how both federal and provincial efforts to increase their jurisdictional control, for example through wellhead pricing and increased tax and royalty shares,

[87] Ontario refineries in the 60s were paying "roughly 10 to 25 percent more than the price paid by refiners in Quebec and the Atlantic provinces for imported oil," a situation which reversed during the 70s due to government price regulation (Gray 2000: 59).

[88] The relation of investment to production imperatives also became salient after the 2014 oil price crash, where instead of slowing down production until prices rose, high-cost production sites needed to maintain and even increase production in order to keep up with interest payments.

indeed had a range of contradictory effects. Provincial challenges to federal constitutional authority contributed to increasing jurisdictional uncertainty, which undermined their attempts at securing constitutional empowerment (46).[89] Battles over tax and royalty shares sent industry into defensive mode, which conflicted with both Alberta and the federal government's aims to promote exploration and development (47-49). In addition, according to Fossum, both levels of government were "so preoccupied with jurisdictional issues" that they hindered their own ability "to grapple with the oil industry's continued influence" (50).

Trudeau's interventionist policy went through 2 more iterations, one in 1976 and another in 1980. The latter, the National Energy Program (NEP), planned for

> "a petroleum monitoring agency […]; subsidies to encourage the development of new oil supplies in frontier areas and from the Athabasca oil sands; subsidies to help substitute other forms of energy for crude oil; the extension of the gas pipeline system East from Montreal to the Maritimes; energy conservation measures; the establishment of an alternative energy corporation; an enlarged program for Petro-Canada; and a goal of 50 percent Canadian ownership of the petroleum industry by 1990" (Gray 2000: 60).

The program called for a phase-out of oil exports by 1990 and shifted the industry/province/federal distribution of revenue from 45:45:10 to 36:35:29 (61). The program touted that, "Federal government action […] 'must establish the basis for Canadians to seize control of their own energy future through security of supply and ultimately independence from the world market'" (61).

Ironically, given that national interventionism had been motivated in part by the desire to shelter Canadian consumers from inflated world prices, the lavish expenditures of the program were premised on the bountiful promise of "a never-ending escalation of oil prices," which contributed to its demise when oil prices failed to meet these expectations (Gray 2000: 62-63). In a twist of fate, 1990 did not mark the successful completion of Trudeau's nationalization program, but the tail end of its complete reversal: in February of that year, the Mulroney government "announced the decision to privatize Petro-Canada" (Fossum 1997: 236), which came as no surprise given that the Conservatives had been explicit about scaling back state enterprise from the outset.[90]

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[89] Clarity and predictability is mostly desirable when established rules serve your present interests. As we have seen recently in the Trans Mountain Expansion case where the BC government has been attempting to assert its jurisdictional right to regulate the passage of hazardous materials on its territory, the Alberta government has suddenly become the champion of unassailable federal constitutional powers.

[90] Incidentally, the year that the legislation to privatize Petro-Canada was passed, 1991, was also the year that the NEB was relocated from Ottawa to Calgary.

The NEP was quickly dismantled after the Mulroney Conservative government won power in 1984, and both federal and provincial levels of government began shrinking away from interventionism, a development which was in step with global excitement for market-based governance (Gray 2000: 87). When the U.S.-Canada Free Trade Agreement (FTA) was negotiated,[91] "[t]he provinces moved to ensure that the FTA would contain clauses that would bar the federal government from certain courses of action and prelude a future NEP" (Fossum 1997: 10). Mulroney described this dismantling of the NEP during a visit to New York as "Canada is open for business" (cited in Fossum 1997: 199), and his reversal of its policies reoriented Canada's hydrocarbon industry "along the North-South rather than the East-West axis" (199). Gray (2000) describes the energy program that conservatives had been formulating while in opposition as, "essentially, free the energy companies to do their thing and, in the process, create jobs and wealth" (87).[92]

The turn away from governmental interventionism in hydrocarbon development found its way to the regulatory sphere, where attempts at imposing bureaucratic rational will on nimble and highly reactive market prices had proved frustratingly difficult. I mentioned Roland Priddle above, the new NEB chair that Lewington lauded for his enlightened stance on harm mitigation and landowners' concerns. Priddle was not only critical of the flurry of underplanned applications for oil and gas projects that cropped up in response to the high prices of the 70s and early 80s. He also estimated that the "frenzy of energy-regulatory-administrative activity […] was largely a waste of time and money and that oil supplies for Canadians could have been much better secured by the operation of the market" (Gray 2000: 77). The number of authorizations that the Board had to issue went from 285 during its first year of operation in 1960 to 1,200 by 1972 and 3,196 in 1974 (83-84).

I am not going to go into details of how the NEB's regulatory and pricing processes changed. But one fascinating example will suffice to suggest the breadth of the shift. A central function the Board had been tasked with since its inception in 1959 was to ensure national gas

[91] Negotiation began in 1986. The agreement was completed the following year and brought into force on January 1, 1989. It was superseded by the North American Free Trade Agreement (NAFTA) in 1994 when Mexico was included. See http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/united_states-etats_unis/fta-ale/background-contexte.aspx?lang=eng

[92] When Pat Carney took over as minister of Energy, Mines and Resources between 1984 and 1987, he took the lead "without the help of all these little people who write memos about how important they are," leaving ministry officials "stupefied and dismayed" (Gray 2000: 88). Pat Carney was "named 'Oilman of the year' by Oilweek magazine in 1986" (88).

supply by estimating reserves in excess of a certain duration of supply. In 1987, the Board announced its Market-Based Gas Export Procedure, by which it "would continue to assess trends in gas supplies and demand, but as long as the market appeared to be meeting its function in providing needed supplies, and in the absence of complaints to the contrary, there would be few impediments to obtaining export approval by anyone with gas purchase and sales contracts" (Gray 2000: 96). The assumption underlying the Board's initial processes were that "the supply of 'non-renewable' energy resources is finite and should thus be carefully husbanded" (95). But the Board's new rationale was that such protections were senseless given that innovations would always replace depleted forms of energy — as whale oil had been replaced by kerosene in the past (95). The Board's evaluation of the new procedure in 1996 found it to be a success as it contemplated lower prices, higher corporate and technological efficiencies, and quadrupled export volumes. The fact that proven gas reserves had fallen by half was not seen as a problem, but rather as an indicator of the sector's new-found nimbleness (96).

environment, the Environment, and political agency

I have already introduced above how environmental concerns were featured in early pipeline negotiations, which is to say not very much but for a few vocal landowners protesting pipeline companies' cavalier and destructive practices. Environmental matters, as a general area of concern, began appearing in the 70s after discovery of oil in the Arctic opened up a different kind of conversation. The NEB created its environmental division in 1972, which was eventually staffed in 1974. Earlier I mentioned the first time that allegations of bias successfully challenged an NEB panel in its review of the Mackenzie Valley Pipeline in 1975. These hearings were also the first time that environmental concerns began to predominate in pipeline hearings (Gray 2000: 106), with public pressure being in large part responsible for their gradual (reluctant) incorporation into regulatory planning and coordination (Dosman 1975). As Dosman notes, while environmental issues were nominally addressed from the outset after the discovery of Alaskan reserves, these tended to rely on corporate research and served other purposes than environmental protection, namely the protection of Canadian jurisdiction in the North against the threat of American encroachment (ch. 9).

Environmental concerns, like the rising trend towards market-based governance, were also global in scope and soon came to permeate many areas of government. Environmental regulation was also subject to dichotomous thinking about governmental agency, as reflected in

debates opposing government-centered "command and control" type of regulation to govern*ance*-centered approaches relying on market forces to incentivize standard compliance. The latter has tended to predominate in Canada since the 90s (M'Gonigle et al. 1994). As much as federal and provincial governments had fought to increase control over oil and gas development, jurisdiction over the environment proved a considerably less attractive power to hold — except for the contingent political leverage it could offer (K. Harrison 1996). Governments have had to tread a difficult line between a growing popular desire for environmental protections, the gradual elaboration of environmental frameworks in international law and conventions, and the imperatives of continual economic growth in a competitive and increasingly liberalized international trade context. Without going into detail about how the environmental movement developed since the late 60s, I will give a few landmarks to provide a sense of how environmental law came to play a role in the politics of resource development that we have been discussing.

By all accounts, the 1972 UN Stockholm Conference on the Human Environment indexed the beginning of a broader consideration of the environment as a general area of concern, which led to "an explosion of international treaty making" on specific issues, to the creation of the UN Environmental Program, and "the beginning of the framework convention-protocol approach" that now predominates international negotiations on environmental protection (Doelle 2013: 4). These developments followed on the rise of a collective environmental consciousness that grew throughout the 60s. Doelle points to Rachel Carson's 1963 *Silent Spring* as a turning point that eventually lead to the creation of "environmental agencies and departments and the enactment of environmental legislation in Canada and the United States" (3).

For Canada, on the federal level, important moments include: the creation of the federal Department of Environment in 1985; the enactment of the Canadian Environmental Protection Act (CEPA) in 1988 that targeted toxic substances and served as a tool of implementation for international agreements and gave a central role to public participation (Doelle 2008); and the Canadian Environmental Assessment Act (CEAA) introduced in 1990 "to entrench the federal EA [environmental assessment] process in legislation" and proclaimed in 1995 (Doelle 2013b: 500). One of the most significant and controversial legislative changes included in Harper's 2012 omnibus "budget" bill, C-38, was the replacement of CEAA 1995 with CEAA 2012, that

considerably narrowed the scope and powers of federal EAs (see e.g. Doelle 2012; Fluker and Srivastava 2016).

The period between 1972 and 1992 saw the growth of environmental non-governmental organizations (ENGOs) and the proliferation of international instruments on issues like air pollution, the ozone layer, and hazardous waste. It is also during this time that governance institutions began conceiving of the environment as more than its biophysical elements to include within it the social, cultural, and economic dimensions of collective life. The 1977 first session of UNESCO's[93] Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage and the widely influential 1987 Brundtland Commission report were important landmarks in this respect. The Brundtland report, *Our Common Future*, that underlined the cross-boundary nature of pollution, quickly became a cornerstone of sustainable development[94] and a recurrent feature in government policy. It underscored the urgency for global concerted action and led to the 1992 UN Conference on Environment and Development in Rio, a.k.a. the "Earth Summit." Principle 10 of the Rio Declaration contains three crucial aspects for environmental law: citizen access to information; public participation in decision-making; and access to justice (Baril 2006: 21).[95] As Baril explains, these three components became integral to the development of procedural rights from prior substantive iterations of environmental rights, making the "materialization of these rights" possible (59). Again at the level of the United Nations, these procedural rights were enshrined in the 1998 Aarhus Convention.[96]

Quebec's first environmental law, the *Loi sur la qualité de l'environnement* (LQE), was enacted in 1972 and reformed in 1978, and created the province's first Environment ministry in 1979. It is the 1978 LQE reform that spawned Quebec's *Bureau d'audiences publiques sur l'environnement*

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[93] The United Nations Educational, Scientific and Cultural Organization is dedicated to advancing global peace through the promotion of enlightened humanist ideals. See https://en.unesco.org/about-us/introducing-unesco.

[94] The report's oft-cited definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland et al. 1987). The definition can be found in Part I, chapter two of the online version, which has no page numbers, available here: http://www.un-documents.net/wced-ocf.htm.

[95] In full, Principle 10 reads as follows: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." All 27 Principles can be accessed here: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

[96] Details can be found here: http://ec.europa.eu/environment/aarhus/

(BAPE), the province's independent environmental assessment bureau. Though the LQE's definition of environment was more narrowly focused on bio-physical effects, the BAPE quickly found these limitations unworkable and took liberties to expand its scope by considering all manner of impacts on human communities. In its review of the Trans-Quebec and Maritime Pipeline in 1979, the BAPE observed that given how concerns expressed by interveners went far beyond bio-physical impacts, it was "unrealistic and quite impertinent to limit the population's interventions to only those aspects falling within a narrow understanding of the environment" (BAPE 1979 A-10, my translation). The BAPE's wider vision was reflected in the 1980 *Règlement sur l'évaluation et l'examen des impacts sur l'environnement* (REEIE) (see Baril 2006: 23-27).[97]

Sustainable development — or *développement durable* in French — starts making its way into Quebec's political institutions in the mid-90s. In 1994 the *Loi sur le ministère de l'environnement* includes a "sustainable development perspective in the minister's mandate" (Baril 2006). In 1996, it is the turn of the *Loi sur les forêts* to incorporate "*l'aménagement durable*"; the nascent *Régie de l'énergie* is tasked with accommodating a "sustainable development perspective" in its mandate to "satisfy energy needs" (68); and the *Loi sur la protection du territoire et des activités agricoles* is modified to incorporate the same accommodation (68). A preamble is added to the *Loi visant la préservation des ressources en eau* in 2001 to insert the "respect for sustainable development principles." The "perspective" is added to the *Loi sur la conservation et la mise en valeur de la faune* and to the new *Fonds national de l'eau* in 2002 (68-69).

As mentioned in the previous chapter, it is interesting to note that Quebec's Environment ministry has kept the word "environment" in its name since its inception, except for a brief month in 2005. In February of that year, the government attempted to change its name from *ministère de l'Environnement* to *ministère du Développement durable et des Parcs* (Ministry of Sustainable Development and Parks). A month later, the ministry was renamed *ministère du Développement durable, de l'Environnement et des Parcs* (Baril 2006: 68; see also Francoeur 2005). While the attempt to drop the reference to the environment failed, the move is indicative of the complications that

[97] In English, the *Regulation respecting environmental impact assessment and review*. Essentially, the relation between a regulation and a law, as that between the REEIE and the LQE, is everything you've ever wanted to know about a law but never thought to ask. The REEIE provides the details about which projects are subject to which articles of the law, how evaluations should proceed, etc. This is where a crucial knot of the CQDE's (*Centre québécois du droit de l'environnement*) argument for Quebec environmental sovereignty can be found. Division II — "Projects Subject to the Environmental Impact Assessment and Review Procedure" as provided in article 31.1 and ss of the LQE — lists the following, under point j.1: "the construction of more than 2 km of oil pipeline in a new right of way." We will return to the details of why this matters in chapters thee and four.

environmental concerns have brought to territorial management specifically, and to political economy more generally. While the environment as resource — and even the environment as nature facing specific, targeted threats — was politically manageable, the Environment as all-encompassing ethical relationship — i.e. as ecological equilibrium — proved profoundly disruptive for the way political economic life was and is structured.[98] It is no wonder that the Quebec government found "sustainable development" to be a more attractive proposition that the elusive yet pervasive "Environment."

In the province of Quebec, the environment is embroiled in a complex tug-o'-war over political power. It is important to note that the BAPE is not judicial in character (like the NEB); nor does it have any decisional power, which ultimately rests with the Environment minister. What power it has derives from the moral, and hence social, authority it enjoys as a respected institution (Baril 2006: 151). The range of its potential effects on social debates, however, is subject to a number of possible contingencies. For example, the scope of its jurisdiction — which, as we have seen, it has tended to interpret loosely — overlaps with that of other agencies, namely the *Commission de protection du territoire agricole du Québec* (CPTAQ), and the *Régie de l'énergie*. While the CPTAQ has tended to understate the scope of its own jurisdiction, excluding the overall justifiability of projects and focusing solely on their impact for agricultural activity, problems arise when it authorizes prospective infrastructural routes before the BAPE develops its own opinion, which then makes it difficult for the latter to suggest alternate routes (130). As for the *Régie de l'énergie*, it tends to not appreciate the BAPE conducting evaluations that overlap with its own, as they sometimes contradict the *Régie*'s determination of a project's social necessity (130-132).

Because of the BAPE's political influence and its tendency to take a wide perspective on the projects and issues it evaluates, the Quebec government, though initiating some of the BAPE mandates and holding ultimate discretionary power over its recommendations, has often attempted to undermine and diminish the BAPE's power. It has done so mostly by challenging the BAPE's purported capacity to extend its purview beyond "environmental" matters and into

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[98] There would be a lot to say on the emergence of relational thinking across disciplines during the 20th century, from philosophy (Shults 2003; T. Morton 2010) to physics (Barad 2007), biology (Gilbert et al. 2012; Meloni 2014), social theory (Luhmann 1995; Bateson 2000; De Landa 2006), geopolitics (Masco 2010), environmentalism (Lovelock 1979), and beyond (Thrift 1999; Urry 2003; Taylor 2010). Here I emphasize the complicated political ramifications of its ethical implications. See Puig de la Bellacasa (2012); S. Jackson and Palmer (2015); Stengers (2005).

domains that overlap, for example, with the *Régie*'s competence on economic and energy considerations (132).

This kind of underlining conflict was rehearsed in the mandate that the BAPE was given for Energy East in June 2015, which excluded "economic benefits." The evaluation of those aspects was delegated to the ministries of Finance and of Energy and Natural Resources. Quebec Finance Minister Carlos Leitaõ justified the decision by arguing that the BAPE did not have the credibility to evaluate the economic benefits of such a large-scale project, which would be more credibly done by "experts in the domain of analysis" (Robillard 2016).[99] Similar dynamics were in play more recently over the BAPE's evaluation of Montreal's plan to develop a controversial urban electric rail network. After the BAPE's report severely criticized the project on many fronts, it suffered a backlash from the Liberal government that dismissed its concerns, stating that the BAPE tended to overstep its mandate by commenting on the economic dimensions of the project (Cormier and Zabihiyan 2017).

Conclusion

Before finally closing this chapter, I want to note a few important takeaways from the above discussion that will inform my subsequent arguments. Despite the fact that it is possible to tell the story of our relation to our habitat over the past century as a trajectory towards increasingly enlightened stewardship, a closer look reveals a much less linear progress than a gander across institutional landmarks would suggest. For one, the wider the definition of "environment" has become the more at odds it has been with Canada's constitutional division of powers (Kennett 1992), especially as it began finding its way into Supreme Court of Canada decisions in the late 80s and 90s. In this sense, constitutional friction over environmental jurisdiction reiterated the kinds of tensions seen earlier over "energy" concerns. Energy, and the way it was tied to national imperatives and insecurities, had a different political and administrative life than its localized "resource" and "infrastructure" correlates.

Climate change — as experienced through attempts to implement international agreements like the Kyoto Protocol, for example — offered a similar type of political problem (Doelle 2013a). It is different than pollution, and yet not different enough that it can avoid

[99] An external consultancy firm, Aviseo Conseil, was also mandated as part of this effort on April 18, 2016. The Liberals had to cancel the contract only 3 days later after opposition parties highlighted the entanglements between the firm and the Liberal Party.

clashing with pre-existing channels of power. "National" issues, when they touchdown into the dense web of organized collective life, tend to test the resiliency of its fabric. As a political blueprint, the Constitution already results in a "patchwork of federal powers superimposed on a carpet of provincial powers," which sometimes conflict and sometimes operate concurrently (167). Pervasive, complex, and dynamic issues like environmental integrity destabilize the difficult political balance.

One of the important court cases that contributed to giving institutional force to a broader consideration of the environment was the 1992 Friends of the Oldman River Society v. Canada case, where the Society wanted the Court to quash the government of Alberta's approval of a dam project based on the argument that the dam affected areas of federal jurisdiction. In his analysis of federal environmental jurisdiction, Kennett (1992) cites Justice La Forest's decision: "It must be recognized that the environment is not an independent matter of legislation under the *Constitution Act, 1867*. It is a constitutionally abstruse matter which does not comfortably fit within the existing division of powers without considerable overlap and uncertainty" (181). For Kennett, the central tension lies between the requirements for environmental assessments to reach beyond "the biophysical environment alone" — especially after the influential Brundtland Report — and the very tenets of federalism, which "allocates responsibilities to different levels of government, thus risking fragmentation" (192). Kennett concludes that "the broader the view taken of the environment, the less logical it is to consider 'environment' as a relevant category for defining constitutional jurisdiction. If the environment is the biophysical and socio-economic context within which human activities occur, environmental considerations are pervasive in the regulation of all activities" (203).

From this perspective, the environment is not a jurisdictional object, but an aspect for joint consideration (Doelle 2013b: 187-188). But joint consideration is cumbersome, complex, and unpredictable, just as "aspects" are jurisdictionally more difficult to pin down than functions. The more people you bring to the deliberation table, and the more power you give them in actual decision-making, the more difficult it is to swiftly resolve the tension between differentially situated and constituted imperatives. The period between the 70s when governments began grappling with environmental exigencies and today can be characterized as one of constant and restless struggle over the conduits of political power that have needed to accommodate, in one form or another, multifarious environmental and procedural expectations. To complicate matters

still, both the gradual assertion of Aboriginal rights and jurisdiction — especially since the enactment of section 35 of the Constitution in 1982 — and the growing salience of municipal government as a privileged site for the implementation of sustainable practices have contributed to muddying the jurisdictional waters still.

Political power and responsibility over the environment, and environmental assessment processes specifically, provide a lens into two interesting aspects of environmental politics. One of these is the tension between procedural and substantive rights. The other is the tension between generic evaluations of industrial activity and specific project evaluations.

While procedural rights are understood as essential to democratic inclusivity, they tend to encourage the maintenance of arbitrary zones of concentrated power. They also provide legitimacy to entrenched forms of development by occluding the normative commitments embedded in their techniques of valuation and participation (Kysar 2010). Substantive rights, on the other hand, have the benefit of binding decision-makers to pre-specified minimum outcomes but they tug at the conflicts that arise during efforts to reach generalized agreement on normative collective goals. Democratic substantive deliberation, which is premised on shared values and political identity, requires a significantly different kind of decision-making infrastructure than procedural deliberation, which offers the promise of value-neutral participatory and calculative mechanisms (see Bohman and Rehg 1997).

In the following chapters, we will see a lot more of how this dance between procedural enactments and substantive achievements has been constitutive of contemporary democratic political agency in Canada. Here, I will note its general dynamics. The more procedural inclusion becomes a *sine qua non* condition for "social licence" of development projects, the more governments and proponents look for ways to enact these procedures while stripping them of agentic consequentiality. In legislation, this has worked through legislative reforms that have written ministerial discretion into law by giving prior (which projects are subject to EA and to what extent) and final discretionary authority to ministers.

Today, these types of legal and administrative measures are depicted as "modernizing." Their operative symbolic strength is on the one hand that they are more "efficient" and "streamlined," and on the other that they leave open the *possibility* of more stringent environmental protection. To contest them is to contest the ministers' good will to do the right thing, which they invariably affirm will be their decisional beacon in the future. In this frame,

regardless of how extensive and public the nature of EA consultations and evaluations may become, the ultimate "weighing" of the gathered data and its translation into a determination of public interest remain *in camera*.

This is one of the ways that my observations of legislative and regulatory enactments link up with observations made by researchers writing on infrastructural politics. For instance, Larkin (2013) argues that an attention to the "poetics of infrastructure" can help us locate politics in less conventional places, like residential plumbing. "Poetics" refers to the fetishistic quality of infrastructure whereby infrastructure itself becomes imbued with the promise of modern development in a way that is separate from its functional integration. Larkin provides the example of Aboriginal housing where "[a] pipe may not be attached to an effluent disposal system, but it is attached to techniques of regulation, audit, and administration" (335).[100] In the context of our present discussion, this can imply two things. First, environmental legislation and regulation in and of themselves communicate a certain kind of promise that has social and political force, regardless of how they are actualized in the particular.[101] By extension, it means that various kinds of performances and artifacts (scientific studies, regulatory evaluations, corporate consultations, etc.) can circulate through different institutionalized spaces with a range of effects that are different from the qualities of the enactments that generated them. Second, it introduces a disjuncture between generalizable promises and specific exceptions by which environmental promises can be perpetuated even as they are continually betrayed in the present through momentary sacrifices for the sake of future achievements.[102]

The differential political life of generic and specific enactments leads us to the second aspect of environmental politics: the tension between specific EAs and more "strategic" upstream and prior evaluations, where strategic evaluations include citizens in earlier planning and development stages. Strategic evaluations address one of the principle critiques aimed at project-

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[100] Infrastructure as a promise of integration to modern development is one of the important themes discussed by scholars of the recent "turn" to infrastructure. See e.g. Harvey and Knox (2015) on roads; Anwar (2014) on postcolonial industrial development; Elyachar (2005); Björkman (2015) on market integration; Schwenkel (2015) on water distribution; and Hetherington (2012) on bureaucratic reform.

[101] Namba (2016) provides an important caveat to the apparent dichotomy that inheres in unfulfilled infrastructural promises by noting that "poetic" enactments themselves, aside from their degree of correlation with direct functional success, have effects of their own that might speed up other functionalities.

[102] For a similar kind of argument, see J. Gordon (2015: 31-59): "After the ducks death, then Syncrude CEO Tom Katinas made a 'promise to do better.' This, as we will see, is the promise of modernity — the future will be better; any deaths endured today will have been worthwhile because of the kind of society that we will inhabit in the future" (35).

specific EAs, namely that they fail to promote democratic deliberation on wider social development. The flip side is that while strategic evaluations contain important democratic promise, they can also serve as generic democratic rubber stamps not bound to project-specific legal conditions. As Baril (2006) notes, while strategic environmental evaluations can alleviate the burden put on subsequent project evaluations and help to tame the polarization of debate, this is only true if the results of strategic evaluations are the fruit of meaningful consultations (137).

In Quebec, the recent lead-up to the adoption of a new law framing hydrocarbon production on its territory on December 10, 2016, is a case in point. The *Projet de loi sur les hydrocarbures*, passed within a wider legislative package implementing Quebec's 2016-2030 energy policy towards "energy transition," was the result of a sweeping sequence of strategic environmental assessments (SEE) begun in 2014, but building on prior SEEs dating back to 2011. While nominally sweeping in scope, the process was widely criticized on many fronts. Among them were: the lack of citizen participation in structuring the SEEs themselves (which reflected the government's problematic assumptions and prior interest in opening up the territory to hydrocarbon production); the failure to distribute power and authority over the evaluative process and ensuing analysis; the discretionary nature of what was done with the "knowledge" once it has been gathered. Ultimately, rather than having been a tool for distributed democratic deliberation, Quebec's SEEs reflected the government's prior orientation and served as a powerful anti-democratic rubber-stamping tool that subsequently legitimated *decreased* citizen participation in specific decision-making based on the rationale that they had already been consulted at the outset.[103]

These two aspects suggest that contemporary political power operates at the boundary between democratic procedure and substantive determination. How this works will become clearer in the next three chapters, but we need to set out with a preliminary observation in mind: political, legal, and regulatory infrastructures are largely indeterminate in a number of ways, most of which stem from the fact that observable infrastructures — Constitutional documents,

[103] These were points made by Jonathan Théoret, director of GRAME, during a federal environmental assessment reform consultation on October 26, 2016, in Montreal. The *Groupe de recherche appliquée en macroécologie*, a research and sensitization group on environmental sustainability, was an active participant in the Energy East debate, namely through Montreal's and Quebec's public consultation hearings. On October 26, when asked what conditions were necessary to generate social licence, Théoret explained that the public's capacity to understand its place in the process is important, which was not the case in the ongoing NEB process for Energy East. Also important was the manner in which their participation would be subsequently treated. According to him, "acceptability comes from what we do with the reports."

legal texts, procedural rules, etc. — are synthesizing aspirational approximations that have only an indexical relation to the activities they are meant to structure and regulate, but that are vastly excessive of them. Their fixity adjusts with difficulty to the contingent, shifting, and heterogeneous nature of the relations they would encompass. As a result, their agentic power cannot be understood as predictive or explanatory. Rather, they are contingently mobilized, towards different ends by different actors, as part of wider more-than-institutional assemblages.

In the next chapter, we finally return to Energy East pipeline controversy itself, tracing its progression as an object of federal concern from the introduction of the pipeline project to the ultimate recusals of the NEB panel introduced at the top of this chapter. On the way, we will also see the ambiguous manner in which political agency was figured on the national level, attributable in part to the ambivalent nature of the collective in question.

Chapter 2: Energy East as a Matter of Federal Concern

Introduction

I began the previous chapter with a brief description of a failed NEB hearing on August 29, 2016. The following day, the NEB announced it was suspending its hearings until it could decide how to deal with the panel members accused of breaching procedural equity principles, and while it figured out just how to conduct its public hearings in Quebec where the pipeline and the NEB had met with most resistance. Little more than a week later, on September 9, the Board announced that, "All three Panel Members have decided to recuse themselves in order to preserve the integrity of the National Energy Board and of the Energy East and Eastern Mainline Review." In addition, both the NEB's Chair and Vice-Chair recused themselves from the "specific administrative duties" related to the 2 pipeline applications,[104] such as appointing a new panel and enforcing time limits.[105] Two staffers[106] with "no decisional authority" over the review were also reassigned. The NEB announcement[107] stated that, "The Energy East and Eastern Mainline Hearing is adjourned until a new panel is appointed. Once a new panel is appointed, the review of the two project applications can and will proceed."

This was as much of a *tabula rasa* as the Board could perform, in the hope that it would reset public opinion and allow for this pipeline project review to go forward. As it turned out, the recusals were not quite enough of a clean slate and the Trudeau government ended up opting for something more akin to the purifying cleanse of the crematorium.[108] But this is the stuff of

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[104] The NEB review combined 2 interconnected project applications by TransCanada: the Energy East pipeline project and the Eastern Mainline project. Since Energy East proposed to convert some 3,000 km of TransCanada's Mainline gas pipeline for oil delivery, the Eastern Mainline project consisted of 279 km of new gas pipeline in Ontario to allow TransCanada to "meet its commercial obligation" to its eastern clients (NEB 2017b).

[105] The members assigned to the Energy East panel were Roland George, Lyne Mercier, and Jacques Gauthier. The Chair and CEO was Peter Watson. The Vice-Chair, also a panel member, was Lyne Mercier.

[106] These were director Jean-Denis Charlebois, and VP Communications Tom Neufeld, mentioned in the previous chapter.

[107] The announcement can be viewed here: https://web.archive.org/web/20160910175856/http://news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1122609&crtr.tp1D=1

[108] After an encompassing review of Canada's environmental assessment framework initiated on June 20, 2016, the Trudeau government began its overhaul by tabling Bill C-69 on February 8, 2018. Most notably for our discussion, the bill replaces the NEB and its constitutive legislation with a new agency, the Canadian Energy Regulator (CER). While retaining many of the NEB's functions, the CER will no longer be conducting environmental impact assessments or consultations on projects, which had been one of the central critiques of the 2012 changes legislated by the Harper government. These are given over to a single central assessment agency, the

epilogues. What this thesis is concerned with are the long 3 years of scandal, controversy, and public pressure leading up to the NEB panel's recusal in September 2016. My arguments are about the pervasive indeterminacies that lurk within seemingly stable forms, and the constitutive ways in which power is mobilized towards effecting these stabilizations. All of the material discussed in the upcoming chapters deal, in one way or another, with these indeterminacies, which concern not only knowledge production and circulation but the very infrastructures of legal, regulatory, and political practice. My arguments are meant to emphasize important points of constitutional articulation that have ramifications for what and how social futures can come about. In this sense, this whole thesis is about agency over collective outcomes.

This chapter is concerned specifically with the Energy East controversy as it unfolded around NEB procedure and federal jurisdiction over the pipeline as a *national* object. As we will see, there was a number of constitutional tensions. First, between attempts to empower the NEB process by emphasizing its exclusive authority and the legally determined bounds of its evaluation and an ongoing campaign by the NEB to regain popular trust by adapting its process to public expectation. So, on the one hand appealing to inflexible procedural prescription to congeal power into objective and non-political evaluative forms, and on the other depicting itself as a responsive, flexible, and adaptable agency. This tension can be understood in terms of the constitutive tensions inherent to the NEB's functions described in the previous chapter. Expressed in those terms, throughout the controversy, the NEB tried to conciliate its role as an impartial quasi-judicial adjudicator of pipelines — hence effectively cloistered form public debate about ongoing reviews — and its role as promotor of hydrocarbon prosperity and regulatory trustworthiness — hence responding to a perception that, "Canadians expect the National Energy Board to engage with them both inside and outside of the hearing room."[109]

A second tension arises out of the growing mainstream recognition of climate change as a matter of urgent collective concern, which exacerbates emergent contradictions between entrenched modes of economic prosperity and the profound systemic reconfiguration of our

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Impact Assessment Agency of Canada, which replaces the current Canadian Environmental Assessment Agency. See Howard et al. (2018) for summary.

[109] The quote comes from an NEB document explaining the "NEB engagement in Quebec," which attempted to quell the controversy that grew after its January 2015 meeting with Jean Charest had been leaked to the public a year later. The document can be viewed here: http://neb-one.gc.ca/bts/nws/whtnw/2016/2016-08-10-eng.html. The reference to monastic expectations comes from my interview with the director of the NEB's Montreal office.

ecological relations that seems to be required. This, in turn, brings to light a third tension, between the state as personified rational actor that exerts deliberate agency upon its current condition in order to bring about desirable futures for its collectivized social body, and the state as arbiter of a de-politicized market consisting of purely economic exchanges, to which is delegated the task of bringing about *emergent* desirable futures through the aggregated decisions of atomized individuals. This tension concerning the nature of governmental agency is of course profoundly related to scalar personified depictions of it. A view into the actual processes of government quickly dissolves any prior discreet coherence we might have expected to find (see e.g. Mitchell 1991). Fourth, contemporary pipeline controversies and recent circulations of the "social licence" trope reveals a deep tension within "consultation" as a mode of transparent and inclusive democratic decision-making, which at one end of the spectrum means consent and hence veto,[110] and at the other means dutiful "consideration" of differential perspectives.

For example, Trudeau, at a press conference on March 1, 2016 (CBC 2016b), responding to a question about whether Quebec's injunction request against TransCanada might influence other provinces to do the same, uttered the now famous: "Even though governments grant permits, ultimately only communities grant permission." His statement won him applause. He repressed a smile, visibly pleased with himself. The phrase became somewhat iconic. It made it into the Liberal policy platform (Liberal Party of Canada 2018). Unsurprisingly, it was also taken up widely by various groups attempting to assert local agency over the project.

It is worth noting two important aspects here. First, many activists and environmentalists tried to assert that this meant *veto* rights for local communities, especially First Nations. Second, note the language Trudeau used prior to the statement: "I think there is a desire by provinces across the country […] to ensure that they are acquiring the kind of social licence that hasn't been acquired in the past." What is to be acquired here is not consent, but social licence, a phrase that has gained popularity in recent years in the context of economic development (Colton et al. 2016). For the most part, when negotiating social licence, the federal and Quebec governments and TransCanada have not meant something communities provide but something

[110] This claim is especially strong for First Nations, who have a dual basis for it: article 35 of the patriated 1982 Constitution, which recognizes and affirms Indigenous ancestral and treaty rights; and Canada's tentative adherence to the United Nations Declaration on the Rights of Indigenous People (UNDRIP), which affirms, *inter alia*, the right to Indigenous self-determination and the right to free, prior, and informed consent. You can consult article 35 here: http://laws-lois.justice.gc.ca/fra/const/page-16.html, and UNDRIP here: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

acquired *procedurally*. Take federal Natural Resources Minister Jim Carr's comment at a breakfast event organized by the Alberta Enterprise Group, held on the same day as the NEB hearing in Montreal on August 29, 2016. His expectation was not that the pipeline review would generate consent but that, if conducted properly, "most Canadians will say, 'I've had a chance to be heard, that was a reasonable way of making a decision'" (Graney 2016). From their perspective, given that licence depends on enactments rather than substantive outcomes, these procedural enactments are amenable to statistical reductions, which circulate differently and to different effect than qualitative specifications. TransCanada was especially proficient at listing its consultative pedigree as a kind of "Pass go, collect $200" performance.

So, the foregoing story begins with the Energy East project, its introduction in Quebec, and the growing resistance to both the project and the federal regulator. It is also about the wider political dynamics that confront pipeline projects in contemporary Canada, and how these shifted over the course of the Energy East controversy.

From gas to oil

On September 1st, 2011, TransCanada PipeLines Limited submitted a restructuring proposal for tolls and services on its pipeline system.[111] The goal was "to enhance the long-term viability and sustainability" of its pipeline system "and [of] the WCSB [Western Canadian Sedimentary Basin, where the resource is extracted] as a whole"[112] (3). TransCanada was responding to "recent and dramatic changes in the business environment of natural gas supply, demand and transportation in North America" (1).[113]

In its March 27, 2013 decision, the NEB put it this way: "The Mainline is in an unprecedented position. No major NEB regulated natural gas transmission pipeline has ever been affected by market forces to the extent that the Mainline is now affected. [...] The future of the Mainline depends on how TransCanada is able to respond to the changes to its business

[111] The restructuring was for TransCanada's Mainline gas transportation system, as well as for its Alberta and Foothills system, which are owned by TransCanada subsidiaries, respectively NOVA Gas Transmission Ltd (NGTL), and Foothills Pipe Lines Ltd. The application can be found archived on the NEB's web site: https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A31084

[112] The quote is from the B1-5 - Section 1.0 Executive Summary A2C6L3. It can be found here: https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A31084

[113] See Plourde (2015) for details. In general terms, after deregulation of the gas market in Canada in the mid-80s, gas production in Canada more than doubled and moved in to meet growing demand in the U.S. Between 2003 and 2007, production and consumption patterns changed, with US gas production rising sharply thereafter and supplying "growing volumes to Canadian buyers" (especially in Eastern Canada) even as Canadian exports to the United States are falling."

environment" (1).[114] In its decision, the NEB suggested a new regulatory tolling model for the Mainline, to which TransCanada objected. In its May 1st, 2013 application for Review and Variance of the NEB decision, TransCanada stated that it "does not believe that the Decision provides it with a reasonable opportunity to recover its prudently incurred costs" (1).[115] On June 11, 2013, the NEB rejected TransCanada's application, suggesting that to recover costs TransCanada might "seek opportunities to redeploy Mainline assets" in other capacities (TransCanada Corporation 2014b). TransCanada concurred that since "the Mainline has multiple parallel pipelines[116] over most of its footprint, conversion of one of these pipes from gas to oil service means that gas transportation will continue over the same routes used today" (TransCanada Corporation 2014a). TransCanada decided to repurpose approximately 3,000 km of its 42-inch Mainline pipe, between Burstall, Saskatchewan and Iroquois Junction, Ontario, for the Energy East project it had begun formulating a couple of months prior. The repurposing would "lower the Mainline's cost base by approximately $1 billion" (*ibid*).

The repurposing initiated perhaps the first of many controversies that would dog the pipeline over the next four years. I have mentioned the significant changes in TransCanada's

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[114] The NEB decision can be found here: https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A51040. The decision further describes TransCanada's conundrum: "The Mainline faces increasing competition for gas supply from intra-Alberta demand, other ex-Western Canada Sedimentary Basin (WCSB) pipelines and new markets for WCSB gas. The Mainline competes with pipelines from emerging shale and tight gas basins in the United States of America (U.S.), which deliver gas to eastern markets. The Mainline must adjust to this new environment because eastern consumers may not renew contracts for long-haul service and bypass infrastructure may be built" (1).

[115] The Application for a Review and Variance of NEB Decision RH-003-2011 and Order TG-002-2013 can be found here: https://apps.neb-one.gc.ca/REGDOCS/Item/View/948224. It is interesting to note that the "primary grounds" of TransCanada's objection to the Board's proposed regulatory model was that this model "was neither proposed nor discussed" during the hearings, and so "TransCanada was not provided an opportunity to provide evidence" (4). For TransCanada, this was "an error of law — a denial of natural justice and procedural fairness" (6).

[116] The TransCanada pipeline system that services Eastern demand for natural gas includes the NGTL system collecting from the Western Canadian Sedimentary Basin; the Mainline, beginning at the Alberta-Saskatchewan border and consisting of 5 parallel lines over the prairies, 3 lines in Northern Ontario, the "Eastern Triangle" in Southeast Ontario between North Bay, Iroquois Junction near the Ontario-Quebec border, and the Niagara region; the Mainline joins up with the Trans Quebec and Maritime (TQM) pipeline near Saint Lazare, Quebec, and runs along the north shore of the St. Lawrence River to Saint-Augustin (west of Quebec City). From there, the TQM crosses under the river to facilities in Saint-Nicolas. The TQM also splits off in Terrebonne, north of Montreal, to a point near East Hereford on the US border. The TQM, which spans 572 km with 31 delivery points, is equally owned by TransCanada and Gaz Métro Limited Partnership. It provides "more than half of the total demand for natural gas in Quebec since 1991." See TQM's website: http://www.gazoductqm.com/en/about.html. Profiles about Canada's pipelines can be found on the NEB website here: https://www.neb-one.gc.ca/nrg/ntgrtd/pplnprtl/pplnprfls/index-eng.html.

business environment above. The NEB documents[117] a marked decrease in annual intra-Canada flow of natural gas in the Mainline through the prairies between 2006 and 2013. While capacity (which depends on a number of factors such as temperature, compression, product, etc.) is around 7 billion cubic feet per day, flow drops from an annual average of 5.97 billion cubic feet in 2006 to 2.18 in 2013. The NEB explains that during this period long-haul contracts over the prairies and Northern Ontario decreased while short-haul contract in the Eastern Triangle increased as "shippers were switching to interruptible or short-term firm contracts rather than using full-year firm service," forcing TC to increase tolls.[118] Another set of factors were also at play. Belot (2016) argues that the Mainline became empty not because of insufficient demand but because of decreased gas production in Alberta combined with the radical increase in energy demands from oil sands production (rising 300% between 2005-2015).

The repurposing of parts of the Mainline thus had a dual advantage for TransCanada. On the one hand, TransCanada would capitalize on this increase in tar sands production by providing access to new markets for the bitumen. On the other, it would put pressure on the three largest eastern customers of Mainline gas to opt for firm long-term transportation contracts.[119] Indeed, there was initial concern over whether the Energy East project would affect gas supply and pricing for eastern provinces. TransCanada's reasoning was that if this was their concern, they could simply opt to contract for long-term capacity instead before Mainline assets were transferred over to Energy East. That way, TransCanada would be bound to ensure that the Mainline retained sufficient capacity for those customers (TransCanada Corporation 2014a). In other words, these eastern customers had been opting for the flexibility of supply afforded them by the changed business environment, while TransCanada was attempting to mitigate its future business risk by locking them into long-term commitments. A settlement was reached between TransCanada and the companies in September 2013, whereby TransCanada

[117] The information can be found on this web page: https://www.neb-one.gc.ca/nrg/ntgrtd/pplnprtl/pplnprfls/ntrlgs/trnscndmnln-eng.html

[118] The expectation that infrastructure should be available for pay-per-use when needed combined with the unwillingness to pay for the full cost of maintaining said infrastructure for potential eventualities is something I have observed in previous research, albeit in a completely different context: the funding of student service groups through fee levies. Though all students could selectively opt-out from specific groups' fees by contacting them, students from one faculty presented a petition to systematically exclude that faculty's students from being charged fees for a number of more "liberal" groups. See http://cast.concordia.ca/2014/03/on-fee-levies/

[119] These customers are known as the eastern Local Distributor Companies, made up of Enbridge Gas Distribution, Gaz Métro, and Union Gas.

committed to building new gas capacity between Toronto and Montreal.[120] The new facilities were referred to as the Eastern Mainline Project, which was to be reviewed by the NEB concurrently with the Energy East application.

I am flagging this here to relativize what often comes across as ideological commitments but that, given the right set of circumstances, is on some level more contingent and pragmatic than ideological. Providing flexibility of supply to refineries and market diversity for shippers, as a universal market good, would become a mainstay of TransCanada's argument for the pipeline during the March 2016 BAPE hearings. Since Enbridge had received final approval from the NEB in September 2015 to reverse the flow of its Line 9B pipeline[121] to Montreal and increase its capacity to 300,000 bbl/d, Quebec refineries now had significant access to "local" oil from western producers.[122] TransCanada could no longer make the strong nationalistic argument that Energy East was designed to replace foreign oil with local, "ethical" oil.[123] But now, emphasizing Energy East's provision of increased market flexibility for producers and refineries also afforded TransCanada a counter-argument to claims that it was going to directly contribute to increased tar sands production, and hence to increased GHG (greenhouse gas) emissions. This counter-argument was not about causality, but about agency and responsibility — or, put differently, about ethics.

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[120] The settlement was executed on August 17, 2015. It assuaged not only the concerns of eastern distributors but those of the Ontario and Quebec governments as well. Concerns over gas supply had been expressed in the Ontario Energy Board's report on the costs and benefits of the Energy East pipeline, mandated in November 1, 2013 and released on August 13, 2015. Quebec stated this concern on November 18, 2014 as part of a list of "seven conditions" the government was setting before it could consent to the pipeline. Ontario's report can be consulted here: https://www.oeb.ca/industry/policy-initiatives-and-consultations/energy-east-consultation. Quebec's letter communicating the conditions to TransCanada is no longer available on the Environment ministry's site, but the conditions can be viewed in Bovet (2014).

[121] Line 9B, you might recall from chapter one, was the last extension between Sarnia and Montreal of the original Interprovincial Pipe Line, now owned and operated by Enbridge.

[122] There are 2 refineries in Quebec. Suncor's refinery in Montreal had a 137,000 bbl/d capacity, and Valero's Jean Gaulin refinery in Lévis had a 265,000 bbl/d capacity. Importantly, neither was equipped to refine significant amounts of bituminous oil. Following an agreement between Valero and Enbridge, Valero and the Groupe Desgagnés Transport joined in a new company called Transport Maritime Saint-Laurent, obtaining two Panamax ships (500,000 bbl capacity) to ship 9B's oil from facilities east of Montreal to Lévis. Interestingly, both Panamax ships are registered under a Barbados "flag of convenience," meaning they subtract themselves from national fiscal obligation and labor and safety regulation (D. V. Gagnon 2015: 151).

[123] See Levant (2010) for the argument that increasing oil production in a democratic country like Canada serves to undermine the wealth of dictatorships elsewhere. See e.g. Davidson and Gismondi (2011) for a counter-argument, namely that increased production in one region does not lead to decreased production in another but rather to discounted prices due to excessive supply, which in turn encourages rising consumption (156). Global politics of oil production following the 2014 price crash have tended to confirm this point, and to show that oil producers, rather than be automata tethered to the impulse of maintaining market equilibrium, are sophisticated

The indeterminacy of aspirational projects

Market flexibility provided a way for TransCanada to deresponsibilize itself from collective outcomes in which it participated, arguing that it was simply an individual part of an aggregate — an assemblage whose outcomes could not be judged as deliberate because they were emergent, and in the case of the world-as-market always ultimately optimal. It also meant that its project was tied to potentialities which only had to be true in principle, regardless of current conditions. In this way, it could make a specific case in favor of its pipeline in one context — for example fulfilling a direct need from national producers and refiners — and then shift to another in another context — such as offering infrastructural access to a range of production sites for a range of destinations, depending on market conditions. In some venues, especially in the beginning, TransCanada emphasized the local provenance of oil, while avoiding mention of oil sands. But the pipeline's functional and agentic flexibility became increasingly visible after the oil price crash, where current market conditions — an oversupply of oil and depressed prices — suggested that a restriction in the flow of oil was needed to restore market balance.[124]

As Alberta's oil economy crashed, however, pipeline advocates clamored ever more loudly for more market access to remove restrictions on tar sands growth, arguing that the country's future prosperity depended on it. As the oil sector effected deeper cuts to stay afloat, Alberta did not blame the irrationalities that made the oil bubble possible, nor did it blame companies for prioritizing their bottom line over workers' income security. It blamed the irrationalities of political obstruction to pipeline expansion. It did not matter what the current state of the market seemed to suggest. What mattered were the fundamental principles: give market actors as much potentiality as possible and let them decide contingently the better course of action as situations arise. This mode of action is tricky because it is at face value neutral — i.e. non-substantive — and yet stems from normative assumptions about political agency and the greater social good. In addition, given the pervasive notion that political outcomes should be the result of aggregated "economic" decisions, agentic attribution in political discourse becomes in a sense fungible, meant to address the only political problem that matters: market obstruction.

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agentic actors that strategically exploit periods of crisis and that respond to a complex array of other pressures less amenable to modelling.

[124] And indeed OPEC countries attempted to negotiate such restrictions, which was difficult because one country's restrictions is another country's opportunity for increased market share (see e.g. Bérubé 2015).

TransCanada, however, had to make its case in a number of venues with different exigencies. In a general public setting like media interviews or its promotional website, TransCanada could afford to be creative in its aspirations — about itself, the pipeline, the latter's wider contributions, and about future market conditions. In regulatory filings, TransCanada had to fulfil somewhat stricter expectations as to how to set out its business case. In both cases, TransCanada's story also shifted through time, partly because market conditions changed so much between 2013 and 2016. While at first Energy East was all about light crude from Western Canada destined for eastern industries, the story grew to adapt to changing circumstances, namely to address the crisis in the Alberta tar sands.

I do not necessarily mean this as a critique. *Of course* TransCanada's project adapted to shifting circumstances. My critique is rather aimed at how TransCanada's claims were represented: not as partially visible aspirations that would inevitably deviate as they met the multifarious complexities of actual existence, but as simple statements of fact that could be accepted as such and immediately forgotten. In the context of depressed prices in 2015 and 2016, TransCanada emphasized more the potentiality of its pipeline service than its direct relation to an actual need. And in later iterations of its regulatory filing, TransCanada relied on shale oil from North Dakota for almost a third of Energy East's capacity. The company was not quite as enthusiastically forthcoming with information like that — it was made public by intervenors during public hearings in Quebec, not by the company.

I mention this here at the outset because both the vagueness of the project and the obvious selective partiality of its iterations had a strong influence on the negative reception that both the project and the company received, that is to say with great skepticism and wariness. Interestingly, the NEB also faced similar pushback on similar grounds. Part of my argument will be that TransCanada and the NEB's behavior stems from the tension between the democratic requirement that pipeline projects move through the social body before they can find their way into the ground, and attempts by companies, regulators, and governments to retain as much control and power over these processes to predict and determine as much of their outcome as possible. In other words, it is the tension between legitimacy and predictability.

Amy (1990) makes the argument that the rise of cost-benefit analysis as a predominant tool of environmental analysis was "not due to its obvious intellectual superiority" but to the effective countermeasures that business interests took in the 70s to obtain political power in

response to the growing strength of environmentalist, consumer, and public interest groups (64). This mode of accounting and analysis became a useful tool for government agencies to "forestall public opposition" by relying on "technocratic forms of legitimation," allowing them to "claim[...] that their decisions are legitimate because they are based on superior information and thorough analysis" (63). But Amy argues that rather than enhance "the rationality of their decisions" this mode of evaluation only "enhances the *appearance* of rationality and thus serves to undermine environmental opposition to development projects" (63, emphasis in the text). The important take away here is not just about administrative forms that resist democratic agency, but that administrative forms, not matter how inclusive, are necessarily interwoven with "a particular conception of progress" (Torgerson and Paehlke 1990: 12; see also Kysar 2010). In other words, they are necessarily political. The question is whether their political objectives are visible as such, and what their political qualities are.[125]

Try as they might, I would posit, in the current mode of economic development, governments and proponents cannot resolve the tension between legitimacy and procedural predictability, such as it presents itself — just as they cannot resolve the tension between the imperative for decarbonization and the pressures to promote hydrocarbon development. Because these tensions are only reconcilable on the sparsest of discursive terrains — as in Trudeau's repeated refrain that "environmental protection and economic growth go hand in hand"[126] — all that governments and businesses can do, in the context of pipeline development, is to try and wiggle themselves out of the predicament and onto the other side of public visibility and hope that court challenges do not drag them back into the arena.

So there are two separate points here. First, given that, when they are iterated and debated in public or procedural settings, pipeline projects are in large part aspirational sociotechnical objects that are conjured and projected onto imagined futures, they can be better

[125] For suggestions on how social sciences other than economics might contribute a more nuanced and multifaceted version of collective life to environmental law, see Boyd et al. (2012). For an argument that challenges the narrow mode of valuation of cost-benefit analysis and advocates for substantive environmental minimums in tar sands development, see McLeod-Kilmurray and Smith (2010).

[126] For one iteration among countless others, see: https://pm.gc.ca/eng/video/2016/11/29/prime-minister-trudeau-announces-decisions-major-energy-projects-canada.

thought of as works of fiction.[127] Studies meant to demonstrate the economic benefits of the project, such as the September 2013 report mandated by TransCanada (Deloitte & Touche LLP 2013), speak volumes to the fictional quality of aspirational projects. Impressive claims of billions of dollars in GDP contribution and hundreds of thousands of created jobs — which then circulate with great aplomb as statements of fact by pro-pipeline advocates or contribute to the overall epistemological murk by being fed into subsequent research models[128] — occlude the arbitrary contingencies of their calculations. Aside from the specifics of how categories like jobs are constructed and calculated, reports like these rely on yet other models and statistics, which make their own speculative claims, for example about future economic conditions.

Importantly, aspirational pipelines cut away from view as much as they visibilize, and herein lies a major political stake of pipeline politics: what is consequential and worthy of attention will be different depending on whether you ask the company, a federal regulator, a provincial EA agency, a municipal councilor, a farmer, etc. Think back to Lewington's struggle with Interprovincial Pipe Lines and the NEB over three decades, discussed in the previous chapter. A wasted farmland mattered not to either of these as they had other priorities to attend to. Contemporary pipeline reviews have given valence to many more concerns within the procedural, legal, and political arena, but the struggle is still about visibility and inclusivity on the one hand, and the *kind* of visibility which prevails on the other (see Duncan 2013). This dynamic played out in the controversy over the restrictive scoping of NEB reviews, but it also played out in a number of other ways. A central part of the contest between TransCanada and municipalities in the Energy East controversy had to do with how much of the project was specified before it was approved, with TransCanada pushing towards general principles and municipal officials demanding site-specific details. We will see a lot more about this dynamic over the next chapters.

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[127] Here I use fiction after Geertz who explains that the root *fictio* does not imply that something is false, but rather that any claim is the result of multiple acts of creation, translation and circulation, some deliberate and methodologically scientific and some not, but none of which are the necessary condition to produce an operationalizable piece of knowledge (1973: 15-16). As Gregory (1994) put it, "If the critique of realism has taught us anything, it is surely that the process of representation is constructive not mimetic, that it results in 'something made,' a 'fiction' in the original sense of the word" (8).

[128] Such as the Canadian Energy Research Institute's May 2014 *An Economic Analysis of TransCanada's Energy East Pipeline Project*, which was posted on Natural Resources Canada's website. Available here: https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/energy-resources/CERI_Study_140_Full_Report.pdf

The second point is that, because of their fabricated nature, these projects become indeterminate in the sense that the specifics of their iterations are in constant motion. This is one of the reasons why I have chosen, in my own narrative, not to open with or dwell on projected details about the pipeline until they become material, in some form or other, to people impacted by them. Before moving on, I will mention the obvious. If we accept the premise that pipeline projects are aspirational — i.e. that they convey interested or situated visions of the future (and of the past and present) more than they mirror pre-existing stable referents — then the implication is of course that there is very little that circulates in their regulatory and pre-regulatory negotiations that is not, in one way or another, *political* — all of it participates in enacting particular publics and materializing particular futures. This is the case for development projects in general, but is especially visible in pipeline projects given the wide geographical distribution of their potential effects and the influence they have on future possibilities.[129] I mention this truism because the opposition between "political" and "factual" evaluation is one of the discursive grounds on which the legitimacy of pipeline approval has extensively come to rest.

The pipeline as a political object

During the evening session of the March 8, 2016 BAPE hearings[130], Vice-President for the Quebec and New Brunswick portion of the Energy East project Louis Bergeron[131] explained the business case for Energy East. For one, the Valero refinery in Lévis did not have the capacity to refine heavy oils like the bitumen produced in the Alberta tar sands. The refinery did not have a supply agreement with TransCanada (it had one with Enbridge for line 9B) but an *interconnexion* agreement. Similarly, for Suncor's refinery in Montreal, "what is important is to have a second alternative to be able […] to exercise this flexibility [in relation to supply fluctuation] in our

[129] Politics explained through infrastructural negotiation rather than through democratic tropes does not have to be so grandiose as to involve widely distributed dramatic outcomes, as I appear to suggest above. Quite the contrary. For an argument that citizenship is better understood as a function of daily infrastructural access, see e.g. Anand (2017). In terms of Anand's analysis of urban water delivery, the infrastructure in my discussion is not the pipeline but the regulatory procedure. An interesting and powerful facet of infrastructural politics is that they lead the observer towards two very different poles of analysis — profound and large-scale transformation (e.g Jensen and Morita 2017); and the subtle, less visible yet significant impacts that small differences have on the daily lives of people (e.g. Easterling 2014) — more often than not, combined in a single frame (e.g. Edwards 2003).

[130] You can view the transcript from this session here: http://www.bape.gouv.qc.ca/sections/mandats/oleoduc_energie-est/documents/DT3.pdf

[131] Bergeron had been hired in September 2015 because his "specialty is selling pipeline projects to a skeptical public." He had overseen the construction of the very controversial Pipeline St-Laurent only a few years prior. In an interview, Bergeron explained that Quebecers "look at pipelines and big projects in general with a different eye than the rest of Canada. […] Whatever the project, we know it will be obsessed over" (Markusoff and Patriquin 2016).

operation" (23).[132] Second, Bergeron explained that while supply was on the rise, neither refinery production nor overall consumption was. Third, when asked about which type of oil would come to predominate, Bergeron said that they would "attempt to give a better estimation. At this stage, it is difficult to provide numbers because, again, us, we are the *transporter*, the shipper and refiner must come to an agreement on the quality" (11, my translation and emphasis). Bergeron further explained that, "Now, we can't, when designing a project like Energy East, we can't know with certainty which producer will sell how much to which refinery, but what we know is that the tool will be available and the business dynamic will be interesting so that both may have a business relation" (14). In other words, with Energy East, "The producers take the financial risk and say: us, we'll find a way to sell our crude, and they'll have the choice between exporting or selling to refineries" (20). So, it was not TransCanada's job to intercede on which oil would go where and to what purpose. TransCanada was a conveyor of possibilities for other actors.

But, as noted above, it would take some time to get to this ultimate figuration of the pipeline's (a)political agency. At the outset, Energy East was another political object altogether. On April 2nd, 2013, just days after the NEB's first decision to propose an alternate regulatory model for the Mainline, TransCanada announced "that it will hold a binding open season to obtain firm commitments from interested parties for a pipeline to transport crude oil from Western Canada to Eastern Canadian markets." The press release[133] framed the project as an opportunity for "greatly enhancing producer access to markets in Eastern Canada. […] The Energy East Pipeline could eliminate Canada's reliance on higher priced crude oil currently being imported," stated at 600,000 bbl/d for Eastern refineries in 2012.[134] At the time, depending on results of the open season, TransCanada was shooting for a "potential in-service date in late-2017." The release also stated that TransCanada "is beginning Aboriginal and stakeholder engagement and field work as part of the initial design and planning work for the project." The open season would be held between April 15 and June 17, 2013, during which "[i]nterested parties may submit binding bids for transportation capacity of crude oil from

[132] The third refinery, in Saint John, New Brunswick, had an agreement for 50,000 bbl/d (of the total 1.1 million bbl/d capacity) and a "joint venture agreement with TransCanada to build the marine facility" (24) and then operate it (25).

[133] The press release can be consulted here: https://web.archive.org/web/20170218113141/http://www.transcanada.com/announcements-article.html?id=1704003&t=

[134] This number includes supply to the third and ultimate refinery that Energy East would have connected to, the Irving refinery in Saint-John, New Brunswick.

western receipt points to delivery points in the Montreal and Quebec City, Que. and Saint John, N.B. areas."

On August 1, 2013, TransCanada officially announced[135] it was "moving forward with the 1.1 million barrel per day Energy East Pipeline project," after finding "strong market support" during its open season for "long-term contracts to transport crude oil from Western Canada to Eastern Canadian refineries and export terminals." Though the press release introduced "export terminals" for the first time, it went on to emphasize that Energy East will connect "the oil resources of Western Canada to the consumers of Eastern Canada, creating jobs, tax revenue and energy security for all Canadians for decades to come." TransCanada further added that "interest in Energy East supports refineries' desires to have access to a stable and reliable supply of Western Canadian crude oil — pushing out more expensive crude oil from foreign regimes."[136] The press release also made sure to mention that Energy East in no way diminished the need for TransCanada's other ongoing project, Keystone XL: "Both pipelines are required to meet the need for safe and reliable pipeline infrastructure and are underpinned with binding, long-term agreements." The pipeline was expected to cost $12 billion dollars. In addition to the 3,000 km of converted Mainline pipe, the project also planned for 1,400 km of new pipeline through Quebec and New Brunswick. Finally, TransCanada affirmed that, "Over 60 years of pipeline experience has taught us that to advance a project of this size, we must engage in open and meaningful discussions with Aboriginal communities and key stakeholder groups" — which it had been doing "for the past several months."

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[135] The press release can be viewed here: https://web.archive.org/web/20170218051625/http://www.transcanada.com/announcements-article.html?id=1746092&t=

[136] Note the pejorative connotation of "foreign regimes" rather than the more neutral "states," or even the more accurate "international production facilities whose ownership, management, and benefits are subject to an array of contingent agreements between national and territorial governments and multinational oil companies." In 2013, more than 2/3 of oil imports came from the Middle East, the U.S., the North Sea, and North Africa. Oil supply to specific refineries is notoriously difficult to pin down, on the one hand because refinery supply shifts depending on where the advantage lies, but also because specifics are subject to industrial secrecy. Statistics are *inferred* from the only numbers available — total Canadian crude imports by country of origin, which is made especially tricky because the accounting does not differentiate between crude oil and condensate; the latter is used to dilute bitumen for transport. Though oil imports from U.S. grew from 6% in 2010 to 62% in 2015 because of the availability of cheaper U.S. shale oil, there is not necessarily a direct correlation between U.S. imports and refinery supply. For more details, see the brief presented by the Petroleum Resources Branch of Natural Resource Canada to the Senate Committee on Transport and Communications: https://sencanada.ca/content/sen/committee/421/TRCM/Briefs/TRCM_2016-06-07_Follow-upfromNaturalResourcesCanadareceivedonJuly192016_e.pdf

It took a little more than a year for TransCanada to put together and file its 30,000-page regulatory application to the NEB, which it did on October 30, 2014, after "18 months of environmental studies, engineering work and public consultations." The announcement[137] repeated earlier claims that, "Not since the construction of the Canadian Mainline has there been an opportunity to connect the vast energy resources from western Canada to eastern Canadian markets […] ensuring we realize the greatest value for our natural resources," and eliminating the need "to import most of the 700,000 barrels [eastern Canada] consumes every day." TransCanada boasted that, "Within the pages of the 70 printed binders filed with the NEB are specific details on environmental planning measures, design and construction methods for safe operations, findings from an independent environmental and socio-economic assessment, and details on discussions with more than 7,000 individuals, 5,500 landowners and 158 First Nation and Metis communities across six provinces." The announcement also made official TransCanada's plans to build a marine terminal in Cacouna, Quebec, thus providing for added jobs and economic activity in the province. As we will see in the next chapter, the company's "consultations" did not provide the lubricant it was hoping for and the Cacouna terminal elicited huge pushback because the site was also home to a beluga whale nursery, a species classified as at risk at the time.

Here are a few more of TransCanada's claims. Energy East would "support an average of approximately 14,000 direct and indirect full-time jobs across Canada during development and construction, [and g]enerate more than $7 billion in additional tax revenues after the first 20 years of operation for local, provincial and federal governments, along with billions of dollars in economic activity across the country." The project involved 3,000 km of converted pipe and 1,600 km of new pipeline to Montreal, Lévis, and Saint John, New Brunswick refineries. In addition, TransCanada and Irving Oil had "formed a joint venture to build, own and operate a new deep water marine terminal." The release also boasted that, "All of TransCanada's oil pipelines are monitored 24/7 by a state-of-the-art control system, allowing highly-trained operators to stop the flow of oil within minutes if necessary."

Despite the announcement's celebratory tone, Energy East was already in trouble. The pipeline had from the very beginning in 2013 received considerable pushback from Quebec

[137] The announcement can be viewed here: https://web.archive.org/web/20160308103942/http://www.transcanada.com/announcements-article.html?id=1891138&t=

municipalities, at first mostly in the form of municipal resolutions asking the province to intercede and perform its own environmental assessment by mandating its *Bureau d'audiences publiques sur l'environnement* (BAPE); and then increasingly in the form of outright opposition to either Energy East's specific path or to the project in its entirety. Much of the impetus behind municipal resistance had come from citizen mobilization, which had put pressure on their municipal councils.

There were two general forms of "citizen"[138] resistance. The first travelled through channels of democratic engagement, attending and protesting TransCanada "consultations" in local jurisdictions, gathering information and support, and putting pressure on municipal councils. These groups denounced the company's "web of lies,"[139] challenging most of TransCanada's assertions by pointing out the dichotomy between the company's public discourse and the information contained in its regulatory application. For example, they attacked TransCanada's depiction of Energy East as a tool for national energy security, given that the project was "founded […] on supply contracts with foreign clients." Every argument in favor of the pipeline was met with a counterfactual: TransCanada's safety record was dismal; it's emergency measures were "deficient"; the NEB's oversight was "inadequate and complacent"; Quebec did not source its oil from "unethical" places like Saudi Arabia but mostly from Africa, the North Sea, and Newfoundland; the pipeline would not replace but complement shipments by train; the principle type of oil to be carried was not light crude but much more controversial diluted bitumen; etc.

The second type of resistance was a "de-localized" — or cross-local — effort, pushing back on the environmental front by targeting: climate change and the need to *decrease* hydrocarbon production; the particular destructiveness of tar sands extraction; the domination of corporate interests and their captured political and regulatory allies over better forms of social development. For example, on May 10, 2014, the *Marche des peuples pour la Terre Mère*[140] set off for

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[138] I use quotations here to indicate the tension between categories of discursive convenience and the excessive life they are meant to encapsulate. While everyone involved in the controversy was a citizen, the word here indexes individuals that were more or less unaffiliated to officially sanctioned institutions like ENGOS and trade unions, or organizations involved in some form of governance be they strictly governmental bodies like municipal councils or involved in governmental functions like integrated management groups. Where possible and manageable, I will be dealing in specifics rather than typologized, reified generalizations.

[139] "Les propos de TransCanada sont un tissu de mensonges." See http://www.stopoleoduc.org/wp-content/uploads/2014/01/Communiqu%C3%A9-De-Presse-2013-09-20-Les-Propos-De-TransCanada-Sont-Un-Tissu-De-Mensonge1.pdf

[140] The People's March for Mother Earth.

a scheduled 33-day walk along the prospective pipeline route from Cacouna to Kanesatake, stopping to hold public meetings in affected municipalities along the way. One participant, feeling encouraged after meeting so many citizens and elected officials, expressed that, "We are clearly capable of blocking these projects,[141] but it is imperative that people mobilize to take their fate into their own hands. We cannot trust either Harper or [Quebec Prime Minister] Couillard to defend the common good" (Côté 2014). ENGOs like the Council of Canadians, Équiterre, and Greenpeace, but also many others, also buzzed with activity. For example, on June 2, 2014, Greenpeace and Équiterre, in conjunction with the consulting firm Goodman Group, released a report titled *Economics of Transporting and Processing Tar Sands Crudes in Quebec*, which found much risk for little reward in the province. These are but two examples of a wide number of initiatives that pushed back against Energy East by providing counter-narratives and counter-facts.[142]

These two forms of resistance did not evolve in isolation from each other but interacted and overlapped with and co-constituted each other in a number of ways. While locally-informed opposition, especially when verbalized by municipal official, focused on the material and fiscal implications of the pipeline in specific places, the wider concerns expressed by environmental groups about hydrocarbon development, climate change, and political expediency also figured there, and vice versa. As local citizen groups scrambled to formulate expertise and form alliances, they appealed to various forms of knowledge on pipeline development which informed their discourse — landowners with prior pipeline experience, jurists, sociologist, geologists, ENGO representatives, etc. As reflected in the protest walk from Cacounca to Kanesatake, protestors also sought to connect their struggle with that of First Nations, some of whom had been formulating cross-local alliances against hydrocarbon development.

In Quebec, First Nations resistance grew mostly from the advocacy of Kanesatake Mohawk Council grand chief Serge Simon. The pipeline was slated to pass through Mohawk treaty lands. Simon worked to form alliances with other First Nations across Quebec and Canada, which eventually led to the support of the Assembly of First Nations Quebec and Labrador in June 2015 for Kanesatake opposition to Energy East. It also contributed to the

[141] Note the plural here.

[142] Opposition was not exclusive to Quebec, though especially significant there. New Brunswick, the site of the other export terminal, also saw significant opposition against the pipeline, though not so fiercely against the NEB itself.

eventual official opposition by the Iroquois Caucus[143] in January 2016, and to a Cross-Canada Treaty Alliance Against Tar Sands Expansion in September 2016. Concerns over tar sands expansion and pipeline development expressed by Simon resonated with those expressed by many others, a combination of the cumulative threat to situated livelihoods and the overall threat of climate change — "the greatest threat faced by humanity," he wrote in a letter to Quebec Prime Minister Couillard in March 2016.[144]

By the time it filed its NEB application in October 2014, TransCanada had already been subjected to a successful injunction request by the *Centre Québécois du droit de l'environnement* (CQDE) to halt the company's preliminary tests in Cacounca. And November was about to bring the rain. Quebec's National Assembly was about to vote a unanimous resolution in favor of asserting the province's sovereignty over environmental matters, which meant a legally binding, *Quebec-specific* study of TransCanada's project and a consideration of its total greenhouse gas (GHG) and climate change contribution. TransCanada suffered embarrassment after Greenpeace leaked a public relations plan that the Edelman firm had concocted to help the company push through Quebec opposition, stoking the flames further. Amongst other strategies, Edelman proposed to manufacture third party support and distract opposition groups by attacking them on other fronts. The Montreal Metropolitan Community — the province's most important urban community representing almost half the province's population —took a stand against the pipeline and its company, depicting the project as "unacceptable." As if that was not enough, the *Committee on the Status of Endangered Wildlife in Canada* (COSEWIC) changed the beluga whale's status from "at risk" to "endangered." In April 2015, TransCanada announced it was giving up its Cacouna terminal.[145]

"Speak vert!"

December 2014 brought yet another controversy. On December 15, the CQDE wrote a letter to the NEB to "communicate their preoccupations" about there being no official French version of TransCanada's application on the NEB site. The French version, a voluntary contribution by the company, appeared to be condensing thousands of pages on the commercial

[143] The Caucus is composed of Akwesahne, Kahnawa:ke, Kanesatake, Oneida Nation of the Thames, Six Nations of the Grand River, Mohawks of the Bay of Quinte, and Wahta Mohawks.

[144] You can view the 7-page letter, and the annexed Iroquois Caucus statement and Assembly of First Nations Quebec and Labrador resolution here: http://s3.documentcloud.org/documents/2761259/Letter-From-Kanesatake-to-QC-Re-EE.pdf

[145] All of these controversies will be discussed in greater detail in chapter three.

aspects of the project contained in four of the application's volumes. Another difference that eventually cropped up was the information regarding the crossing technique for the St. Lawrence river, which in the English document was qualified as requiring a "stage III assessment" — i.e., "a detailed investigation and/or mitigation of an identified hazard" — as advised by Golder Associates in their March 2015 report, whereas the French version made no mention of the recommendation (Markusoff and Patriquin 2016). On January 6, 2015, the NEB refused the request to make an official French version available, based on having no obligation to do so. The CQDE's request for a review of this decision was also refused. These were the opening salvos of the battle on another front that combined a sense of environmental exceptionalism in Quebec and the province's cultural specificities.

Let us take a moment to overview how this played out over the following two years before we return to our chronology.[146] The CQDE submitted an official complaint to the federal Office of the Commissioner of Official Languages on December 15, 2014, who investigated TransCanada's and the NEB's linguistic obligations. They also filed an injunction request in a federal court, which was turned down. At the hearing in February 2015, the NEB lawyer defended the pipeline, stating that, "Oil and gas pipeline projects are entirely to the benefit of Canadians. Energy East is one of them." She also argued that the Board had neither the time nor the resources to translate TransCanada's application (Marquis 2015). The Commissioner's preliminary report, released in May 2015, found for its part that the NEB's publication of the project application was neither a service nor a communication with the public but an integral part of the NEB's quasi-judicial function. TransCanada spokesperson Tim Duboyce justified their own decision by saying, "If we didn't translate the documents, it's because we judged that there was nothing to translate in there, it is literally number tables in many cases" (*ibid*).

On June 19, 2015, the CQDE invited the NEB to an alternate mode of conflict resolution, which the NEB refused on July 2, 2015. The CQDE reiterated the invitation in July and in November of 2015 to discuss the "linguistic obligations of the federal institution in the case of the Energy East project." What concessions were made occurred after TransCanada submitted modifications to its application on December 17, 2015. On February 3, 2016, the

[146] Most of the information discussed below can be found in the affidavit presented to the Federal Court of Appeal on August 18, 2016 by CQDE lawyer and general manager Karine Péloffy. The appeal was part of a case the CQDE had been making to ensure equal access for francophones to the NEB's hearing process on the basis of the obligations implied in article 20 of the *Canadian Charter of rights and liberties*, and part IV of the *Official Languages Act*. The affidavit is available here: https://cqde.org/wp-content/uploads/2016/08/Affidavit-de-K.-Peloffy.pdf

NEB published a decision requiring that TransCanada submit a consolidated application given that the documentation had become difficult to make sense of, "even for experts, as it presents itself at the moment" (Shields 2016b).[147] On March 21, 2016, the NEB announced its intention to manage the translation, which would appear on the NEB's website and be structured in the same way as the English version.

But problems remained. Following the NEB's reception of TransCanada's application as complete on June 16, 2016, the French consolidated version still only appeared on TransCanada's website, where the company posted a disclaimer about any discrepancies or omissions. Despite the NEB's July 20, 2016 assurances that francophones may use the French version "in full confidence," the CQDE highlighted that "access to the French version is preceded by a notice from the NEB stipulating that, "The NEB is not responsible for the exactitude, up-to-datedness, or reliability of these sites, and cannot offer any guarantee in this regard."[148] An important difference, in terms of functionality, was that while the NEB's version was entirely searchable, only the titles were searchable on TransCanada's French version, which the CQDE qualified as an "obvious disadvantage suffered by francophone intervenors and experts in their preparation for the NEB process."

February 2015 marked the early stages of the NEB process. On February 3, the NEB launched its month-long application to participate in the Energy East hearings process. On February 20, 2015, some 20 different groups of citizens, farmers, environmentalists, and laborers launched the "Speak vert!" campaign in Quebec.[149] The stated goal was "to communicate their indignation with the NEB's refusal to make available to francophone citizens an official translation of the 30,000-page document submitted in English by TransCanada for its Energy East pipeline." Maxime Laporte, of the *Société Saint-Jean-Baptiste*, said in the press release:

> Before the *Révolution tranquille*, francophones were told to 'Speak White!' […] Today, in 2015, it is 'Speak Oil!' The NEB must however understand that Quebec is not pipelinophone, that here we speak French first, and that we speak the language of respect, for the environment, our lands and resources, of which only the people are masters, in the respect of First Nations. That is why today we say to the NEB and TransCanada: 'Speak Green!' Speak so we understand you well and understand all the implications of your dangerous projects.

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[147] As we will see in chapter four, anti-pipeline advocates seized on this opportunity to further criticize the environmental assessment initiated by the Quebec province. The BAPE hearings, which began in March 2016, were based on TransCanada's problematic unconsolidated application.

[148] Point 43 of the above-cited affidavit.

[149] See the press release here: http://speakvert.quebec/. All the translations are mine.

Karel Mayrand of the Suzuki Foundation said, "It is inconceivable in 2015 that francophones are expropriated in English by a federal agency. Francophones are not second-class citizens […]." Anne-Céline Guyon, of the influential citizen group *Mouvement Stop Oléoduc*, argued that, "We are far from the free and informed consent that should be the prelude to any decision-making. This only further undermines the credibility of a public hearing process already rightly considered by many citizens as, at best, a public relations masquerade, and at worst a true intellectual imposture. How not to think, in these conditions, that the die is cast?" Jacques Tétreault, of the equally influential *Regroupement Vigilance Hydrocarbure*,[150] qualified TransCanada's and the NEB's behavior as "colonialist," deeming it "unacceptable that we be forced to rely on the promoter for essential information in French."

The depiction of the project and of the federal assessment process as colonial was iterated in a number of venues, such as the February 2015 issue of the journal *L'Action Nationale,* titled *Le Québec face à l'ordre pétrolier canadien*.[151] In it, for example, retired geography professor Bernard Vachon (2015) published an article titled "Territorial Planning confronted with the 'Oil Road'" (my translation). Vachon contrasts this "oil road" with "the rise of ecological, social, and cultural values in contemporary Quebec" that finds expression namely in the recomposition of rural territory along the St. Lawrence Valley. One of the sources of intense dissatisfaction with how projects like Energy East get planned and approved is that there is little to no space to discuss alternative social futures and the ways that the project under review might conflict in various ways with other desirable modes of collective prosperity.

Public engagement and the appearance of bias

November 2014 was also fateful for another reason. On November 25, the NEB began its 6-month National Engagement Initiative, gathering "27,500 views" through a public discussion forum and during which NEB CEO and Chair Peter Watson toured across "34 cities and towns across 9 provinces and two territories." Watson's mission was to ask citizens how the Board could "better understand how we can adjust our pipeline safety program, public engagement and communications" to "the diversity of Canadians' concerns [in order] to remain a world-class national energy regulator. We want to know how well you think we're doing and ideas on how we can adjust our approach to pipeline safety and environmental protection." The tour ended in

[150] There will be more information about these two groups in chapter three.
[151] Which could be translated as "Quebec against Canadian petroleum hegemony."

Calgary with a Pipeline Safety Forum on June 3, 2015, which assembled "nearly 400 individuals, experts and organizations from across the country who have a vested interest in safe energy regulation in Canada." Watson summed up his touring experience as follows: "The Canadians I heard from shared many of the same concerns about energy infrastructure. They want their water protected, their land protected, and they want to know that the NEB is good enough to do the job of protecting both, particularly in emergency situations."[152]

Two issues, one of them fatal, followed from the initiative. The first came about from the "top priority" that the NEB gave to "[e]ngagement and outreach to Canadians […] through its regional offices in Vancouver and Montreal" — Vancouver, where the Trans Mountain Expansion pipeline project was mired in opposition, and Montreal, where Energy East was slowly being engulfed as well. The NEB was planning to open the Montreal office in the spring of 2015 "to strengthen the NEB's regional presence, raise awareness about its work, build stronger relationships with regional public and local institutions, communities, landowners and Aboriginal groups; and to be in a position to more quickly respond to events requiring immediate NEB attention."[153]

The announcement was made on January 16, 2015 as part of a joint press conference with MMC (Montreal Metropolitan Community) president and Montreal mayor Denis Coderre. The controversy around this arose in August 2016, when investigative reporter Mike De Souza revealed that the press conference had been "an important step in a carefully crafted communications plan" dated December 1, 2014, which proposed that "chief executive, Peter Watson, would 'leverage' his meeting with Mayor Coderre to announce the Montreal office and then 'approach regional, credible third parties to promote our regional offices.'" These offices "would deliver 'no front-line services for folks with questions or concerns'" who would "still have to go through existing channels to get help from the NEB." De Souza quotes RVHQ activist Carole Dupuis's reaction: "Why is a tribunal doing public relations?" (De Souza 2016d).

The second and more impactful issue arose from another meeting the NEB held as part of that 2-day trip in Montreal. While the National Engagement Initiative disclosed meetings it held with a number of groups in the Quebec province between late February and early March 2015,

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[152] See the announcement here: http://www.neb-one.gc.ca/glbl/ccct/index-eng.html, and the concluding statement here: https://www.canada.ca/en/news/archive/2015/06/national-engagement-initiative-concludes-successful-pipeline-safety-forum.html

[153] Read the press release here: http://www.neb-one.gc.ca/bts/nws/nr/2015/nr03-eng.html?=undefined&wbdisable=true

the NEB also held an undisclosed meeting with former Quebec premier Jean Charest on January 15, 2015, "to brainstorm about ideas to promote the fossil industry and pipelines in a region that is largely opposed to big oil" (*ibid*). Note that in its National Engagement Initiative, the NEB made sure to specify that, "These meetings are in addition to the existing engagement efforts of Board [*sic*]. They are also outside of our regulatory process; they are not discussing any specific project. Instead, the focus was on hearing views regarding pipeline safety and environmental protection."[154]

The Charest meeting turned into a fatal problem for two reasons. First, Jean Charest was employed by TransCanada as a consultant at the time. Second, the NEB party was constituted by Watson, two NEB staff, and two commissioners. These commissioners, Jacques Gauthier and Lyne Mercier,[155] were also part of the Energy East three-member review panel. Remember that review panels are expected to follow the same procedural strictures as judges, i.e. to avoid any form of exchange regarding an ongoing review outside of official proceedings. After the National Observer revealed the meeting in early July 2016, both the NEB and a spokesperson for Charest — who had also been present at the meeting — confirmed that the meeting had occurred but asserted that an explicit warning had been given that Energy East could not be discussed (De Souza 2016b). The NEB also denied having had any knowledge of Charest's employment status. But further information access requests by the National Observer for meeting notes and emails revealed that Energy East had been the primary reason behind the meeting, requested by NEB panel-member Gauthier in December 2014.[156] The handwritten notes reveal part of Charest's advice, which centered on Quebec being poorly acquainted with the NEB. A section of the notes reads: "Message: Who is the top dog? The NEB!" (De Souza 2016c).[157]

To situate this within the wider arc of the NEB's procedural sequence, TransCanada had submitted amendments on December 17, 2015. As mentioned, on February 2016 the NEB required that TransCanada submit a consolidated application, given that the documentation had become "difficult to parse, even for experts." The NEB declared TransCanada's application

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[154] http://www.neb-one.gc.ca/glbl/ccct/index-eng.html

[155] As fate would have it, both Gauthier and Mercier had been Harper appointees to the Board, whose terms had been extended just prior to the fall 2015 federal elections.

[156] The email reads: "Regarding the subject, I want to introduce the new chairman of the Board and speak about the major oil industry issues that will affect Quebec (Energy East, etc.). Overall it will be quite a general meeting" (De Souza 2016c).

[157] The notes are available here: https://www.scribd.com/document/320326477/Staff-notes-from-NEB-s-January-2015-meetings-in-Montreal

complete and ready for evaluation on June 16, 2016. On the same day a number of groups[158] published an open letter[159] criticizing the NEB's decision given that "essential information was missing, such as the technique to cross the Ottawa River, spill risk analysis for most of Quebec's rivers, and an examination of the French version of the now 38,000-page document."

The NEB had received a 21-month extension for its review and report from the Natural Resources minister and the Governor in Council in late March and early April 2016. A June 22, 2016 NEB procedural direction announced "an initial, more informal, opportunity for intervenors and the Applicant to exchange information." The hearings were meant on the one hand to enhance understanding of the application "as a whole" through "high-level questions" to inform subsequent interventions. On the other hand, they would provide intervenors with an opportunity "[t]o tell the Board your views about future hearing process steps and how they may best suit your participation goals. While the Board has already held a process survey,[160] your views may help the Panel finalize or refine process steps that still have details to be determined."[161] At the time of the later revelations, in early August, the NEB had already started these hearings in New Brunswick. The Quebec hearings were scheduled for August 29-September 2 in Montreal, and October 3-7 in Quebec City.

The NEB's response to the Charest revelations, sent to De Souza (2016b), was:

> The NEB sincerely apologizes to you and your readers that this material was not provided at the time of your media request. While there was no ill-intent in our response, the Board deeply regrets that our search for records at that time was not comprehensive and that our response did not accurately reflect the meeting.

Two separate challenges were launched. On April 11, 2016, *Stratégies Énergétiques* (S.E.) and the *Association québécoise de lutte contre la pollution atmosphérique* (AQLPA) sent a letter[162] to the NEB Secretary asking for the recusals of the three members appointed to the Energy East review and for the suspension of ongoing hearing processes. They argued on the basis that the Charest meeting contravened with the natural law principle of procedural equity to which review panels were bound. The NEB replied that it would consider the latter as a motion. The second motion

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[158] Some of which we are familiar with, such as the CQDE, Greenpeace, the RVHQ, the Stop Oléoduc Movement. Most of the others were equally active during the controversy, even though I have not included them in the narrative.

[159] Available here: http://www.stopoleoduc.org/groupes/energie-est-une-evaluation-precipitee-par-un-organisme-en-deficit-de-credibilite/

[160] This survey was conducted between June 22 and July 6, 2016.

[161] The NEB document, "Procedural direction 5," is no longer available on the web.

[162] Available here: http://www.ledevoir.com/documents/pdf/lettre_aqlpa_110816.pdf

was filed by Canadian environmental law firm Ecojustice on behalf of an Ontario community group, Transition Initiative Kenora, on August 22, 2016, asking for Mercier's and Gauthier's recusals, also on the basis that "the appearance of bias was enough to justify the removal of panel members who had a relationship with an industry proponent."[163] Despite the challenges, the NEB decided to go ahead with the Montreal hearings, and sent a letter to participants forbidding them to speak on these challenges during the audiences, asking that they confine their thoughts on the matter to paper instead.

We have already seen in the previous chapter how things panned out for the NEB in Montreal. The first hearing fell apart at the outset, and the NEB suspended the hearings until further notice. A number of intervenors sent letters to the NEB in support of the motions asking for recusals. Ecojustice reiterated[164] its motion on September 7, 2016, arguing that more than just the review panel, all proceedings thus far should be considered void and quashed given that "dozens of procedural and substantive matters that have shaped the Board's review of Energy East" had been decided upon after the panel's targeted misconduct. Greenpeace Canada took the opportunity to link the NEB's proximate behavior to the wider systemic problems with Canada's environmental assessment framework, the NEB's failure to include climate change mitigation in project reviews, and the government's failure to reform its nation-to-nation relationship with First Nations. On the strength of this, Greenpeace recommended that the review be suspended until Canada complete its promised reforms, by which it would equip itself with a "credible process for evaluating major energy infrastructure that is appropriate for the 21st century."[165]

Development, the environment, and the public interest

I want to take a moment to situate our discussion within the wider arc of hydrocarbon and environmental politics alluded to by Greenpeace above. As the NEB process began in early 2015, the project and its evaluation were already tied up in a number of challenges stemming as

[163] The second challenge is available here: http://www.ecojustice.ca/wp-content/uploads/2016/08/2016-08-22-Notice-of-Motion-re-Recusal-motion.pdf

[164] See the letter here: https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2540913/2797619/2997663/3028147/A79293%2D1_2016_09_07_%2D_Letter_to_NEB_re_Consequences_of_Reasonable_Apprehension_of_Bias_%2D_A5E9I6.pdf?nodeid=3028259&vernum=1

[165] The Greenpeace letter can be viewed here: https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2540913/2997454/3003515/3027700/A79300%2D1_Keith_

much from the particularities of emplaced livelihoods, ecosystems, and endangered species as they were to notions of political alienation and domination, sovereign rights, due process, and the collective right to challenge the status quo and propose alternate social futures.

The next two years saw the intensification of resistance from a wide range of social groups, institutions, and municipal government. They also saw various attempts by the Quebec provincial government to impose its environmental law. I will leave these mostly aside for now as they will be the subject of the following two chapters. Here I will point out that despite the motion voted in its National Assembly, the Quebec government announced, on February 11, 2015, its intention to make its case at the NEB, where it would be represented by its *Régie de l'Énergie et des Ressources naturelles*. When it finally mandated a BAPE on June 8, 2015, it did so under an article of the law meant for the generic evaluation of economic sectors, not for the compulsory evaluation of specific projects. The stated goal of the hearings was for the government to "have in hand all the analyses and arguments necessary to defend Quebec's interests at the NEB hearings."

This is the moment that the CQDE perceived as the fork in the road for Quebec environmental sovereignty, when Quebec gave up on assuming its authority over the project despite the National Assembly motion.[166] The government's decision was highly criticized by environmental groups, and parliamentary opposition also jumped on the opportunity to critique the government for having relinquished its provincial authority. The *Parti Québécois* called the mandate a "*BAPE de façade.*"[167]

The year 2015 was important for other reasons as well. As mentioned in the introduction, in the lead-up to the December United Nations Climate Change Conference in Paris, public demonstrations of concern over global environmental risks intensified. On April 11, 2015, thousands marched on Quebec as part of the Canada-wide Global Climate March, where the causal link between Energy East, tar sands expansion, and climate change was put on display. That year also marked the multiplication of warnings against hydrocarbon investments from the financial world, on the grounds of their being financially risky and unreliable, socially

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Stewart_submission_re_TIK_motion_on_recusal_of_Energy_East_panel_members_%2D_A5E9K5.pdf?nodeid=3051990&vernum=1

[166] The CQDE's Michel Bélanger and Jean Baril expressed their perspective in a February 25, 2016 conference titled: "Énergie Est: Contourner les lois du Québec pour traverser son territoire? Non!" ("Energy East: Bypass Quebec Laws to Go Through its Territory? No!")

[167] Which could be translated as qualifying the BAPE as window dressing.

controversial, and environmentally costly (Bérubé 2015a; Bouchard-Boulianne et al. 2015). As if to make their case, global oil prices — which had begun dropping in the fall of 2014 — collapsed through 2015, hitting their lowest point in January 2016.

A May 2015 report by the International Monetary Fund (IMF) argued that the true cost of fossil fuels in 2015 could reach $5,300 billion globally, with $60 billion in Canada alone.[168] The Organization for Economic Co-operation and Development (OECD) released a similar report on the true costs of fossil fuels in September of the same year.[169] The OECD listed 800 measures by which its members and 6 "emergent" countries support their production and consumption, measures that had drained between $160 to $200 billion yearly in public funds between 2010 and 2014. The OCDE argued that these measures had a certain "inertia" which sustained them past the point where instituting them made more political sense than in the present, and encouraged state apparatuses to revise them on a regular basis. Both the OECD and IMF reports agreed that these subsidies significantly hindered efforts towards the mitigation of climate change and of the health impacts of pollution.

My objective here is not to mount my own case against the pipeline — especially not through the use of reified findings decoupled from their generative calculous as I am circulating them here — nor is it to adjudicate on the validity and import of specific evidence. I cite them here to highlight how public reasoning on fossil fuels was taking shape, and to note how the circulation of such arguments worked towards constructing a specific kind of common sense about the relation between political agency and environmental issues. Even as the federal government and industry pushed for pipeline capacity — and as the Couillard government in Quebec pushed for its own hydrocarbon development plan on its territory — government talk of "global climate change leadership" became increasingly common. In July 2015, for example, at the Climate Summit of the Americas, Couillard announced subscribing to the Pan-American action statement on climate change, committing to GHG reductions of 80% to 95% below 1990 levels by 2015. There he also declared that "we are observing presently the beginning of the end of the hydrocarbon era" (Shields 2015b).

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[168] The IMF calculated this "true cost" by factoring in public subsidies to hydrocarbon industries and externalized costs related to climate change, pollution, and infrastructural damage. The report can be viewed here: https://www.imf.org/en/Publications/WP/Issues/2016/12/31/How-Large-Are-Global-Energy-Subsidies-42940

[169] Available here: http://www.oecd.org/environment/support-to-fossil-fuels-remains-high-and-the-time-is-ripe-for-change.htm

Climate change, and most especially the growing acceptance of the decarbonization of the economy as a self-evident logical and necessary outcome, was putting politicians in a tight spot and highlighting an interesting knot in contemporary political agency.[170] While decarbonization required decisive action to redirect the economic juggernaut and redefine people's general expectations of how resources should fuel their daily lives, it also made visible everyone's prescriptive theories of social change. In response to Couillard's commitments, Patrick Bonin[171] commented that:

> The [GHG reduction] target adopted is completely incompatible with the new pipeline and tar sands projects, and with the hydrocarbon production contemplated in Quebec. The adoption of a target is an important step, but the government has a duty of coherence and must reject oil, gas, road, or industrial infrastructure projects that would lock us into a highly polluting economy for decades (*ibid*).

The logic expounded by Bonin puts on stage a clear and coherent "we" that has the reasoning faculty of assessing its place in the world and has the agentic capacity to act upon it. But while this personification of nation-state cognizance and agency showed up in the discourse of virtually all social actors in most public venues, a look at the infrastructure of political agency — understood here generally as the pathways and points of articulation of political decision-making and action — reveals some problems with the transfer of individual characteristics to large collectivized aggregates of people. Inversely, states conduct their own required epistemic reductions and generalization in order to render the vast heterogeneous social landscape legible and manageable (J. C. Scott 1998).

There are a number explanations for why states never quite manage to fulfil their social engineering dreams in quite the way they imagined them, most of which are equally valid I expect, but which explain slightly different problems. One explanation is that the world is always

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[170] There is a vast range of scholarship on the political ramifications of climate change. For example, on the relation between climate change and political agency, or between natural and political history, see Wainwright and Mann (2015). See Chakrabarty (2012) for how climate change complicates humanist politics. For the impact of climate change on infrastructurally mediated citizenship, see Zeiderman (2016). While literature on climate change has been mostly interested in how notions of human-induced geological change in the "Anthropocene" challenges our understanding of human agency and scale (see e.g. Whitington 2016), my interest here is in *political* agency: how, as variously formulated collectives, do we act on bringing about certain futures? It concerns the relation between imagination, mediating instruments and practices, and differential power. Some scholars address this tension through critiques of "neoliberal" governance, either as a hegemonic political form that puts our survival at risk (e.g. Brown 2015) or as an insufficient one that must be combined with a heterogenous array of other governmental practices (e.g. MacNeil and Paterson 2012).

[171] Patrick Bonin has headed Greenpeace's Climate and Energy campaign in Quebec since 2012. He was one of the central figures in the mobilization against Energy East.

excessive of its schematic representations, especially when these representations only qualify human agency as that which is worthy of consideration (Mitchel 2002).[172] But more than this, as Mitchel argues, the institutions of modern states designed to generate knowledge about and organize social development themselves act upon and change the world in unpredictable ways. So, part of the issue here is the relation between expectations that abstract universalisms might apply anywhere anytime (Poovey 1998; Stengers 2011), the performative ramifications of the schemes these assumptions generate (e.g. Buck-Morss 2009; Mehta 1999; O'Connell 1993), and the heterogeneous excessiveness of emplaced, political life (Tsing 2005; Blaser 2013; Menon 2013).[173] The tensions that result can be discussed in terms of historical imperialist violence (Chakrabarty 2000; Mehta 1999), just as they can be observed in more apparently benign but politically constitutive classification and standardization schemes on which infrastructural systems are based (Bowker and Star 1999; Timmermans and Berg 1997; Easterling 2014; Timmermans and Epstein 2010).

Another way of explaining the difficult implementation of governmental policy, plans, and programs is the concessions that liberal democratic governments must make to non-governmental forms of power, such as public opinion. As Macfarlane (2014) explains, even at the crest of the "high modernist" era feeding romantic dreams of nation-building through feats of heroic engineering, these aspirations still had to be negotiated — on the one hand with the limits of systematized knowledge, and on the other within the limits of political power, especially in Canada. In the context of the building of the St. Lawrence Seaway in the late 1950s, Macfarlane notes that:

> Lacking the centralized and autocratic authority to simply impose schemes without some measure of approval from civil society and other levels of government, the involved states had to repeatedly adapt, negotiate, and legitimize themselves — in relation to both the specific natural environments and the societies they aimed to control — and their high modernist St. Lawrence vision (228).

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[172] There has been a massive turn since about the mid-80s towards non-human actors in anthropology and beyond, which has expanded the explanatory range of social and historical analysis. The principle effects of this turn for social scientists have been to radically re-distribute agency across vast heterogeneous networks of humans and non-human entities (see e.g. Latour 1993, 2005), and to challenge modern boundaries between society, nature, and technology (see e.g. Haraway 1991; Strathern 1992; Descola 2005). For a recent survey across disciplines, see Grusin (2015). The infrastructure literature has been particularly proficient at putting these insights into analytic practice of situated, more-than-human politics. For examples that challenge the boundary between natural ecosystems and technological systems, see Morita and Jensen (2017); Carse (2014); Blok et al. (2016). For the challenge that material infrastructure poses to humanist framings of agency, see Anand (2016); Meehan (2014). For the complicated relationship between knowledge, systems, and material life, see Bowker and Star (1999); Bowker et al. (2009); Galloway (2004); Hetherington (2012); Lampland and Star (2009).

[173] On the difficulty of even posing the question, see Balibar (2002)

Which is why Macfarlane uses the term "negotiated high modernism," which he feels corresponds to the Canadian case.

Still, the ability for large projects to materialize in Canada is contingent on many factors other than post-scripted political ethos. So while times have changed and projects require considerably more social lubricant to glide through public resistance, as Macfarlane suggests and as we have already seen in our discussion, "large-scale undertakings with a deleterious impact on the natural environment can happen when there are sufficient financial and political interests at stake, particularly when they are distant from large populations centres" (230).

Which leads us to yet another interpretive framework to explain the relation between political reason and political outcomes, namely the gradual shift from political reason to economic reason since the mid-70s as the guiding principle to inform social management. This argument generally comes under the rubric of "neoliberal" change, which Brown chooses to define, following Foucault, "as an order of normative reason that, when it becomes ascendant, takes shape as a governing rationality extending a specific formulation of economic values, practices, and metrics to every dimension of human life" (2015: 30). Brown explains that the "economization of everything" is not about money as much as applying "the model of the market to all domains and activities" (31).

The political dynamic that interests me particularly in Brown's analysis is how the polity comes to be figured within contemporary schemes of governmental decentralization which effect "cooperation without collectivization" (130): the isolating and responsibilization of individual entrepreneurial units (129) that depoliticize the deliberation on future ends by formulating government as the process of troubleshooting technical problems. With the goal of collective life having been distilled to economic productivity, the prior question is always how can growth be facilitated and what degree of sacrifices are we willing to accept for it and how these can be mitigated?

I do not want to overstate this framework, which tends to draw historical differentiations a little too neatly. As we have seen in the history of hydrocarbon development (chapter one), it has always been difficult for the federal government to impose its political reason on competing economic and political interest. Here, it might be important to make explicit how the "state" figures in this thesis. From the outset, I follow Mitchell (1991) in considering the state — and indeed any form of large-scale governmental apparatus — as a reified trope that breaks down

into an assemblage of situated practices and effects that are difficult to delineate in actuality (see also Hetherington forthcoming).

Krohn-Hansen and Nustad (2005) point to a renewed interest for the state as an object of ethnographic inquiry in anthropology. Their perspective is encapsulated in a passage from Radcliffe-Brown's preface to *African Political Systems* (Fortes and Evans-Pritchard 1970), cited in their introduction: "The State in this sense [of a physical sovereign entity ruling over society] does not exist in the phenomenal world; it is a fiction of the philosophers. What does exist is an organization, i.e. a collection of individual human beings connected by a complex system of relations" (Krohn-Hansen and Nustad 2005: 5). Radcliffe-Brown's preliminary observation is similar to actor-network theory's methodological starting point that scaled and reified objects should be broken down into their component relations (Law and Hassard 1999; Law 2004).[174] Of course, reified objects are also real in that their symbolic enactments and mediating practices have tangible effects.

For Krohn-Hansen and Nustad (2005), while "the state cannot and should not be treated as having objective existence" (14), what require investigation are the state practices that attempt to construe both an idealized version of itself and convenient incarnations of its subjects — both of which are "part of the same process" (17). The State needs to generate both an abstract, universal citizen and a sacrificeable particular individualized subject. In our case, this would be the "Canadian" whose interests constitute "the public interest,"[175] and the purportedly isolated non-collectivized recalcitrants whose interests complicate and resist entrenched forms of development.[176]

In doing this, States take advantage of the apparent distinction between its existence as an objectified entity (along with its purported objectified citizenry) and its actual practices that generate that effect. As Mitchell argues (1999), any attempt to distinguish the abstract or ideal

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[174] One principle difference is ANT's emphasis on the more-than-human dimension of relational networks.

[175] For an argument that Harper's 2012 restrictions on EA participation further exacerbated political exclusions effected through public interest deliberation, see Salomons and Hoberg (2014).

[176] Similar kinds of distinctions are operative in spheres less overtly political as well, where they also serve to delineate prior hierarchies of legitimacy. For example, in debates over expertise and scientific knowledge, the sacrificeable subject is the "anecdotal" evidence that has failed, for whatever reasons, to be promoted to the status of systematized and generalizable knowledge. Where control in politics operates through the "public interest" idiom, in regulatory science it operates through the delineation of expertise. See Callon et al. (2001) for an argument that an attention to uncertainty over risk and an opening up of legitimate knowledge to the public's heterogeneous experiences provides not only for better solutions but constitutes better democracy as well. For "counter-expertise" as a form of resistance to institutionalized power, see Topçu (2008).

appearance of the state from the material enactments that generate it, in taking for granted this distinction, will fail to understand it (77, cited in Krohn-Hansen and Nustad 2005: 15). This is why, for example, Harvey (2005) argues that any discussion of the State needs to be emplaced in contingent material engagements, because the State as "an elusive conceptual entity [...] thrives on collapse into a generic absent force and on notions of scalar discontinuity" (127).

In our ongoing discussion, the procedural emphasis on consultation rather than consent allows for the formulation of community consent *in general*, while effectively disregarding opposition in the particular.[177] Trudeau operationalizes the same dynamic when it comes to environmental matters, stressing that his government is committed to a balance between the environment and the economy. While harmony is maintained in the abstract, tensions in the particular are not only not addressed, they are whisked away from the political sphere, being framed as scientific, "merely" factual matters of technocratic concern.[178] Interestingly, TransCanada invested in the same sort of strategy to visibilize an idealized version of itself and its project, while relegating the messy work of specification to less public venues. We will see more about this in the next chapter.

To return to the argument that sets economic liberalization against the political formation of liberal democracies, if we start from the principle that the modern liberal democratic state has always been some sort of chimera relying on a range of syncretic ideologies, rituals, and mediating practices to maintain its storied existence (see e.g. Anderson 2006; and differently, Constant and Ducharme 2009), then much of its history can be told as the hierarchical prioritizing of some forms of prosperity over others. If this research has suggested anything to me, it is that there is no simple overlap between the normative prescriptions of political life and the daily activities which in the aggregate constitute what we might chose to refer to as a polity. So I will not emphasize the historical change in liberal ethos, even though I

[177] For example, Fluet and Krogman (2009) observe that "public consultations processes may be represented as democratic but simultaneously maintain the power relations that produce the current model of economic development. Although consultative processes in Alberta have increased in number, citizen influence is curtailed by the structure of these processes" (138). For the chasm between consultation and agency in First Nations territorial claims, see Kennedy (2009).

[178] Again, similar dynamics play out in with regards to political and "scientific" legitimacy. Just as the State promotes an abstracted and rarified version of itself and the singular national public, so does it promote an abstracted unqualified version of "science," which effectively serves to delineate that which is contestable (values and interests) from that which is not (facts). For the qualitative differences between research and regulatory science, see Jasanoff (1995).

acknowledge the presence of this "neoliberal reason" within the space of public deliberation over pipelines.

Within the scope of my arguments, where the "economization of society" turns up the most is in the naturalization of particular political orders. Biro (2005) uses the term "convention" to express the kinds of political agreements set in antipodal opposition to "nature." What is interesting today is the deep political irony that the entanglements of laissez-faire capitalism and statism have produced. While historically, convention was explicitly understood as the necessary cement to bond new kinds of polities together (e.g. Renan 2002), depictions of state involvement as "interference" in the natural redistributive functions of the market appear to have become pervasive.[179] What I have observed, however, is that while these notions permeate political discourse, governmental policy, knowledge production, and to some degree public expectations, they do not replace historically older conceptions of statehood as much as they interweave with them in surprising ways.

With regards to economic development and environment stewardship, Canadian (and other) governments today occupy an awkward, contradictory space of having to display at once deference to market processes and heroic political agency. Part of how this works in practice is through "recentralization" of political power in governmental agencies (Groves et al. 2013) and ambiguous, less publicly visible and democratically accessible quasi-governmental bodies (Valverde 2018). The effect is of enforcement of particular development goals legitimated through naturalized, "independent" institutional forms. Discursively, the government claims to be deliberately acting in the public interest while arguing at the same time that decision-making is delegated to non-political procedure and expertise. Regardless of overt ideological commitments, the point here is that contemporary environmental concerns are pushing against the normative commitments embedded in the administrative infrastructure of governments by challenging the kinds of prosperity they are designed to produce (Paehlke and Torgerson 1990)

The expectation that regulators can simply "read" the social and factual evidence presented to them and derive from it the best rational outcome is similar to outdated expectations that knowledge production can simply be made to reflect a prior, perfectly knowable world.[180]

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[179] For an example of this style of argument in the sphere of energy policy in Canada, see Pardy (2013). On the effects of commodification as a mode of resource management, see Björkman (2015). For a discussion of various counter-strategies to market governance, see Bakker (2007).

[180] See Stengers (2003) for a depiction of scientific knowledge as emergent of contingent practices rather than as pre-determined moments of discovery.

Similarly, depicting the world as a naturalized economic order implies that there can be a world of relations that operates somehow independently of the situated contingencies of relations and their necessary political correlates. Infrastructures that mediate collective life on the one hand "can have massive ordering effects," just as "any order always generates its own correlative disorder" (Harvey et al. 2016b: 12). In other words, there are no infrastructures that simply mediate without imposing their own normative ordering, and there is no attempt at ordering that does not change what there was to observe and know in the first place.

While the overarching economic narrative is that social and institutional actors simply read and respond to "market" signals, the mechanisms by which this response can be effected rely on different forms of coercion — from outright expropriation to the dissolution of dissent through consultative performances and discretionary decision-making. The overarching tension — between the conventional and the natural — is visible in a number of spheres of human interaction, from ideologies of statehood to regulatory procedure and knowledge production, which I have chosen to explore in this thesis.

To return to our narrative, of the clash between hydrocarbon prosperity and decarbonization imperatives in 2015, what I wanted to make visible here were the modes by which governments chose to enact social change, and how these differed from the political agency figured in discourses implying national sovereignty. Despite the catastrophic potential of climate change, and despite some politicians' recognition of the inevitability of the transition, there seemed to be a profound reluctance to act directly upon economic activity, opting for indirect "incentivizing" measures such as carbon markets to leverage market principles towards governmental objectives.[181] In April 2015, Canada's Ecofiscal Commission[182] arrived at a consensus[183] about the need to implement carbon pricing as a cost-effective way towards environmental and economic prosperity in the face of necessary carbon emissions reduction. The

[181] For a depiction of carbon markets as yet another "neutral," non-political way of setting environmental limits to development — in contra-distinction to legislated substantive minimums which gathered momentum through the 60s and 70s — see Felli (2015).

[182] The commission describes itself as: "A group of independent, policy-minded Canadian economists working together to align Canada's economic and environmental aspirations."

[183] The report, titled "The Way Forward," is available here: http://ecofiscal.ca/wp-content/uploads/2015/04/Ecofiscal-Commission-Report-The-Way-Forward-April-2015.pdf

Commission also wrote a brief[184] outlining "four fundamental principles of good cap-and-trade design" for Ontario as it moves toward carbon pricing policy. The dominant principle was transparency, understood as "clear, predictable, and *immune to political interference*" (my emphasis) — the main ingredients of economic success.

This is also the politics of Quebec's "environmental leadership," on the strength of its joining California's carbon market.[185] Again, it is not my purpose here to litigate the value of these schemes. For the moment, I will only say two things about the political implications of market mechanisms as a mode of governmental agency. First, markets do not overlap with political collectives. For instance, cap-and-trade systems can allow one jurisdiction to buy its GHG reductions from another (see Bélair-Cirino 2015). So, for example, Quebec could meet its reduction targets by buying emission improvements from California.[186] In such a scheme, environmental preservation, industrial performance, climate change mitigation, and territorial sovereignty relate to each other in different ways depending on the mode of representation and experience which mediates them.

Second, delegating political agency, or even political reason, to "markets" allows governments to promote hydrocarbon development and climate change mitigation at the same time because it is not their role to decide when and where the "markets" will make the shift from one to the other — governments can only remove barriers and provide incentives. This is the logic that was so infuriating to anti-pipeline activists, because it seemed to defy the most basic laws of common sense. ENGOs argued that to meet the Paris agreement, we needed a "managed decline of fossil fuel production"[187] because even without new pipelines, current hydrocarbon infrastructure would take us beyond 2 degrees, and current oil wells beyond 1.5 degrees.

It was difficult for environmental activists to interpret politicians' reversible discourse as anything but complicit inaction. But I argue that it is less useful to think of the propositional disparity as being the result of political duplicity than it is to consider it a reflection of the chasm

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[184] Available here: http://ecofiscal.ca/wp-content/uploads/2015/06/Ecofiscal-Commission-Report-Brief-The-Way-Forward-for-Ontario-Cap-and-Trade-June-2015.pdf

[185] Quebec joined the cap and trade program, known as the Western Climate Initiative, in 2008. At the time of writing (2018), the initiative included British Columbia, Manitoba, Ontario, Quebec, and California.

[186] The point was made on October 29, 2015, by *Québec Solidaire* provincial MP Manon Massé at Quebec's National Assembly, pointing out that in the GHG reduction plan for 2030 presented by the Environment ministry, 40% of reductions came from the purchase of carbon credits from outside Quebec, which would cost the government $325 million annually.

[187] As argued by a report released by Oil Change International in September 2016. You can find the report here: http://priceofoil.org/2016/09/22/the-skys-limit-report/

between different modes of political figuration. Couillard, as a figurehead, could be an environmental leader while still supporting — or at least not opposing — the Energy East pipeline, because pipelines were better alternatives to trains, especially after the Lac Mégantic derailment — and because the oil "must move" one way or the other (see Lavalée 2015).

The phrase was uttered by Couillard after the July 2015 Council of the Federation, where provincial and territorial prime ministers came to a tense agreement on a national energy strategy.[188] The premiers met namely to "improve the timeliness and certainty of each jurisdiction's regulatory approval and decision-making processes for energy developments," in part by cutting "duplication and inefficiencies" between different jurisdictions (Morrow 2015).[189] In Quebec's ongoing legislative overhaul, this had been formulated as "modernization." The three-day meeting was tense because Saskatchewan premier Brad Wall was progressively more incensed at Quebec's and Ontario's resistance — such as it was — to Energy East, arguing that oil was a privilege and that the Saudis would not be so irrational as to put the environment in the way of their hydrocarbon potential.

Tense as it may have been, the resulting *Canadian Energy Strategy* document smoothed out the tensions with the brute force of bland statements like: "Canada is a global leader in providing a secure, sustainable and reliable supply of energy that is delivered with a high standard of environmental and social responsibility, consistent with efforts to reduce greenhouse gas

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[188] The Council was a 2004 initiative of the Jean Charest Liberal Government in order to promote non-constitutional means of conciliating the interests of Quebec and those of the other Canadian provinces (Pagé-Plouffe 2015). The energy strategy, for its part, was the "brainchild of former Alberta premier Alison Redford, […] first conceived in 2012 as a way to plan future oil-sands expansion and address climate-change concerns" (Morrow 2015). It is interesting to note that the strategy, coming about through inter-provincial negotiations rather than being imposed by the central federal government, offered a less controversial route towards national unity on energy matters than that proposed in the infamous 1980 National Energy Policy (NEP). But given that the strategy had shared interests with the Harper government, the Quebec *Parti Québécois* premier of the time, Pauline Marois, opposed it for reasons similar to those offered by western provinces in the past: that the initiative intruded on exclusive provincial competency. Couillard renewed Quebec's participation, namely as a means of introducing climate change as a strategic factor (Pagé-Plouffe 2015). The initiative also reflects a shift in the loci of political agency from centralized scalar centers of government to more "localized" governmental bodies as privileged sites to address contemporary issues.

[189] At the time, Quebec was fully engaged in its own efforts towards "modernizing" its administrative practices, with the promise of ever more efficient, rigorous, and just practices. Modernization here implied techno-scientific progress while downplaying the underlying consolidation of specific forms of power. Quebec was modernizing namely by overhauling the LQE's environmental authorization regime and by working towards "complete and integrated legislation on hydrocarbons." Announced on May 30, 2014, this "global, coherent, integrated, and rigorous initiative for the responsible development of the hydrocarbon industry" that will protect the interests of people and the environment and ensure economic benefit and sustainable development in a calm and "orderly fashion" would effectively open Quebec's territory to a wide range of hydrocarbon extraction (MERN 2014).

emissions, and contributes to continued economic growth and prosperity for all Canadians" (11).[190] As you may have understood by now, this kind of proposition is what I have set out to litigate, because they index precisely nothing other than the will to divert attention from the contingent complexities of imagining and managing collective life. It is not simply that the statement attempted to conciliate with words conflicting positions that could not be conciliated in concerted action. As we will continue to see, there were countless other problematic proposition such as this one that were of a totally different epistemological species, but whose main function was to occlude rather than reveal.

A change in government

The 2015 situation[191] — Harper's legacy of a broken EA process, a democratic deficit, and a disregard for environmental and climate change commitments — was both the horse that the Trudeau Government rode into power on and the conundrum that he inherited. In a September 30, 2015 interview, while promoting his new book, environmental activist David Suzuki claimed that reelecting Harper would be catastrophic, qualifying him as a dictator (Shields 2015d). In the context where 85% of Canadian oil reserves needed to stay in the ground to prevent a higher-than-2-degrees planetary warming, he argued that it was absurd for companies to be looking for new production sites or to build new pipelines. The contrast between increasingly global concerns and the NEB's narrowed scope, time limits, and exclusive assessment process since the 2012 omnibus bill created a "decision gap" between the review process and the larger issues that pipelines bring up (Lucas and Thompson 2016). NEB CEO Peter Watson characterized this uncomfortable position as "regulating in the eye of a storm" (389).

The Trudeau government found itself at the epicenter of a tense conflict. The new Resources minister, Jim Carr, received a brief from the NEB after taking office, dated November 4, 2015.[192] The document is informative in its reiteration of the NEB's constitutive tensions between regulating and showcasing Canada's energy sector. But perhaps more to the point here,

[190] the Strategy is available here: http://www.canadaspremiers.ca/wp-content/uploads/2017/09/canadian_energy_strategy_eng_fnl.pdf

[191] See Barry (2012, 2013) for the use of the term "political situation" as a way to expand our temporal and geographical assessment of controversies, which have causal relations beyond their proximate iteration.

[192] The letter was obtained through an access to information request by the *Front commun pour la transition énergétique*, made available here: https://www.pourlatransitionenergetique.org/outil-dossier-dinformation-one-au-ministre-nrcan/

despite citing increasing concerns over hydrocarbon development and climate change and the agency's credibility, the bulk of the commentary contained in the document is dedicated to expounding on the need to change public *perception*. While the public was expecting profound systemic economic and regulatory reform, the Board was looking to finding just the right tone to assuage public concerns.

Economist Robbyn Allan was also writing to the new Liberal Government. She warned Carr that his decision to depict new pipelines as an economic necessity was based on "a memo riddled with factual and analytical mistakes [that] displays a lack of attention to detail."[193] The memo in question was one that Carr had received from his ministry's Petroleum Resources Branch.[194] Allen also wrote a letter to Prime Minister Trudeau, on October 24, 2015, warning him that the NEB "was allegedly violating basic principles of natural justice and procedural fairness in its ongoing review of Kinder Morgan's proposed Trans Mountain pipeline expansion project," and that it had "decided to prevent Canadian participants who would be affected by the project from conducting oral cross-examination of testimony from the multinational Texas-based energy company" — something the NEB had never done before. The NEB justified this decision by its 15 month time limit for reviews, imposed by the 2012 changes to the NEB Act. In an interview with the National Observer, Allen commented that, "The Board has resorted to platitudes, false arguments, obfuscated claims and exaggerated statements and I think Mr. Carr should be very careful about the NEB." She criticized the NEB's brief to Carr, arguing that, "These ministers are incredibly busy and they have a lot to learn in a very short period of time. The board should be taking serious efforts to tell the minister what the problems are. Not to present a briefing book that is very little more than telling the minister how great they are and why nothing should change" (De Souza 2016a).

But it is important to note two things. First, the omnibus bill C-38 (containing changes to the Canadian Environmental Assessment Act) was not the only omnibus bill that the Harper government passed in 2012. Scott (2013a) observes that, "The Idle No More movement sprang into the mainstream in December 2012 as indigenous people across the country grew impatient with the federal government's increasingly aggressive legislative agenda" (62), as instantiated

[193] You can read her letter to Carr here: http://robynallan.com/wp-content/uploads/2016/10/06/Letter-to-Minister-Carr-September-14-2016.pdf

[194] The memo had been obtained by the CBC. It is available here: http://s3.documentcloud.org/documents/2993339/NRCan-Pipelines.pdf

namely in omnibus bill C-45, "the second omnibus budget bill," which "changes 44 federal laws." Scott identifies "the removal of fish habitat protections and the dramatic reductions to the number of lakes and rivers where federal environmental assessment is required" as "[a]mongst the most concerning changes for First Nations" (62).

Second, it is important to not overstate the significance of Harper's legislative changes for pipeline reviews. When analyzed at face value, they suggest a sea change. But problems with pipeline reviews pre-date Harper's changes. We have seen some of these in the previous chapter. But even after "democracy came to the oil patch," as experienced by Lewington (1991), the NEB could still fail expectations in a number of ways. For instances, the NEB review for Enbridge's Phase I of the Line 9 reversal that preceded the changes did not include upstream or downstream effects - focusing instead on the technical elements of the reversal itself — even though it *could have*, being well within the NEB's mandate at the time (D. N. Scott 2013a). Differently, the NEB's review of the contentious Northern Gateway pipeline — which also preceded the changes — despite having been extensive in some regards still failed by not meeting the legal threshold for meaningful Indigenous consultation. The Harper government's approval was overturned by the Federal Court of Appeal in 2016.

The election of the Trudeau Liberal Government in October 2015 marked a change of tone from Harper's autocratic 10-year rule. Trudeau had run his campaign on "sunny ways," community consent for large scale projects, and a promise that he would overhaul the federal environmental assessment process so badly broken by the Harper government. As mentioned, the Liberals' tagline, repeated ad nauseam, was that "a clean environment and a strong economy go hand in hand." In December, Trudeau and Quebec Prime Minister Philippe Couillard held a joint press conference stating that Ottawa would be amenable to considering Quebec's opinion on Energy East — whatever that may have meant. In January 2016, Trudeau began fleshing out how the road to EA reform would be paved by announcing five interim measures for ongoing pipeline evaluations:

> 1. No project proponent will be asked to return to the starting line. 2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence. 3. The views of the public and affected communities will be sought and considered. 4. Indigenous peoples will be meaningfully consulted and where appropriate, impacts on their rights and interests will be accommodated. 5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.[195]

[195] You can consult the ministerial statement here: https://www.newswire.ca/news-releases/ministerial-statement---government-of-canada-moves-to-restore-trust-in-environmental-assessment-566762041.html

Trudeau's plans for EA reform came on the heels of the yearly report by the Federal Commissioner to the Environment, Julie Gelfand, which found — through the study of some 50 pipeline cases — that the NEB did not, in 50% percent of cases, follow up to make sure conditions set upon approval were met, nor did it inspect to ensure compliance with the NEB's norms. Also at issue was the NEB's follow up on compliance when problems were detected. The report also found that a third of the manuals which set out emergency procedures (description and emplacement of emergency equipment, evacuation paths, procedures for shutting down pipeline) were found to be incomplete. The NEB said it would implement all recommendations it contained, and Jim Carr assured his ministry would see to it (Vastel 2016b).

But there had been other issues in the recent past that affected the NEB's apparent trustworthiness. For example, a report by the Commissioner to the Environment in December 2011 had also found "a lack of follow-up by the Board on identified deficiencies" and a "deficient" oversight of emergency procedures manuals."[196] In February 2014, the CBC reported having obtained a copy of a 2011 NEB draft report "about a rupture on a trouble-prone TransCanada natural gas pipeline" that was inexplicably buried for several years following what the Board called an "'administrative error' when an employee left without transferring the file over." It took multiple requests by the CBC, and ultimately a request through access to information procedure, to obtain a partly redacted draft from the NEB. When the Board released the report, it was dated November 2013 and the redacted sections had been changed (Hildebrandt 2014).

In June 20, 2016, Trudeau announced[197] that his government was initiating its overhaul of Canada's environmental assessment framework by conducting four reviews: two committees would examine the Canadian Environmental Assessment Act (CEAA 2012); another was tasked with "modernizing the NEB"; and the fourth was charged with "restoring lost protections and introducing modern safeguards to the Fisheries Act and the Navigation Protection Act." Resource Minister Jim Carr declared:

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[196] The report is available here: http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201112_01_e_36029.html

[197] See the announcement here: https://www.newswire.ca/news-releases/government-launches-review-of-environmental-and-regulatory-processes-to-restore-public-trust-583672391.html

> Today we are demonstrating action to restore credibility to environmental and regulatory processes and ensure that decisions are based on science, facts, evidence and traditional knowledge of Indigenous Peoples. Through the modernization of the National Energy Board we will strengthen Canadians' trust in the regulatory process.

The irony was that, as the Trudeau Government hammered that the NEB process specifically — and the EA process more generally — was badly broken and needed a complete overhaul, the process should still be trusted enough to properly review the Energy East and Trans Mountain Expansion pipelines, perhaps mostly on the strength that his government — contrary to the previous one — could be trusted to make a perfectly objective and righteous decision in the end — that is, factually determined and politically sound. The facts would lead to the best possible decision. Political soundness would be achieved through procedure and dutiful "consideration" of opposing viewpoints.

But the contradictory tension remained. Trudeau hammered that decisions would be made in the public interest and that politics would not interfere with the decision-making process, hoping perhaps that the repetition would smooth out the antinomic nature of these two commitments. The only way that they could be conciliated was if the former could somehow be proceduralized to the point of occluding the ultimately arbitrary moment when opinions are "considered" in a closed room somewhere and one path forward is decided. Rather than provide reassurance that the evaluative process would be apolitical and somehow detached from disagreements about wider social aspirations, the interim measures seemed to exacerbate the tensions by misreading what the public had been clamoring for: the recognition of, and public debate on, the profoundly political commitments that are intrinsic to development projects.

In a way, Trudeau has been drawn into the same political dynamics as Harper had. Despite his apparent desire for democratic inclusivity, his ultimate political gambit has been that power should remain more or less where it has been and invested in much the same priorities as it has. And ultimately, despite his efforts to state pipeline approvals as a straightforward process — or perhaps precisely *because* of his and the NEB's failure to acknowledge the contingent, messy, and political nature of the NEB's work — protestors remained deeply skeptical of the process. Ironically, the NEB's — and more widely the government's — attempts at legitimizing its conduct on the basis of its faultlessly objective and impartial procedures only exacerbated the depth of the mistrust. Put differently, their attempts at negating the irony only exacerbated it.

Conclusion

The NEB's public engagement initiative highlights the ambiguous political terrain it occupies. It might appear that the tension I want to emphasize is between objective factuality and normativity — or between science and politics. But what I am ultimately aiming to point out is that, upon closer examination, the epistemological aspects on which various promises of factual finality rely — science, law, and administrative procedure — also break down into their own normative and arbitrary components. I posit that democratic development requires not only topical agreement but also an explicit acknowledgement of, and agreement on, the normative infrastructure that mediates political encounter. This argument in a sense reflects one of the most controversial aspects of NEB procedure: "scoping," or the prior delineation of what the project is considered to be, what will count as evidence, and who can legitimately present it. The attempted closure of these infrastructures — which we might refer to as formal expediency — was as controversial as the project they were meant to move along. Much of the controversy was ignited and sustained by repeated attempts to close down debate by naturalizing and black-boxing as many of the objects under scrutiny as possible. Which had the reverse effect.

The golden thread of this story is in a sense irony, and how it runs through a plurality of public interactions. In the next chapter, I will follow this irony as it ran through municipal and provincial concerns, jurisdictional authority, and legal procedure. There we will follow TransCanada's public engagement in Quebec, which failed for much the same reasons as the NEB's did. In chapter four, I take a closer look at Quebec's environmental law and the province's indeterminate sovereign enactments, and close with a discussion of knowledge indeterminacies, highlighting the murky overlap between positivist and normative claims.

Chapter 3: Energy East as a Matter of Municipal Concern

Introduction

As we have seen in the previous chapters, the politics of pipeline development are tied to complex negotiations between administrative responsibilities, territorial sovereignty, political agency, and social imagination, which bring up some important questions about the building of political collectivities. In this chapter, I will discuss the Energy East pipeline project as it came to be experienced by regional and municipal communities across Quebec. In doing this, we will retrace much of the same chronology as in chapter two, but from a different perspective.

Indeterminacy and the politics of determination

Let us return to how TransCanada was attempting to frame and present its project in the beginning, and from there get a sense of the kind of backlash that it got. As soon as the project was announced, TransCanada began conducting "open house" consultations in local communities along the pipeline route. In total, the company held three sets of open houses across the country: in 2013, between July and December; in 2014, between March and May; and then in the fall of 2015. In a September 2016 project description[198] submitted to the Quebec government, TransCanada would boast having performed in that province, between March 2013 and December 2015: twenty-seven open houses attended by 2,500 people; more than 130 meetings with municipalities and MRCs;[199] some 30 meetings with interest groups and "environmental protection groups"; fifteen meetings with local federations and delegated UPA groups;[200] thirty-five "information and consultation" group sessions with "landowners concerned by the project" and some 6,800 individual meetings; and having informed and consulted 23 First Nation communities and organizations in Quebec, which gave rise to 277 meetings, to numerous open houses, to First Nation participation in TransCanada's "Indigenous Quebec engagement

[198] I was unable to relocate this document for reference purposes.

[199] MRC stands for *Municipalité régionale de comté*, which translates as Regional County Municipality. MRCs were created by Quebec's *Act Respecting Land Use and Development*. They are administrative units which conjoin all municipalities within a given territory for the purposes of land use planning and development. MRCs are also "municipalities" in the legal sense. See https://www.mamrot.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/acteurs-et-processus/mrc/ There are 87 MRCs in Quebec. Given their uniqueness to Quebec, I have chosen to retain the French acronym.

[200] The *Union des producteurs agricoles* is one of Quebec's main agricultural unions. It worked to negotiate a framework agreement with the company on behalf of its members.

program," to five agreements, to five studies on traditional land use, and to "3156 entries in Energy East's communications registry."

But numbers like these can be misleading: their strength relies on the degree of success of their reification, that is to say, on their becoming objects unto themselves with qualities different than the circumstances they purport to index.[201] Since the early beginning of the Energy East project, TransCanada's engagement with the public was widely criticized as arrogant, dismissive, opaque, and at times intimidating. An interview with Philippe Cannon — initially francophone spokesperson for the pipeline project then later promoted to director for the Quebec portion of the pipeline[202] — complicates the unproblematic numerical story TransCanada liked to circulate. On August 21, 2013, Council of Canadians activist Mark D'Arcy cornered Cannon outside of an Energy East open house in Plaster Rock, New Brunswick, arguing that a recorded interview would be helpful to all those unable to attend. The ensuing 20-minute reluctant exchange established two principle areas of tension.[203]

First, TransCanada's insistence on conveying a palatable version of its project despite controversial aspects. In the interview, Cannon repeatedly insists that "the purpose of the project is to first cut the dependency that the three refiners have from foreign oil from Saudi Arabia, Venezuela, so they can be provided with oil that's less costly and more stable from the western part of Canada," and that this oil would be light crude oil from the Bakken, not bitumen from the tar sands — case in point, eastern refineries do not have the capacity to refine bitumen. Upon D'Arcy's insistence that port facilities are also part of the project, Cannon reluctantly concedes that "some portion of it will be, yes, exported abroad." D'Arcy presses on: "So there is no facility that could export bitumen to foreign markets?" Cannon, "that's … ah… like I told you, the original demand is from the Bakken. I am not telling you [gestures with forward thrusts of his hands], couple of years down the road … ("right") … yeah, original demand…"

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[201] J. Scott and Marshall (2009) define reification as, "The error of regarding an abstraction as a material thing, and attributing causal powers to it — in other words the fallacy of misplaced concreteness" (641, cited in Duncan 2004).

[202] And then still later fired along with 30 other cadres two days after the Liberal federal electoral victory of October 15, 2015, as part of a "corporate reorganization." Cannon was a former Quebec Liberal in the Charest Government.

[203] You can watch the interview here: https://www.youtube.com/watch?v=YwZgk7aVkT8

Then D'Arcy asks about the Bakken: "Is that in North Dakota?" Cannon answers, "Yes, but also in Saskatchewan," to which D'Arcy replies, "Shale oil? Is that shale oil?"[204] There is a short silence as Cannon's eyes widen and you see the panic set in. He shakes his head and says, "Sorry? Shale oil…?" D'Arcy replies, "Shale oil is what comes from North Dakota." Cannon, visibly relieved, says, "Well, it comes from Saskatchewan, so…" D'Arcy: "It's the same, I think it's the same field." Cannon: "Probably," but shakes his head in ignorance. D'Arcy presses on, "Do you know how the bitumen will be diluted?" Cannon replies, "Maybe we should ask that inside," but insists: "But we're not there yet… I know I'm fussy about that, but we're not transporting that."

In time, as we have seen, the portrait of the project would shift considerably to one sold primarily on the strength of providing an oversees export route for Alberta's battered tar sands industry, which involved a different kind of understanding of "national security." Instead of implying politically rational resource management for sustained domestic energy provision, this new kind of security implied defending the beating heart of the nation — i.e., its economic sector, and more precisely its resource industry. National security, in contradistinction to how it presented itself to the federal government in the 70s, did not imply insulating domestic hydrocarbon production and use from global market fluctuations and ensuring sustained access to energy sources. It meant *increased* connectivity with the global market and the facilitation of an increased rate of production of hydrocarbon resources *qua* commodities so as to fuel continued national economic growth. What the "nation" was now insecure about was missing a market ride, not getting the best available price for its resources, and losing market shares. Pro-pipeline commentators obsessed over the "discount" that had "cost" Canada billions of dollars in revenue and that had effectively subsidized U.S. producers.[205]

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[204] Shale oil and gas is almost as controversial as tar sands oil because of its extraction technique, which is done through hydraulic fracturing of the rock within which the hydrocarbons are trapped, which involves injecting a cocktail of proprietary chemicals at high pressure.

[205] For example, this argument was made in the memo from Natural Resources Canada's Petroleum Branch, cited in the previous chapter, which claimed that the lack of pipeline infrastructure had cost the industry $7.3 billion annually between 2011 and 2013 because of an inability to access better prices on the world market. The memo was one of two dueling memos — the other from Finance Canada — which fought to prevail in defining the current situation to incoming Resources Minister Carr. the Petroleum Branch's memo argued that the modernization of the NEB would "build confidence in the development of *new infrastructural proposals*" (my emphasis) in order to "facilitate development." Within their logical framework, "enhancing engagement with Indigenous peoples and advancing a National Climate Change Framework" also served "to create the conditions to facilitate infrastructure development." See the memo here: http://s3.documentcloud.org/documents/2993339/NRCan-Pipelines.pdf, and Finance Canada's memo here: http://s3.documentcloud.org/documents/2850443/EnergyEastATI.pdf

But aside from the project's responsiveness to shifting market conditions, the exact nature of the project would prove difficult to pin down for other reasons as well. As I will be arguing, this was in large part because of the difficult concordance between different species of knowledge — some aspirational, some predictive, some anecdotal, some "scientific," etc. — and the lack of transparency as to the exact nature of each knowledge claim — that is to say, as to the constitutive process that generated it.

The project's subtle elusiveness also had to do with the temporality of development and regulatory procedure. In the project's progression from general aspiration to smooth institutional object to material object, the company and its different publics had different expectations as to where, when, and how specification would and should come about. It is this contest over the locus, visibility, and democratic plasticity of specification that characterizes the politics of pipeline development today. Put differently, these politics have to do with the quality of determination, part of which hinges on political agency, but part of which also depends on what can be regarded as being indeterminate in the first place. This is why I have placed special emphasis on the plasticity of arrangements on the one hand, and on the politics of naturalization on the other.

In this regard, my argument is that in the defence of the hydrocarbon industry, what is being articulated — by the federal government and energy proponents alike — as "politics" is precisely that which has *no* place in decision-making. Prior political commitments are naturalized in the bureaucratic and regulatory order with the resulting effect that deliberation within this bounded realm can be depicted as rules-based, not value-laden. This is what Kysar (2010) terms "regulating from nowhere" (see also Torgerson and Paehlke 1990). Any challenge to these processes is depicted as "political," i.e. based on personal bias and selfish interest.

The irony of pipeline evaluations as I witnessed them was that what was meant to be most indeterminate prior to procedural completion — i.e. a decision as to the public utility of the project — was precisely what was most determinate even before negotiations began. And inversely, what was taken to be most determinate — i.e. the facts at hand and the institutional/regulatory/legal order — in the end proved to be most indeterminate and elusive. I contend that part of the problem arises from a problem of legibility: claims draw their power not from epistemological clarity but rather from its opposite — from constitutive obfuscation. If the arbitrary contingencies of measurement and calculation disappear from view, then what remains

is a "true," uncontestable object that stands on its own. This is the epistemic terrain that adversarial politics draws democratic deliberation to.

The second area of tension I want to reproduce from D'Arcy's interview with Cannon reflects this problem of legibility. D'Arcy critiqued the format of the open house, which did not allow for collective conversations. Cannon's strategy was to reply that (unspecified) others appreciated the format, and that TransCanada had a team of dedicated negotiators whose diligence should not be questioned. D'Arcy argued, for example, that it is customary for First Nations to do a circle where people can voice their concerns and have a public question-and-answer process, noting that TransCanada "does not have that as part of their public meetings; will you start doing that?" Cannon replied that he had colleagues who deal with the First Nations issue, and as for the open houses they had received positive feedback because people could come at their convenience, could go deeper with staff, and some people who are shy to speak in public meetings could feel more comfortable one on one. D'Arcy cited a CBC report where some expressed disappointment at not being able to hear other people's questions and answers, stating that including a one-hour public question session as part of the open houses would be a "small but very important component for a public meeting." Cannon replied, "Well, that's your point of view. The feedback we get from the people that are here is that it's not that *in general*[206] — people really appreciate the format that is taking place here today." D'Arcy pressed, "What would be the problem with a one-hour session?" Cannon retorted that, "This is the format we chose and people are happy with it." "But people told the CBC reporter that they would have liked a one-hour session." "And people told other reporters other things." The back-and forth continued, with D'Arcy insisting that they were used to the public session format in NB, that they had it as part of shale gas consultations, and that he did not see why TransCanada would not have the respect to do that to. Cannon replied that he did not feel it was a lack of respect to send specialists. "But it's not public," D'Arcy persisted, and attendees were not allowed to record technical answers that were given even though a lot of people would have benefitted from it.

There are three aspects I want to emphasize from the exchange. First, TransCanada's pervasive strategy of de-collectivizing negotiations and keeping these negotiations away from public view. Second, the attempt to close debate by appealing to expertise and due process — the

[206] My emphasis.

issue is moot because competent people elsewhere have been assigned to put into effect best-in-class or state-of the-art technologies and processes. Third, appealing to "the general" as an effective counter-weight to potentially problematic specificity. This was especially salient during the BAPE hearings, where it became increasingly obvious that the project being evaluated was mostly aspirational, both in terms of its relation to the past and to the future. That is to say, the relation to past events and to technical specificity was mediated through measurement and calculative schemes that represented the company's semiotic aspirations perhaps more than they contributed to evaluative functionality. Or, put differently, these representations were constituted for procedural expediency more than dialogical problem solving.

Let's have a look at these three points in greater detail.

Contested publics

D'Arcy's argument would prove to be a recurrent and widespread critique of TransCanada's public relations in Quebec, coming from citizens and municipal officials alike. They deplored TransCanada's opaqueness and poor responsiveness and the lack of details available, namely in terms of environmental impact studies, emergency response plans, and specifics about the pipeline's location. They mistrusted the unproblematic corporate veneer the company confidently lacquered over itself and its project, just as they mistrusted that the federal regulatory and decision-making system would include and defend their interests. Eventually, the mistrust also targeted the Quebec government, who seemed reluctant — or at a loss as to how — to fully assert its authority.

As three interviewees described it,[207] TransCanada's open houses came across as an intimidating barrage of specific expertise combined with all the limitations of a sales pitch. O.S.: "TransCanada would arrive with all their montage and some 50 people, full of kiosques all well set-up and their specialists, one for water, one for pipe thickness […]." J.G.: "Quite the showcase." Me: "Why was this expertise not considered useful?" O.S.: "Well because they were salespeople, it was literally salespeople, you know if you come to sell me your car…"

J.G. provided explanations that echoed D'Arcy's reflection, saying that in Quebec people are used to debating things collectively, whereas,

[207] The interview was conducted in French on November 14, 2016, with representatives from the *Conseil régional de l'environnement de Lanaudière*, the *Regroupement des Comités Vigilance Hydrocarbures de Lanaudière*, and the *Organisme de bassin versant Zone Bayonne* (also located in the Lanaudière region).

> TransCanada's open-house format, when we went, there was between 20 and 25 people with red shirts, and when we walked in there were even people with cameras filming you, from the company […]. But it was like they say a showcase […]. There was a piece of pipe in the middle, there were maps and pretty kiosques, it was beautiful, you know, it looked like a store […]. And there people, when you would ask a question […] — there was on interlocutor who would say, "Yes, your question is excellent, but wait a little while I go fetch an expert" […]. And in the time that you were there waiting for them to get someone else and debate the question and come up with an answer, somebody else would come up with a, "Yes, hello, can we help you?" So you were in a big store, and everyone had their answers, all the answers were there, but there never was any debate with a panel and people at the front.

I found many similar accounts of TransCanada's "consultations." J.G. called them a "showcase," others called it a "sales pitch" that did not correspond to the level of risk (Maynard 2014b), especially where the pipeline would cross important rivers providing drinking water to almost half the province's population. Designed to inspire awe and confidence, TransCanada's performances pushed many citizens towards mobilization and collective organization, giving rise to local *Stop Oléoduc* committees along the pipeline. In turn, these committees applied considerable pressure on their municipal councils, which themselves gradually mobilized and collectivized their efforts. For example, the *Stop Oléoduc Bellechasse* committee took shape after TransCanada's October 18, 2013 public presentation in the municipality of Saint-Michel, to which 25 people took part. The committee collectivized the interests of 17 landowners engaged in agricultural and forestry production. While they could understand that their municipal officials, whom they met on December 2, were favorable to the project because of land tax revenues the pipeline would bring, they felt that they themselves would get very little in return and expressed powerlessness: "We feel like we don't really have a choice and that we are left to our own devices in this case. Even if we wanted, we would have little to no recourse against it" (Lamontagne 2013, my translation).

While the *Stop Oléoduc Bellechasse* committee had mitigated success with their municipal representatives, other committees were very successful. The Bellechasse MRC extends south-east of Quebec City from the south shore of the St. Lawrence river. Following the pipeline north-east from there would take you through the MRCs of Montmagny and then L'Islet. The L'islet MRC was the first to declare opposition to *any* pipeline path through its territory, on February 10, 2014, in response to concerns expressed to its officials by the *Comité citoyen Montmagny-L'Islet* about threats to water and agriculture.[208]

[208] The full name of the committees generally followed the pattern of *Comité citoyen stop oléoduc* (Stop Pipeline Citizen Committee) followed by the area the group represented.

During an October 14, 2014 open house in Cap-Saint-Ignace,[209] TransCanada had some trouble meeting citizen expectations. Two *Stop Oléoduc* committees — for Montmagny-L'Islet and for Kamouraska — had incited citizens to participate in Cap-Saint-Ignace and Saint Damase the following day given that the path would soon be finalized.[210] They had a number of worries, about farmland and forest cover, the proximity to population centers, the risk to drinking water,[211] and the potential presence of two noisy pumping stations in the region.[212]

Citizens came armed with very specific questions, such as "Which waterways in the region will benefit from shut-off valves?"; "What is the sensitivity of the pressure sensors that detect leaks, in kilopascal?"; "How can you guarantee that the company will not go bankrupt?"; "What kind of pumping station will be built in Cap-St-Ignace?" To these, TransCanada staff could only provide evasive answers. Some attendees complained about the poor mastery of French demonstrated by some representatives that left them unsure whether their questions had been understood and which contributed to the hesitant quality of the answers received. The L'Islet[213] municipal councilor, who had been asking TransCanada representatives the same question for more than a year — i.e. "what is the smallest leak detectable by TransCanada's detection system?" — made a show of his annoyance at the dubious answers he was receiving until they finally took him into a separate room and provided an answer: a spill of 1.5% of total flow can be detected within two hours (Théberge 2014).

There are a few things to say about this. First, this 1.5% circulated widely among objectors to undermine TransCanada's matter-of-fact dismissal of safety concerns. A 1.5% threshold of detectability implied that anything below could go undetected for an indeterminate length of time. In a 1.1 million barrel-a-day pipeline, considerable damage could be done before anyone was the wiser. The report produced for the D'Autray MRC cited the number, calculating

[209] Cap-Saint-Ignace is a municipality some 50 km north-east of Quebec City on the St. Lawrence's south shore, part of the Montmagny MRC in the Chaudière-Appalaches region.

[210] Indeed, TransCanada submitted its massive application on October 30, just two weeks later.

[211] Stating that one liter of oil was sufficient to contaminate two million liters of water.

[212] Aside from the noise and light pollution that pumping stations generate, most accidental spills also happen there. TransCanada, namely during the BAPE hearings, presented this as a reassuring fact because pumping stations were controlled environments, so these spills could be disregarded as insignificant in terms of risk determination.

[213] The next municipality downstream from Cap-Saint-Ignace.

that 2.6 million liters per day could escape the pipe undetected.[214] The 1.5% threshold was often combined with other statistics. Équiterre, an influential Quebec ENGO that was very active in the resistance against Energy East, used data from the Transportation Safety Bureau on TransCanada's track record since 2004 to argue that a majority of spills were not detected by the company's sophisticated system of sensors but visually instead, often by passersby. Only 13.5% of leaks had been detected with the Supervisory Control and Data Acquisition (SCADA) system, which monitors the pipeline from a control room in Calgary. Équiterre reported similar findings from the Pipeline and Hazardous Materials Safety Administration (PHMSA), a division of the US Department of Transport, which found that only 12% of the 197 spills surveyed between 2010 and 2012 were detected with a long-distance detection system such as SCADA.[215]

Greenpeace, during public consultations held by the Montreal Metropolitan Community (MMC) in September 2015, pointed to the recent Nexen spill as an example of the risk inherent to the 1.5% knowability threshold. The state-of-the-art, double-walled pipeline equipped with a "failsafe" detection system was installed in 2014. The spill, which occurred between June 29 and July 15, 2015, was detected visually by a passerby. It discharged some "5 million liters of bitumen, sand and wastewater over a 16,000-square-metre area" near Fort McMurray, in Northern Alberta (Mehler Paperny and Gilligan 2015). Nikiforuk (2012) cites the U.S. National Transportation Safety Board on the broader point that, "Despite their sophistication, the detection capabilities of in-line inspection tools have limitations. Each tool technology has a stated minimum defect size that can be detected and the tool can be subjected to interference from nearby anomalies or geometry."

Truth and the legibility of objects

Which leads to the second point. The issue is not so much about inconvenient facts as it is about indeterminacy. As emerged during the BAPE hearings, the SCADA system does not detect spills, it detects changes in pressure within a pipe, which can occur for a variety of reasons such as

[214] The report was produced by two consultancy firms, J. Harvey, Consultant et Associés — with expertise on energy and sustainable development — and ECOgestion Solutions — specialized in urbanism, environment, and integrated water management. The extensive report, released in January 2015, was widely influential. It offered specifics to TransCanada's many generalities, and as such served as the backbone for growing opposition among citizen and environmental groups and municipalities. The report can be consulted here: http://www.mrcautray.qc.ca/uploads/editor/file/Rapport%20Autray%20FinaleREDUIT.pdf

[215] You can find the argument here: http://equiterre.org/fiche/une-strategie-de-detection-pleine-de-trous.

heat and the type of oil currently transported.[216] As explained by Jake A. Abes, an industry specialist:

> I think the challenge for any operator in the control room is that […] 99.9% of the time you get signals from a pipeline because there are variations in pressure that will send signals [that] most and the majority of the time […] need to be interpreted and they're not ruptures. So there are a lot of what are called nuisance alarms, depending on how sensitive the settings are set on the leak detection system. So if one continually gets a lot of nuisance alarms, when the real on comes, there needs to be that vigilance to understand that that's the real one. […] So there needs to be that constant reinforcement that when something does happen that cannot be properly explained, that people need to be, need to feel comfortable to be able to shut down the system.

As Abes explained, this kind of behavior requires continual reinforcement by the company, on the one hand through recertification and training, and on the other through a culture of safety and precaution.[217] Shutting down a pipeline is costly, which puts various kinds of pressure on everyone.

The point I am trying to make here about indeterminacy is not that knowledge, which relies on a plurality of mediating instruments, agencies, and assumptions, can never capture anything in an encompassing or definite way — though this is certainly mostly true and relevant. But this is a question of accuracy. What I want to index here more particularly are the interpretive leaps and closures that any claim must make in order to circulate across venues,

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[216] The explanation below is summarized from Harvey Consultants & Associés and Écogestion Solutions (2015). Oil products are transported sequentially in 150,000- to 200,000-barrel lots, with incompatible products separated by buffers. Different categories of oil can have widely differing compositions, characteristics, and behaviors. For now, I will just explain the following: Oil can have a range of densities, which is why oil types are categorized, *inter alia*, by their differential "heaviness," measured by the API (American Petroleum Institute) index. The higher the number, the lighter the density. Water has an API of 10°; light oil (e.g. from the Sahara) has an API above 31.1°; heavy oil, below 22.3°. Bitumen, which is almost solid at ambient temperatures, has an API between 7° and 9°, which is why it has to be diluted, most commonly with between 25% to 30% of natural gas condensate, hence the term "dilbit."

Heat can change depending on the texture of oil. For example, dilbit, even though also mixed with a resistance-reduction agent (subject to commercial secrecy), still produces more friction than other oils so requires more pumping power and pressure, hence generates more heat. There are two other principle processes with which to make bitumen more mobile, resulting in either syncrude and sunbit, which I will not explain here. In their introductory presentation at the March 7, 2016 BAPE hearing, TransCanada said the pipeline would transport 45 different types of oil.

[217] Abes's intervened at the March 10, 2016 BAPE hearing. You can find his intervention on pp. 112-114 of the transcript, available here: http://www.bape.gouv.qc.ca/sections/mandats/oleoduc_energie-est/documents/DT5.pdf

which is a question of portability and legibility.[218] The various representations that TransCanada can make of its SCADA detection system — whether as failsafe and perfectly accurate above 1.5% of total debit or moderately safe depending on the competency of the operator and the culture of the corporate environment — do not change the distribution of "truths" to "falsehoods" as much as they change the *kind* of knowledge being transacted.

This connects with a more general problem that we have been discussing in other respects. How many factors do you have to exclude from a "piece" of "information" for it to circulate as purely "technical"? Or, alternatively, how many factors would need to be included to represent exactly how a SCADA system works (or does not work)? For a citizen being "consulted" on a future pipeline project, whether the company's detection system is a neatly packaged guarantee of swift corporate management of potential risks or a partly indeterminate assemblage of human and machine has a considerable impact on the range of responses available to this citizen. In the case of the former, it is a prowess one can but spectate and applaud; in the latter, it is matter for consideration, ponderation, evaluation. The former is technical in the sense that "technicality" is generally conveyed in these settings: it can be performed according to the best possible knowledge with the best possible technology. In the latter, because it is indeterminate, it is political in the sense that it involves other domains of judgement than are involved in ensuring mechanical functionality. The reason I qualify this as political is that these choices have differential impacts that cannot be simply situated on a binary scale of more or less success, but should rather be understood as favoring certain kinds of outcomes over others. The complex contingent calculous that operators must effectuate between corporate profit imperatives, low leak probability, and the severity of leak outcomes requires the exercise of an agency that cannot be contained within expressions of technical competency. Accordingly, if the safety of citizens will depend on such complex and indeterminate systems, then these citizens

[218] See Duncan (2004) for a demonstration of how the limits of scientific knowledge — e.g. the conditionality or contingency of its formulation — tend to be obscured in the regulatory process, with narratives filling the gaps and universalizing conditional knowledge. As Duncan argues, while validity is measured by transparent and robust methodology, facticity is generated by the opposite, by authoritative black-boxed representations detached from the processes that spawned them. In such contexts, the circulation and mobility of knowledge claims contribute to their authoritativeness as they "can be accepted as authoritative not on an empirical or 'scientific' basis but with a simple move from one arena or from one set of actors to another" (396; see Hunt and Shackley 1999). Which is to say, the circulation itself acts as a mechanism of validation based on credibility (see Shapin 1994).

have more complex choices to make than simply acknowledging the public display of corporate proficiency.

And the SCADA system is but a minuscule part of the more-than-human assemblage that pipelines are, assemblages that also incorporate much less compliant actors than SCADA operators or even pressure sensors might be — such as electrons or bacteria, whose interference are a central cause of pipe corrosion.[219] A pipe section in the middle of a showroom is a very different object than a pipe section in the wild, so to speak. I will leave this aside for now to return to my point. Surely, TransCanada staff standing around at open house "consultations," when asked something like, "How can you detect a leak?", could not really launch into the exhaustive description of technical and ecological indeterminacies combined with the multitude of subtle pressures each operator might feel in their personal and professional lives on any given day.

My point here is two-fold. First, an operator's susceptibility to the implicit demands and expectations of her superiors and colleagues can hardly be qualified as "technical" or "scientific." Second, it cannot be generalized and systematized, packaged and transactioned in any expeditious and convenient way. What is indeterminate, here, beyond the more-than-technical-assemblage, is life itself as a going concern. So any kind of transactionable piece of information in this context does two things: it cuts inconvenient species of knowledge out of the equation, leaving for example only what can on the surface be qualified as "technical"; and it performs a kind of fiction — or as Duncan (2004) puts it, fills in the gaps with narratives. In these cases,

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[219] In the previous chapter, I mentioned an NEB report on a pipe rupture on the Peace River Mainline that remained buried for a few years. The report found that bacteria had caused "particularly aggressive growth rates" of corrosion which the "inline inspection tool failed to accurately assess." Ninety-five percent of the pipe was corroded at the burst section. A research project funded by federal and provincial governments sought to mobilize genomics to improve our understanding of rust-causing bacteria that live in pipeline sludge, which we apparently understand about as much as we understand cancer. Corrosion costs industry $3 to $7 billion per year in "maintenance, repairs and replacement." Microbiological influence makes up 20% of that number (M. Smith 2016).

The reference to electrons indexes the problems that can arise when pipelines are laid in proximity to high tension wires or other pipelines, which can interfere with a pipeline's cathodic protection. In simple terms, cathodic protection diverts rust away from a pipeline by linking it to a "sacrificial metal." TransCanada's Keystone pipeline, as "modern" a pipeline as the Nexen pipeline, experienced more than a hundred spills since being put into service in 2010. The US Pipeline and Hazardous Materials Safety Administration (PHMSA) found that "stray current D.C. interference from foreign pipelines" caused metal loss between 60% and 97% in four sections." The worst hit section had a 0.0120 inch of wall thickness left. The Administration identified mechanical failure as the proximate cause, but blamed TransCanada's slowness to engage in corrective action as a more general problem. See the PHMSA's notice to TransCanada here:
https://primis.phmsa.dot.gov/comm/reports/enforce/documents/320155010/320155010_NOPV PCP PCO_11202015_text.pdf

accuracy (to go back to that), if it cannot be qualified as the degree of correspondence to that which is being represented, should be achieved through the visibility of the processes involved in producing knowledge artifacts (see Latour 1999). It is by this ethical standard — rather than by statements of factual accuracy — that knowledge claims should be judged in a dialogical context like pipeline debates, because it provides the tools to evaluate exactly *what* the claim is about, and whether this claim is then useful in determining whether the project might be desirable. Often, competing claims — like that about the SCADA system or about the probability of leaks — are not attempts to accurately represent either past events or a static knowable concurrent world, but are speculative concoctions of the future.

Evidence, deliberation, and personification

I have taken a long route to make my second point, but it is important for my overall argument. For the moment, however, the takeaway is that TransCanada transacts in opaque determinates: claims that not only hide their constitutive processes, but that close down the complicated heterogeneity of the systems they index. This is the case when TransCanada attempts to close down debate about potential risks by vaunting state-of-the-art technologies, modern processes, an irreproachable culture of safety, etc. It is also the case when they list impressive public engagement statistics. In the end, TransCanada could go to the media and say: "We've talked with the population and answered their questions."

But as J.G. put it, "there never was any debate […]. The communication process was biased from the start." At one of the open houses he attended, J.G. cornered one of the representatives and, after chatting for a few minutes, asked her, "You're a biologist, what could possibly stop this project?" And then — "you know, like we should always trust in human nature" — she turned red, looked left and right, and rather presciently said: "Social acceptability."

Which brings me to the third point I wanted to make about TransCanada's open-house consultations, but which applies to a wide variety of processes: the relational limits of representation and personification. This relates to my overall investigation into the nature of collective objects, or "assemblages."[220] What exactly *is* TransCanada, and how can you enter in relation with it? When do you know that you have met TransCanada, and to what extent and

[220] See De Landa (2006) for the usefulness of Deleuze's theory of assemblages, which offers a way to analyze apparent wholes without assuming their prior, generalizable objectness and organic functionality.

degree can you truly communicate with it, in the sense that both you and TransCanada have the potential to come out of the encounter transformed? This refers to the kind of entity that TransCanada might be, and also to the manner in which its relationality is materialized in the world and its agency exercised.

This notion first came to me while following the NEB's Aboriginal Oral Traditional Evidence sessions for Energy East, held in November and December of 2015. These hearings were held to give an opportunity to First Nations impacted by the project to broaden TransCanada's and the NEB's understandings of the impacts that the pipeline could have on them. The NEB defined Aboriginal Oral Traditional Evidence in contradistinction to "technical and scientific information [that] is best provided through written evidence and tested through the information request process." In traditional evidence, on the other hand, "the Board expect[ed] to hear testimony about sacred sites, ceremonial sites, and traditional uses of land and water in areas through which the proposed Projects would pass, and how these areas could be impacted by the proposed Projects" (NEB 2015).[221] There would be much to say about these hearings and the assumptions underlying them,[222] but I will limit myself to the point at hand: beyond the fact that the NEB panel got a lot more (and less) than it asked for,[223] what was the NEB and TransCanada to do with the generous and meticulous accounts of the historical and

[221] You may have noticed my exceptional use of bibliographic reference for this particular document, in contrast to the direct links I have provided so far for other similar documents. Governmental and corporate documents consulted during the controversy have proven particularly elusive after the fact. Where possible, I have chosen to use direct reference to facilitate consultation. I was however unable to track down this particular document.

[222] At the end of a presentation which I cite below, the NEB chairman, when asked if anything would come of the exchange, while taking pains to emphasize how early on in the process it was, had an interesting slippage: "What I was trying to say, also, this is very early in the process and we don't even know that there — where it's going to end up in terms of actually — are we actually to receive the application as complete and then, if we do, then there are other processes where you can provide more technical and scientific information if that is something — *in other words, more factual information*. Factual based on science on — anyways, I'm probably going too fast and ahead of myself here, but we're here because it's important for us to hear, very early on in the process, exactly the type of information that you're sharing on the potential impacts, whether they're positive or negative, because it depends how things are done. That's what we're here to listen to" (par. 1205, my emphasis, see transcript here: https://apps.neb-one.gc.ca/REGDOCS/Item/View/2856290).

[223] After a long account of the significance of one particular site, an intervenor asked if the NEB had any questions. After a moment of silence, he posited: "So if there's no question, then I take it you totally understood everything." The NEB chairman said, "Well, we need time to probably digest what these stories are. But I did have one question, actually. Energy East has a project going through your traditional territory. And we've heard stories of some previous events that had impacts on your traditional story. Can you talk to what impacts the Energy East Project might have on your traditional territory?" (par. 1101-1106, see transcript cited in footnote 222) Throughout these hearings, the procedural boundaries of what the NEB intended Aboriginal traditional evidence to be proved difficult, almost impossible, to obtain.

contemporary state of First Nations' livelihoods, lands, spirituality, relationality, and of the destitution visited on them by settler society?

There was a palpable incongruence between intervenors' presentations and the procedural setting. An exchange between members of the Piikani First Nation and the NEB will clarify my point.[224] After a long presentation, an elder concluded:

> I had a friend one time, he was in Banff and he was asked to give a speech. And he walked in with his buckskin outfit on. And there was just a handful of native people in there. And he told his — gave his speech in Blackfoot for 15 minutes, and everybody sat there quiet, looking and wondering what's going on. And he said, "You've been with me for how many hundreds of years and you still don't understand me," you know. So with that story, we're hoping that you understand us for the information we're sharing with you today, which is sacred to us. […] So I'm — I kind of got something on my mind. I'd like to ask the Panel something. Like with the stories you're being told today and information that's being given out and that, what do you see coming of it?[…]
>
> [NEB Chairman] Well, at this stage in the process […] we're going basically mostly across Canada to listen to oral traditional evidence. We're trying to understand basically what the impacts would be on your traditions and your way of life. This is very early in the process. We haven't even set what we call a Hearing Order. […] Also, I can't quite answer your question in the sense that we may decide that this application is incomplete so we just give it back to the Applicant. Like we're in listening mode. We're not in decision-making mode at this stage. But essentially, we're trying to understand what impacts this could have on you. […] [O]ur decisions are based on the facts, and what you're giving us today are facts (par. 1162-1186).

What the chairman failed to address was the elder's request for increased epistemological visibility, and so democratic accountability.[225] Besides hearing, how exactly do you *decide* on the basis of what you hear? A letter dated July 30, 2015, written by the Kahnawa:ke Mohawk Council, also iterated this point, "requesting more information on the scope, purpose, methodology and procedure that will be used to collect oral traditional evidence in order to be in a position to get *informed consent* from elders."[226] Among other questions, the Council wanted the NEB to: be more specific about *why* it wants oral traditional evidence (OTE) an *how* OTE would clarify the project's impacts; specify how oral traditional evidence fits within the NEB's published "list of issues"; "demonstrate its flexibility required to receive and weigh oral traditional

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[224] You can find the transcript here: https://apps.neb-one.gc.ca/REGDOCS/Item/View/2856290

[225] This was a widespread critique of the NEB's — and more widely the government's — evaluative processes. Even after the Trudeau government came to power in late 2015 and added a review panel to extend pre-existing pipeline reviews — namely on the West Coast for the Trans Mountain Expansion project — the process came under "blistering critique" for putting on empty consultation performances for a project whose outcome was already pre-determined. As one observer put it: "With no investigative powers, scientific expertise, or resources to speak of, the panel members sit mutely in their chairs and jot down a few half-hearted notes as people plead with them from the microphones. At the end, their report goes into a top hat and — poof! — the minister pulls out a yes or a no" (Nagata 2016).

[226] Emphasis in the text. The letter can be consulted here: https://apps.neb-one.gc.ca/REGDOCS/Search?txthl=A4R8J7

evidence" given the scope it proposes on what OTE is not. The Council felt it was unrealistic "to comment on potential impacts" while not commenting on "contemporary context/facts"; and unrealistic "to limit their testimony to what is strictly within the Board's purview in terms of jurisdiction under the *NEB Act*." The Council also wondered how OTE would "be weighed in the NEB's decision-making process, and according to what parameters and principles?"

In a manner similar to TransCanada in its own public engagements, the NEB's reply clarified precious little about the nature of evidence and its decision-making process, other than reiterating its definition of OTE and boasting about its expertise, skills, specialties, and experience. The closest the NEB got to an answer was saying that its "determinations will be made in accordance with the Board's mandate as defined in its governing legislation, including the NEB Act and the CEAA."[227]

The Piikani Elder, after the chairman's answer that they were "in listening mode" and not at a stage where anything was being decided yet, reiterated that they had had consultations like this before, which just "fell on deaf ears":

> So we need to be serious because a lot of work goes into this, a lot of walking and a lot of good intentions that we're going to do — these are going to be protected because I'm out there and I pray, and I talk to the people, the Elders that have gone on that built the sites. I say well, we're here to protect you, we're here to make sure you're not disturbed, that you recognize your ceremonies weren't in vain, that you did help people and you're still helping people. Then you walk away and then they get destroyed.
>
> [NEB Chairman]: I did notice that you were looking at the proponent or the company that's proposing that this be built. And that's another advantage that this process has, is that the company that is going to — if we give them permission to build this pipeline, has also heard you. So we, as the regulator, have heard you. The Applicant, Energy East, has heard you. And that's why they're here in the room. We want them to listen and we've given them the opportunity to ask questions to understand what you're saying also. Apparently you've been very clear in what you've been saying, so there has not been — they have not asked for those clarifications (par. 1193-1196).

So the NEB hears, and TransCanada hears, but how exactly "TransCanada" — through the experience of its dispatched representatives sitting in the back — was moved or changed by the presentations is an open question. TransCanada's outside legal counsel, speaking for the company, would invariably provide the same answer, a variation of: "On behalf of Energy East, I would like to thank the Piikani First Nation very much for the information that you've generously shared with us today. In particular, we are thankful for the information you've shared about the

[227] I was unable to relocate the NEB's answer for reference purposes.

Great Sand Hills, and we look forward to understanding more as the engagement process continues. We don't have any questions for you at this time" (par. 1215).

I do not mean to rule out the company's potential sensitivity to local challenges or its ability to propose route changes in response to information or push-back it received along the way, which it did. What I am pointing out is on the one hand the tensions between modes of knowing and operationalizing knowledge; and on the other limits to relational exchanges because the kinds of persons involved in the exchanges are of a different order — that is to say, they come as different agentic instantiations. While an individual citizen or a municipal councilor might change her mind about a project after being confronted with different perspectives, claims, and arguments, TransCanada cannot. A TransCanada representative could, but this would have little bearing on TransCanada's "mind" or on the nature of the exchange, the purpose of which is to move past obstacles towards the completion of the project. Representatives cannot experience as, and act for, the company as a whole — especially not in the same temporal frame as the individuals they are facing do. They can only interact within the given limits of their mandate, scripts, and responsibilities. In open house settings, this mandate essentially was to give a convincing representation of the project and diffuse any potential areas of tension. They were not sites of consultation nor even of information if we understand information as the problematization of face-value appearances — let alone were they sites of collective debate. Regulatory hearings, as we have hinted at above for the NEB and as we will see later for the BAPE, also have their own relational limits.

Pipelines and municipal planning

TransCanada's open house sessions — and their public relations in general — would meet increasingly mobilized resistance. During the third set of open houses, in November and December 2015, the *Mouvement Stop Oléoduc* and the *Fondation coule pas chez nous*[228] invited citizens

[228] *Coule pas chez nous*, which can mean literally "don't flow in our home," plays on the French word "coule," which can mean both "flow" and "leak." *Coule pas chez nous* was initially a campaign launched by the *Stop Oléoduc* movement in May 2014 to inform and mobilize citizens and municipalities. The concerns stated were GHG emissions, water contamination, TransCanada's efforts to isolate landowners, the "incomplete and biased" nature of the information it shared, and the lack of details about the project communicated with citizens and public officials. The campaign was turned into a non-profit foundation after 24 representatives from 13 groups met on April 2015, as a means to ensure the project's continuation. The first board of directors included members from five loosely affiliated pipeline/hydrocarbon resistance groups. *Coule pas chez nous* is a good example of the wider framing of the pipeline debate as a collective project against the hydrocarbon economy. Since the assumption was that the biggest challenge to energy transition is mobilizing political and economic will, imposing infrastructural limits on the industry made sense as a first step forward (see e.g. Gilbert 2015). Supporters of the pipeline tended to take the

to "build a social wall against Energy East" by gathering at the door of the open house buildings.[229] So while TransCanada's efforts were designed to impress, reassure, and disarm collective resistance, they arguably had the reverse effect, sowing suspicion and reaping collective pushback.

A similar sort of dynamic played out with TransCanada's relation to municipal officials. A representative from the Vaudreuil-Soulange MRC, in November 2014, described how the company ignored the MRC's choice between two alternate paths, and questioned the validity of TransCanada's consultation: "We want these to be reunions between specialists, not a meeting between our specialists and their public relations advisors" (Jacques 2014, my translation). The MRC depicted these meetings in its October 2015 brief presented during the Montreal Metropolitan Community's (MMC) consultations on Energy East[230] and in the brief it submitted in April 2016 to the BAPE:

> A few meetings were held between representatives of the company and the officials responsible for fire safety on the territory. However, these meetings turned out to be controlled demonstrations of the company's good know-how rather than collaborative work meetings. These meetings were public relations exercises. The municipalities and their emergency services expect more responsible and professional actions from a promoter as important as TransCanada Pipelines and its Energy East Pipeline project (4, my translation).

After "four meetings and multiple letters" with TransCanada representatives, "the MRC still had received no written documents, and this two years after the start of the discussions." The MRC council's decision to not deliver any municipal "certificate, permit, or authorization until TransCanada has submitted the required documents" was unanimous (6).

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opposite view: let the industry do its thing, when people are ready to transition — when it will be the right time — the market will simply make it happen.

[229] As far as I could tell, the expression "social wall" came from a July 2015 news article (Shields 2015a). The journalist depicted Trudeau's position on Energy East as predicting a "mur social" in the current state of things. Trudeau comment was meant as a pre-election dig against Harper's gutting of the federal environmental assessment processes, and as a conveniently strong position on the pipeline *debate*, though not on the pipeline itself. Trudeau did not take position against the pipeline, but in favor of EA reform that would renew public trust and generate social licence. This is yet another instance of procedural politics: strong and agentic on form, elusive on substance.

It is also useful to remind ourselves that TransCanada's third open houses were taking place during the Paris conference on climate change. *Stop Oléoduc* organizers framed their resistance as not only about a pipe but about the pipeline's incompatibility with the GHG emissions reduction required for the survival of our species and its habitat (see e.g. Berthiaume 2015).

[230] The MMC brief, where the passage quoted above can be found, can be viewed here: http://cmm.qc.ca/fileadmin/user_upload/consultation/oleoducTranscanada/M100_OLEODUC_MRC_VAUDREUIL-SOULANGES.pdf

In August 2016, the MRC's deputy director general stated that, "All they do is public relations. For example, during our last meetings on fiscal questions, they actually said that we didn't know how to count, even though we had mandated a few analyses" (Meloche-Holubowski 2016, my translation). The MRC's pointed concerns came from already having 253 hectares "alienated by the passage of other pipelines," of which 25 hectares were situated within urban areas (5).[231] The fiscal study they mandated found two principle disadvantages to pipeline rights-of-way. First, they are subject to a regressive mode of taxation, whereas the value of other taxable properties increases with time and the real estate market. Second, pipeline rights-of-way preclude future construction within their boundaries, so do not contribute to economic synergy in the community.

The wider concerns raised by the Vaudreuil-Soulange MRC — TransCanada's arrogance and poor responsiveness, the lack of specific data on key environmental issues and emergency measures, the threat to water, and the interference of the pipeline on land use planning through territorial fragmentation — were recurrent concerns for municipalities, especially for large urban communities like the MMC who had adopted its *Plan métropolitain d'aménagement et de développement* (PMAD) "after laborious negotiations" between the 82 agglomerated municipalities in December 2011.[232]

The pipeline interfered in two way here. First, it conflicted with municipal plans — for example, the pipe would have crossed numerous wooded areas protected by the PMAD, in addition to wetlands and waterways (Corriveau 2015). Areas like woodlands and wetlands are essential to territorial management given their hydrological role, namely in terms of aquifer recharge. Second, because of the way the pipeline project asserted its own territorial and geographical priorities and given the company's commitment to exclusive federal political power — that is to say, as superseding in importance and authority anything that might be generated

[231] From the MRC's MMC brief. See footnote 230.

[232] PMADs — which translates as Metropolitan Land Use and Development Plan — are a central responsibility of the province's two metropolitan communities incorporating Montreal and Quebec City and their surrounding areas. The PMADs engage municipal and governmental actors to cohere and harmonize their territorial interventions according to sustainable development principles (social equity, economic efficiency, and environmental protection), in order to promote the areas' attractiveness and competitiveness. See https://www.mamrot.gouv.qc.ca/amenagement-du-territoire/orientations-gouvernementales/communautes-metropolitaines/; and for greater detail: https://www.mamrot.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/planification/plan-metropolitain-damenagement-et-de-developpement-pmad/

more locally — Energy East presented not just an administrative impedance but an insult, effectively dismissing the dedicated and deliberate work of municipal service.

As the MMC explained[233] in early 2016: "In the end, TransCanada does not appear to have consulted or taken into account, in the design of its preliminary path, the territorial planning documents elaborated by the different levels of municipal government," concluding that "the path does not respect the PMAD's orientations, objectives, and criteria" — despite explicit requests by many municipalities that TransCanada conform its project to their territorial planning. It is important to note the exact nature of the municipal complaint here. TransCanada boasted having been receptive and made dozens of changes to its pipeline to accommodate local particularities. But the MMC's critique was that, "TransCanada does not provide details as to the relative weighting of criteria in the choosing of the path, including those taking into account the tools of territorial planning. The absence of weighting factors does not allow municipalities to judge the path chosen, and hence evaluate whether it indeed has the least impacts." While TransCanada made it possible to contest the route, it made it extremely difficult for anyone to evaluate the method by which interventions were considered and the route determined.

These two aspects — planning and development on the one hand, and processual agency on the other — explain much of the impetus and pattern of municipal concern and protest as they arose. Administrative units like MRCs, the MMC, and the Quebec Metropolitan Community (QMC)[234] have specific obligations and responsibilities affected by pipelines, namely sustainable territorial use, environmental protection, public security, and social and economic development. The *Municipal Powers Act* also gives them competency over waterways. As the MRC D'Argenteuil explained in a presentation given at the NEB Pipeline Safety Forum and in a brief presented at the MMC, new energy infrastructure must not only fit within an MRC's *Schéma d'aménagement et de développement* (SAD)[235] — so accommodate the concerted efforts of communities

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[233] The document cited is part of a series of documents explaining the position that the MMC took in January 2016 after conducting public consultations in September and October of 2015. http://cmm.qc.ca/fileadmin/user_upload/documents/20160203_transCanada_fiche_instrumentsPlanification.pdf

[234] MRCs and urban communities were the result of efforts beginning in the late 1950s to pool and redistribute resources and coordinate services across municipal communities. While both are considered "supralocal," they are not identical. Urban communities incorporate and overlap with MRCs. See https://www.mamrot.gouv.qc.ca/organisation-municipale/historique/presentation/; and for greater detail: https://www.mamrot.gouv.qc.ca/organisation-municipale/organisation-territoriale/instances-municipales/paliers-municipaux/

[235] The Planning and Development Scheme is to MRCs what PMADs are to metropolitan communities. For specifics, see https://www.mamrot.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/planification/schema-damenagement-et-de-developpement/

to envision and enact desirable futures — they must also be incorporated into the obligations and responsibilities of municipal officials. This is why municipalities were so adamant about specific information, detailed emergency plans, and responsive communication, because they felt that in their scramble to adapt and prepare to TransCanada's plans, their legal duty was being obstructed by the lack of corporate transparency and regard for the importance of their work.[236] As the D'Argenteuil representatives put it at the Safety Forum, municipalities felt like they were becoming managers of high risk while receiving very little economic benefit.

Municipal opposition and environmental concerns

In Quebec, the first wave of resistance coming from municipalities was expressed in resolutions asking the provincial government to mandate a BAPE evaluation of the project. It is important to note that the news of the pipeline hit the municipal world like a "kick in the teeth," as one interviewee put it, with the lack of available information contributing to a growing sense of panic. Appealing to a provincial review of the project was a way of putting some kind of buffer between them and what many perceived as alien forces that could not be trusted — namely TransCanada, the NEB, and in some ways the federal government — putting an awkward onus on the Quebec government. As J.G. put it during our interview, if the company is your only source of information, "you're done for!"

So citizens scrambled and mobilized to gain some leverage over the project, putting increasing pressure on their municipal councils. As early as July 8, 2013 — before TransCanada's official announcement of the Energy East project — the municipality of Saint-Alban (about half-way between Trois-Rivières and Quebec City) passed one such resolution. It asked the provincial government to mandate a BAPE, citing mostly general concern that the project and its effects should be adequately surveyed. Of particular concern was "[...] that the NEB's public hearings cannot guarantee a sufficiently wide and flexible frame to provide Quebecers access to the debate in an inclusive and non-restrictive manner, and that they [the NEB] will not take into consideration the environmental and socioeconomic context of upstream and downstream activities related to the project."[237] Municipal officials and their citizens had a

[236] As argued by D'Argenteuil senior analyst Frédérick Jones and prefect Scott Pearce in their presentation at the June 2015 Safety Forum. See http://www.argenteuil.qc.ca/database/Image_usager/2/Amenagement/Presentation_Forum_Pipeline_ONE_juin2015.pdf

[237] I provide the translation for all cited resolutions. This resolution can be found here: http://www.equiterre.org/sites/fichiers/resolution_bape_saint_alban.pdf

range of open questions,[238] and palpable insecurities about whether, how, and by whom these might be taken seriously. The expectation was that the province, through its environmental laws, could and should stand between its citizens and the company.

After TransCanada's official announcement on August 1, 2013, many municipalities and MRCs followed in Saint-Alban's steps: one in August, four in September, five in October, two in November, four in December, and so on every month for the following two years. Municipalities were not just asking the provincial government to intervene. Some, reacting to TransCanada's September 2013 preliminary path, declared their opposition to it. The first such resolution I am aware of came from the municipal council of Saint-Roch-de-L'Achigan on October 1, 2013.[239] It cited concerns for the integrity of farmland given that "the preservation of agricultural lands and their related economy is a priority for our collectivity." Other municipalities soon followed, citing similar reasons, such as Saint-Sulpice on December 2nd, 2013, concerned for its farm- and woodland.[240] The Saint-Sulpice resolution proved inspiring to other municipal councils, such as Lanoraie's, who modelled its own March 10, 2014 resolution after that of Saint-Sulpice.[241] Municipal interests and imperatives, at face value, seemed at odds with those that the pipeline company was responding to.

It was not just municipal governments who were speaking out in an official capacity. The *Fondation québécoise pour la protection du patrimoine naturel* was an early outright opponent.[242] The Foundation is a non-profit whose main mission is the "conservation of biodiversity, principally through the protection of the *battures de Saint-Augustin-de-Desmaures*," a 400-hectare natural reserve situated on the territory of the Saint-Augustin-de-Desmaures municipality, along the St.

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[238] For example, translating loosely, the Kamouraska MRC's September 11, 2013 resolution cites citizen anxieties about: the project's conception and security; general environmental questions; socioeconomic and property questions; the promoter's financial liability; the project's economic viability. The council itself worried about: the pipeline's compatibility with the development of a regional park and with the territory in general, namely in aesthetic, ecological, recreational, and patrimonial terms; obtaining guarantees about public security and environmental protections, both in the short and long term; effective benefits for Quebec society; confirmation of the taxability of the infrastructure; information transparency; end-of-life measures for the disposal of the pipeline; the project's social acceptability for all interested parties, including those not directly impacted by the infrastructure. The resolution can be viewed here: http://www.equiterre.org/sites/fichiers/mrc_kamouraska.pdf

[239] Some 50 km north of downtown Montreal, in the Lanaudière region. You can view their resolution here: http://www.equiterre.org/sites/fichiers/resolution_st-roch-lachigan.pdf

[240] Saint-Sulpice is also in the Lanaudière region. Saint-Roch-de-L'Achigan and Saint-Sulpice are equidistant from Montreal, but the Saint-Sulpice municipality is right on the water's edge of the St. Lawrence river's north shore. See its resolution here: http://www.equiterre.org/sites/fichiers/resolution_saint_sulpice.pdf

[241] The Lanoraie municipality, part of the D'Autray MRC in the Lanaudière region, was at the epicentre of important citizen and then municipal advocacy and resistance.

[242] Translates as Quebec Foundation for the Protection of the Natural Heritage.

Lawrence river's north shore. The *battures* (a sand bar) is where TransCanada was planning to cross over to the river's south shore, a plan the Foundation qualified as the project's "Achilles's heel." The board of directors took position against the pipeline project on October 10, 2013, citing, *inter alia*, concerns over: the environmental impacts of tar sands production; their support for an energy transition; the risks of a spill for the *battures*, the river, and the area's citizens. They would later flesh out their position in a January 2015 report, which contained details about potential impacts at all stages of development, such as the effects of sedimentation at the construction phase on species habitat.[243]

The Lanaudière *Conseil régional de l'environnement* (CRE) also passed an early resolution against the project on November 4, 2013, emphasizing its wider ramifications.[244] One argument the CRE made was that lack of access to world markets for Alberta's tar sands was a *good* thing, as this put a limit on the industry's potential contribution to global greenhouse gas emissions (GHG). The mix of ultimate concerns over tar sands production, greenhouse gas emissions, and climate change, and of proximate ones over local economic, ecological, and political particularities was not necessarily universally stated by all who voiced concerns but was certainly common enough. And as resistance became increasingly widespread over the following three years, generalizable issues functioned as a beacon rod. Climate change; the environmental and social devastation of tar sands extraction; the pipeline's threat to hundreds of waterways; the imperial and colonial domination of the Canadian petro-state against local self-determination — all of these provided universals by which to reach across the chasm of sometimes insular site-specific positions and played into the debate in various ways at different times.

Another regional organization, the OBV Zone Bayonne, again in Lanaudière, passed a resolution in January 2014 "to oppose in a clear and unconditional way the passage of the

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[243] The Foundation would also submit a brief — an updated version of the report — to the 2016 BAPE. The brief makes note that TransCanada, in its documentation submitted to the NEB, omitted to mention that the pipeline would be laid under the officially protected area, despite having received repeated notice by the Foundation since the fall of 2013 (6).
The report can be viewed here: https://www.dropbox.com/s/hq5zfd52lpvzs5p/Annexe_2.29 Préoccupations Oléoduc.PDF?dl=0
The brief can be viewed here: https://www.dropbox.com/s/u8jmyrs1miyfed0/FQPPN%20-%20Pr%C3%A9occupations%20vs%20projet%20O%C3%89E_Version%20BAPE%20-%20v160414-JAMDH.docx?dl=0

[244] There are 16 CREs in Quebec, one for each administrative region except for the Nord-du-Québec region. They were founded between the early 70s and late 90s with the mandate to preserve and improve the environment, and to provide citizens with a tool for democratic deliberation, multiparty concertation and planning, and participation in governmental decision-making processes. While autonomous, the organization is recognized and supported financially by the Quebec government since 1995.

Energy East oil pipeline on its territory."[245] The board of administrators' concerns ranged from the "catastrophic impact that GHGs have had on the global climate since the beginning of the industrial age" to the vulnerable habitats along the pipeline's path and the lack of knowledge about the region's aquifers — "a prior *sine qua non* condition for any drilling or pipeline project."

There are two things to note about the OBV Zone Bayonne's intervention. First, the vulnerable habitats cited in its resolution were the Saint-Pierre lake and the *complexe tourbeux de Lanoraie*.[246] The latter's entire peat bog ecosystem covers 7,700 hectares, 5.3% of which are protected since 1994 as the *Réserve écologique des Tourbières-de-Lanoraie*.[247] This water reserve holds great social and economic importance for the region, and already faces anthropic pressures from fragmentation due to urbanization. The impacts of a spill in such an ecosystem would be exacerbated by the fact that cleanup measures in peat environments also result in their destruction. The best course of action, according to information provided during the BAPE hearings, is to let nature take its course and decompose the spilled substance over the next thousand years or so.

The second point to highlight is that taking such a public, politicized stance was very unusual for an OBV. OBVs are primarily coordination and consultation bodies and so, as per their framework, TransCanada along with its Energy East project was a "water actor" like any

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[245] OBV stands for *Organisme de bassin versant*. They are watershed management organizations created by Quebec's 2002 National Water Policy. They function as inclusive multi-stakeholder boards designed to promote the integrated management of water. The OBV Zone Bayonne was created in 1995 by Quebec's environment ministry; its area spans five watersheds within the Lanaudière region. Its resolution is available here: http://www.equiterre.org/sites/fichiers/resolution_organisme_des_bassins_versants_de_la_zone_bayonne.pdf

[246] The Lac Saint-Pierre is the most important archipelago of the St. Lawrence river. It includes 103 islands, 20% of the river's marshes, and 50% of its wetlands. It is recognized under the Ramsar Convention and identified by UNESCO as a global biosphere reserve. The Saint-Pierre ecosystem, which is located east of Montreal between Sorel-Tracy and Trois-Rivières, is under increasing pressure from polluted tributaries and loss of habitat. A 2013 synthesis document produced by Quebec's Environment ministry called it "un joyau à restaurer" — a jewel to restore. See http://www.mddelcc.gouv.qc.ca/eau/lac-st-pierre/doc-synthese.pdf

[247] TransCanada disagreed that the pipeline would pass through the peat bog, arguing that it was going through wetland instead. Activists disagreed, citing Quebec regulation. The disagreement was not about the pipeline's exact location but about the classification system used to categorize its environment. According to the *Regroupement des organismes de bassins versants du Québec* (ROBVQ, see below), TransCanada used incomplete sources in determining its extended study area and thus failed to include exploited peat bogs and river flats, and wetlands smaller than 0.5 hectares. As a result, "Energy East's path runs through an ecological reserve (Tourbière de Lanoraie), multiple recognized natural reserves, a precarious species' habitat, and multiple biological refuges" (ROBVQ 2016: 22, my translation). In addition, neither the ecological value nor the floral and soil composition was inventoried by TransCanada, making it impossible to appreciate the nature of affected wetlands and the impacts the project would have on them. For a general discussion of the complexities involved in classifying wetlands, see e.g. Zoltai and Vitt (1995).

other. OBVs, as they are understood at the ROBVQ,[248] do not take positions on issues — they work to elaborate and implement the *Plan directeur de l'eau* as mandated by Quebec's Environment ministry.[249] Zone Bayonne was the first OBV to take position against Energy East and received considerable resistance from both the ROBVQ administration and other OBV administrators. It took more than two years to fully turn the collective around. Zone Bayonne met with similar push-back when it attempted to pass a resolution at the *Table de concertation régionale du lac Saint-Pierre*.[250] The motion — to send a letter to the federal and provincial Environment ministries citing the Table's concerns about the potential impacts of Energy East on the Lac Saint-Pierre — was defeated by one vote. The reason given was, "On n'a pas à se mêler de ça, c'est de jurisdiction fédérale."[251]

One point I want to flag with this is again the murky relationship between "political" and "technical" matters of concern. At which point, for an OBV, do concerns over potential risks within a "*zone de sensibilité*" — such as the identification of sensitive areas for municipal water intakes — become political? The ROBVQ would eventually push against its initial estimation of this boundary in 2015 when it released two in-depth analyses of the Energy East project. The first considered the impacts of pipeline construction on wetlands and water bodies in general, both above and below ground (Boursier 2015). The second provided a juridical analysis of aspects of environmental law relevant to itself and *Stratégie Saint-Laurent*[252] in their intervention at the NEB (Bach and Blaney-Thibault 2015).

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[248] The *Regroupement des organismes de bassins versants du Québec* is the umbrella organization that represents all of the province's 40 OBVs. J.G. described the relation of the ROBVQ to individual OBVs as that of a syndicate, acting like a buffer between the government and the OBVs.

[249] The ministry defines the Plan as: "A document which collects the information necessary to the understanding of hydric, environmental, or territorial problems, as well as those tied to usage conflicts experienced in the watershed of an area under integrated water resource management. It also presents possible intervention solutions in terms of protection, restoration, and valuation of water resources" (Gangbazo 2011: 2.15, my translation).

[250] A multi-stakeholder coordination body for integrated water management of the St. Lawrence river. There are 12 separate tables spanning the length of the river. OBVs, among other "water actors", sit on these regional "tables."

[251] "We don't have to meddle in that, it's federal jurisdiction."

[252] It is probably getting difficult to keep track of all these actors. What is important to keep track of is not so much the particulars of each group than the kinds of tensions that arose from their involvement. *Stratégie Saint-Laurent* is the non-profit organization that represents the various ZIP (Zone d'intervention prioritaire) committees in Quebec. Put simply, where OBV's were created to implement the integrated water management scheme for Quebec's tributaries to the St. Lawrence, Quebec's 12 ZIP committees work towards the integrated water management of the river itself within a provincial-federal framework.

Perhaps a technical estimation becomes political when its conclusions are used by the authors to speculate about the relative value of a collectivity's potential future commitments. For example, in its brief presented to the 2013 provincial *Commission sur les enjeux énergétques du Québec*, the ROBVQ (Verville and ROBVQ 2013) favored pipelines over trains, recognized the continued need for petroleum resources, but stressed that the precautionary measure contained in Quebec's *Sustainable Development Act* should be prioritized.[253] In effect, the ROBVQ was stating a tension, leaving it to the relevant empowered political agents to resolve the tension. On the other hand, it opposed the importation of tar sands bitumen on account of its poor environmental track record, in terms of GHG emission and of the extraction and transportation processes themselves (13).[254] They also highlighted the need to evaluate projects in their entirety, upstream and downstream of pipelines themselves, and considered that if deemed necessary to support hydrocarbon extraction during the energy transition towards cleaner fuels, "social licence and the support of local and regional authorities should be considered a prerequisite" (14).

Though more forceful, these latter statements still acknowledged the legitimacy of the decision-making process. So perhaps an intervention becomes political when it questions the normative distribution of decision-making authority (see Rancière 2004). Two more individual OBVs[255] officially declared their opposition to Energy East in its current state in a joint press release on January 26, 2015, citing concerns for vital waterways, aquifer recharge zones, wetlands, and forest cover.[256] Despite the company having had submitted its 30,000-page application at the NEB on October 30, 2014, and despite the OBVs having met with TransCanada on December 9, both OBVs were uncomfortable with the lack of crucial information about water-crossing techniques for major waterways, about TransCanada's method of categorizing waterways,[257] about the location of shot-off valves,[258] and about unanswered

[253] You can read the brief here: https://robvq.qc.ca/public/documents/robvq/positions/memoire_energie.pdf

[254] By "importation" the ROBVQ was referring to transport from Alberta to Quebec.

[255] These were the *Organisme de bassin versant de la Rivière du nord* (Abrinord) and the *Conseil des bassins versant des Mille-Îles* (COBAMIL). COBAMIL covers Montreal's northern crown, overlapping the Laurentides and Lanaudière regions. Abrinord extends north-west of COBAMIL, for the most part in Laurentides. Conjointly, both OBV's had 7 municipalities within their territories that were directly affected by the pipeline.

[256] Available here: http://www.abrinord.qc.ca/wp-content/uploads/2015/07/Communiqu%C3%A9-de-Presse-TransCanada.pdf

[257] This mattered because TransCanada was planning on using open-trench techniques to install the pipe through minor rivers. The method planned for major rivers, horizontal drilling, had been deemed unfeasible for the

questions with regard to emergency measures in the case of a spill. The COBAMIL president stated that, "Considering that OBVs are water guardians and that the Energy East oil pipeline project could endanger our hydric resources, both surface and subterranean, it is our duty to reject it such as it is submitted at the NEB. Potential economic returns should not be obtained to the detriment of our natural resources, *most especially* water, essential to life" (emphasis in the text, my translation).

The ROBVQ eventually took a clear position against Energy East, in its 2016 brief presented to the BAPE, where it offered 39 recommendations and 14 opinions.[259] They were highly critical of the BAPE's current mandate, which "does not allow for a fair evaluation of the environmental and social impacts of the project, nor does it allow the government to establish a legally-binding decision on its authorization" (ROBVQ 2016: 49, my translation). The ROBVQ found that the potential threats to Quebec water resources, ecosystems, and population health and security "alone justify an extreme prudence, or even a firm opposition from the government of Quebec" (49). The ROBVQ's position was elaborated by compiling the resolutions of the Zone Bayonne, Abrinord, and Cobamil OBVs, and of two other OBVs who had eventually followed their lead.

Conclusion

In this chapter, we have seen some of the concerns that arose for communities living along the proposed pipeline route as they engaged with the project and its proponent. Beyond the material risks that the pipeline and its content would pose to local ecologies, administrative responsibilities, and livelihoods, I have chosen to highlight how much of the contest and controversy revolved around the differential relation to indeterminacy. TransCanada's argument was that power and expertise were determinate, and not much else. Put differently, political and technical decision-making were a function of naturalized, exclusive authority: the authority of federal jurisdiction on the one hand, and the authority of corporate expertise on the other — the former tasked with deliberating in the public's interest, the latter tasked with enacting its unproblematic corporate proficiency. The effect of TransCanada's argument was that substantive

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Ottawa River and the Etchemin River by Entec Engineering Technology's June 2014 report for TransCanada because of the nature of the sub-soil. TransCanada later removed the report from its filings.

[258] The D'Argenteuil MRC was up in arms that in the Energy East application only one valve was planned within its territory, 5 km north of the Ottawa river. Canadian pipeline standards require a valve on either side of water crossings.

[259] Available here: https://robvq.qc.ca/public/documents/documentation/z4p0dg1u.pdf

determination, whether of a political, economic, or technical order, was best left to the discretion of capable authorities.

TransCanada's underlying assumption was that any species of decision-making was a matter of objective weight, not subjective value. In other words, the prior political and epistemic order was set, determinate. Within this space, substantive propositions could be kept indeterminate because their outcomes were predictable, almost pre-determined, a matter for positivist investigation rather than ethical deliberation. It is not surprising that in this order of things, "political" has come to mean something other than "of import to the polity." Whereas I would suggest that most decisions, because they have differential impacts on communities, can be considered political in many respects, politics — in the contemporary naturalized political economy — has come to communicate the narrowest of circumstances: the interference in the smooth technocratic management of collective life. Or, put differently, the challenge to naturalized ethical priorities.

But Energy East's publics proved far too recalcitrant to simply accept TransCanada's determinacies, contesting the distribution of authority and assertion of expertise, and demanding that the constitutive channels of political, administrative, and technical deliberation be made visible so that they may judge for themselves how outcomes came to be determined. In the following chapter, I continue unpacking these politics of indeterminacy, this time focusing on emergent enactments of provincial sovereignty.

Chapter 4: Energy East as a Matter of Provincial Concern

The environment and provincial sovereignty

I have already made multiple reference to Quebec's contested BAPE hearings. The trouble with the BAPE hearings was that the Quebec government, faced with a recalcitrant company, had compromised on its environmental law. Before we get to this compromise and the subsequent March 2016 BAPE hearings — which objectors liked to call a "BAPE tronqué" (truncated BAPE) or "BAPE au rabais" (discounted BAPE) — I want to describe some important milestones and developments along the way, which will help explain how tensions were building between TransCanada and the provincial government and further explain the degree to which municipalities took matters into their own hands. These developments also played an important role in fueling the public imaginary in terms of the kind of ecological and political threat that Energy East represented. While citizen mobilization in impacted localities began almost instantly — most notably through the *Mouvement Stop Oléoduc* in August 2013[260] and the widely influential *Regroupement Vigilance Hydrocarbures Québec* (RVHQ)[261] — it is TransCanada's plans to build a marine terminal in Cacouna, Quebec that struck the public's wider environmental imagination.[262]

The plan required building a marine terminal capable of receiving tankers with 0.7 and 1.1 million-barrel capacity, and a storage facility capable of housing 4.95 million barrels. While the Cacouna plan provided the Quebec government with a rationale to support the project based on the promise of job creation and economic activity, it ultimately gave it the rationale to

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[260] *Stop Oléoduc*, which we have already encountered in the chapter three, emerged during three citizen-led information meetings in August 2013 in the MRCs of L'Islet, Kamouraska, and Témiscouata, to which some 500 citizens participated. The name was chosen to resonate with Stop the Pipeline movements in Western Canada and the U.S. Three local committees were spawned, unified under a common understanding that: "In its current form, the project that will be submitted to the NEB will not decrease train traffic, reduce dependency on foreign oil, influence oil price at the pump, cut pollution, mitigate risks of explosion and spills, nor will it contribute long term jobs to the region. All this led by a company with a dubious track record in terms of security and 70% of which is owned by foreign shareholders" (Info Dimanche 2013). The movement later adhered to the RVHQ (described below), benefitting from its pre-existing network and experience.

[261] The RVHQ was originally created in 2010 to federate some 100 citizen committees (today 130) that were requesting a moratorium on shale gas fracking in the St. Lawrence Valley. In September 2013, in response to Energy East, the group took its current name and expanded its mandate to include resistance to all exploration, exploitation and transport of hydrocarbons. They describe their mission as one of information and sensitization to "the greatest challenge mankind has ever faced: climate change."

[262] TransCanada's original plan was to use the facilities in Lévy, on Quebec city's south shore.

withdraw outright support for the politically toxic project after TransCanada dropped the Cacouna plans in April 2015.

The public scandal erupted because Cacouna, situated in the St. Lawrence estuary, is also the site of a beluga nursery. The beluga whale — an iconic species in Quebec and staple of the tourism industry in Tadoussac (across the water from Cacouna on the north shore) — had also been identified by federal scientists in 2013 as having a population in decline in the St. Lawrence and was considered at risk. For an environmentally sensitive public, Cacouna provided a readily available figuration of the pipeline's inevitable environmental transgressions. It also began a jurisdictional kerfuffle around constitutional indeterminacies and the political management of scientific expertise that revealed how TransCanada was going to play its jurisdictional cards throughout. The Cacouna controversy also brought the *Centre québécois du droit de l'environnement* (CQDE) into the fray.[263]

TransCanada received a notice from Quebec's environment minister in September 2013 that the Cacouna port project was subject to the LQE's section 31.1.[264] This meant that the company was required to submit an *avis de projet* (project notice and description) to the ministry, which would automatically set off a legally pre-determined sequence leading to an environmental assessment by the BAPE. Although TransCanada submitted an *avis de projet* for the Cacouna terminal on March 4, 2014, the company made sure to attach a letter framing its compliance:[265]

> In addition to the environmental assessment of the marine terminal and petroleum storage reservoirs, the government of Quebec has asked Energy East to participate in a public hearing process led by the BAPE, which will also concern the Quebec portion of the Energy East Pipeline. In the same spirit of collaboration, we accept to participate *voluntarily* [my emphasis] to this public hearing process, which will also include the Quebec portion of the pipeline.

TransCanada's voluntary participation was its way of hedging its bets, showing good will and compliance while subtracting itself from any potential adverse effect of non-federal authority.

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[263] The CQDE, as its name suggests, works to inform, promote, advance, and invigilate environmental rights. It participated in and led a number of legal actions during the Energy East controversy, and arguably enforced Quebec's environmental jurisdiction more forcefully and effectively than the provincial government. In addition to following its action closely, I conducted two extended interviews with its founder and then-president Michel Bélanger in 2016 and early 2017.

[264] *Loi sur la qualité de l'environnement*, Quebec's environmental law. One of the controversies affecting the pipeline revolved around two articles of the LQE by which environmental assessments could be conducted, articles 6.3 and 31.1. I will explain the difference when we bite into that chunk of juicy juridical contention below.

[265] The letter is cited on page 16 and 17 of a 2016 court challenge by the CQDE, which I will discuss later. It is important to note that the letters were obtained by the CQDE through an access to information request — they

At every step, when faced with a provincial legal obligation it could no longer conveniently avoid, TransCanada would specify the voluntary nature of its compliance. There was another element in the letter that would prove significant, for different reasons. TransCanada continued:

> The environmental evaluation of the entire Energy East project will be submitted to the NEB in accordance to federal requirements. The parts of these federal requirements relevant to Quebec, that is to say those concerning the pipeline and related facilities situated in Quebec, will be available in French and English and will be provided to the minister of Environment. The federal requirements will constitute the reference document on which basis Energy East will address any questions relating to the pipeline in Quebec.

As the CQDE would later point out — and as would become obvious during the 2016 BAPE hearings — a pipeline materialized in response to federal requirements is a different object than one subjected to provincial concerns. The deputy minister to the Environment replied in a March 7, 2014 letter, restating TransCanada's legal obligation to submit an *avis de projet*, to apply to various authorization permits, and further specifying that "[...] given that the pipeline you are considering would go through Quebec public lands and the St. Lawrence river, the government of Quebec, as landowner of these lands and of the public water property, must consent to the conditions put on the project's realization."

On March 26, 2014, TransCanada received from Quebec's Environment ministry the *directive d'étude d'impact*.[266] The short story of what occurred between April and September 2014 is as follows:[267] TransCanada, without informing Quebec's Environment ministry let alone asking for a provincial permit, conducted seismic surveys in Cacouna between March 25 and March 30, 2014. It had obtained a permit with conditions from the federal Department of Fisheries and Oceans (DFO), which established an exclusion zone and stated that the work should not exceed April 30th.[268]

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were not made available publicly by Quebec's environment ministry. The document can be viewed here: https://cqde.org/wp-content/uploads/2016/02/Demande-en-justice-amende-.pdf. All translations are mine.

[266] This is the step that follows an *avis de projet*. The *directive* is the document in which the government specifies the elements it wants the company to survey in their impact study. Once an impact study is submitted and deemed satisfactory, a BAPE is then initiated.

[267] This account is based on a number of sources, most of which are related to the CQDE. It is based largely on interviews with Michel Bélanger, who led the charge in the injunction requests against TransCanada in Cacouna. My account also draws from procedural documents Me. Bélanger shared with me: a Transport ministry investigation report on the probity of the procedure leading to the issuance of a permit to TransCanada from Quebec's Environment ministry; and a transcript of Me. Bélanger's interrogation of the Quebec Environment ministry scientist tasked with evaluating TransCanada's request for authorization permits. It also draws from subsequent legal documents such as the one cited above.

[268] The DFO scientist responsible for the notice qualified this cut-off date as somewhat "arbitrary" given that there is no "fixed date" for the belugas' arrival. Despite beluga presence prior to April 30, the date is established

In early May, the company announced its intention to conduct geotechnical surveys in Cacouna.[269] The CQDE submitted an injunction request on May 16, 2014 to stop the work, alleging that TransCanada was legally required to obtain permits from both the federal and provincial governments.[270] The day before the hearing, TransCanada submitted its provincial permit request. On the day of the hearing, March 23, 2014, TransCanada told the judge that the injunction was unnecessary given that the permit request had been submitted and that they would put their work on hold until the minister granted the permits. TransCanada also made sure to specify that they were doing so not because they were legally bound to but on account of them being good corporate citizens. What is more, TransCanada also came to the hearing equipped with a letter from a DFO functionary that it had obtained on May 21, stating that the second set of surveys in Cacouna did not require federal authorization.

Quebec granted TransCanada its permits on August 21, 2014. While the CQDE's first injunction attacking the DFO's letter was thrown out,[271] it submitted a second injunction, this time attacking Quebec's decisional process. With a little more time to dig, they found some interesting details. First of all, Quebec's Environment ministry had no expertise on the belugas. The biologist in charge of evaluating TransCanada's request appealed to the DFO's expertise. She eventually talked with the DFO's beluga specialist, wanting to know why the initial conditions set out in the original permit had not been maintained in the May 21 letter. This is where she learned that the scientific committee that had been consulted for the first DFO notice had not been consulted for the second — and that the DFO specialist did not know why. The DFO specialist concurred with the CQDE's specialist that the extra barges required for the second surveys would be more toxic for the belugas. When Quebec's biologist asked the DFO specialist for a written statement, the latter made perfectly clear that she intended the conversation to remain confidential. She said that she would be more than happy to provide a scientific notice, but that she needed the request to come through her superiors.

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on the basis of May being "a very important time for beluga feeding." This is a good example of what indeterminacy can mean in the context of scientific knowledge. Here, it does not mean that beluga use of the Cacouna site as a nursery and feeding ground is not temporally or geographically true or knowable, but that it coexists uneasily with overly determinate categorical statements about it, such as discreet and fixed calendrical delineations.

[269] This second set of surveys involved drilling rather than sonic blasts and required two barges rather than one.

[270] As prescribed within Quebec's LQE and its *Act respecting the conservation and development of wildlife.*

[271] The judge ruled that all she had was two experts saying contradictory things and it was not up to the courts at that point to decide between them.

So Quebec's biologist turned to TransCanada, asking it to provide a scientific notice from the original team that would confirm that the work would not harm the belugas. The company refused, stating that the federal government had already deemed it unnecessary. The biologist persisted, sending four more requests, all of which were dismissed by TransCanada. The last correspondence came from a very high-ranking Harper-appointed cadre who restated the May 21 letter's assertion that no authorization was required. For the confidentiality reasons stated above, Quebec's biologist omitted in her report the DFO's specialist comment that she would not have authorized the drilling. David Heurtel, Quebec's Environment minister, granted the permits on August 21, even though there had been no confirmation that the belugas would not be harmed.

This is what won the CQDE's injunction. The court found Heurtel's decision-making flawed and ordered the suspension of TransCanada's drilling until after October 15, 2014, which was considered by the CQDE expert as the end of the critical period for beluga calves. The CQDE filed a complaint with Quebec's Environment ministry that TransCanada should have filed for an authorization certificate for its initial seismic tests. A year later, on September 4, 2015, the ministry finally gave the company a non-compliance notice and ordered it to pay a fine of $5,000, the lowest legislated fine.

TransCanada spokesperson Tim Duboyce argued that they had been ignorant of the requirements, and stated having learned from their mistakes. While in general understanding the shorthand trope that circulated was that it was the whale — or more precisely concern over the whale's safety — that got in the way of TransCanada's work at Cacouna, it was in effect the government's failure to fully apply its environmental competency combined with the vigilance of an environmental rights group that changed the course of events. During the summer of 2014, there were in a sense two (and probably more than two) versions of Canada suspended in a state of potentiality — one enacted by some DFO functionaries and TransCanada, and another by the CQDE and its allies. Each attempted to mobilize various entities and legal and bureaucratic infrastructures to collapse the potentialities into a determined state.

Agency, substance, and the indeterminacies of political infrastructure

The Quebec government, while starting out with a clear idea of how its environmental competency shaped the nature of its political sovereignty, quickly gave in to the stubborn endurance of TransCanada's claims. In the end, the CQDE won out because they were able to

mobilize both determinacies and indeterminacies in the legal and political infrastructure: they exploited constitutional indeterminacies as to the distribution of environmental competency on the basis of the determinacies contained in provincial environmental regulation. But for the CQDE, the fight was not over provincial sovereignty as such. In another case, they had exploited the same indeterminacies to protect the *rainette faux-grillon* (a very small frog) whose habitat was being threatened by a development project; except that in that case they had used *federal* competencies to cancel provincial authorization permits.

In the case of Energy East, the stakes for Me. Bélanger were not even about whether TransCanada's pipeline would eventually make it through or not, contrary to most environmental groups. The stakes were about a certain quality of procedural decision making. Me. Bélanger described the power play made by the DFO officials and TransCanada as a "voluntary deficiency of consultation […] — when your own scientists are telling you that they have not been consulted and you continue to maintain that consultations are not required." In this case, what Bélanger wanted to see were concessions made by discretionary power to possibly inconvenient contributions by scientists.[272] Me. Bélanger's question about the nature of sovereign power was, "Does the fact that the federal [government] has a say, even final, mean that the provincial has no say at all? Is the beluga species not equally protected by Quebec law? And if not, what does it mean? Does it mean that we have to just shut up when it's a federal institution? Even when you make mistakes? We don't even have the right to look at it? To evaluate it?"

The CQDE's position on power is informative. They are strategically aware of ambiguities within the distribution of authority over environmental matters and exploit them to the service of a political and legal rationality that internalizes long term environmental goals. While they fight against proximate environmental threats, their ultimate objective is always infrastructural. Governments and companies like TransCanada prefer determinate power relations, i.e. a clear and exclusive allocation of decision-making authority. They also prefer indeterminate substantive guidelines, i.e. writing as much discretionary power into the law as possible, leaving open the possibility of strict environmental protections while still facilitating regulatory expeditiousness. This is done for example by narrowing the range of projects automatically subject to environmental assessment, or by using "can" rather than "must" in

[272] In terms of constitutional ambiguities, there have been other cases recently where development interests have occupied this zone of tension between federal and provincial powers. For example, questions over who has a say over expansion plans for the Port of Quebec has gone to the Court of Appeal.

legislation — as in "the minister *can* refuse…," or "the minister *can* consider greenhouse gas emissions."[273] The CQDE and other EA reformists, on the other hand, prefer indeterminate power — a shared and inclusive distribution of decision-making power — and determinate substantive legal guidelines.

What substantive indeterminacy combined with centralized, exclusive power makes possible is framing contingent transgressions of overall political goals as exceptional. In this way, ministers can argue that they are fighting against climate change *in general*, while implementing contrary plans in the specific. We have been seeing this kind of dynamic recently in the Trans Mountain Pipeline Expansion case, where the Trudeau government has gone above and beyond to make sure the pipeline gets built — to the point of buying the project after the company threatened to pull out. If you look at this half-hour interview with him,[274] published on February 18, 2018 by the National Observer, you will notice the startling fact that the only rationale underpinning his unconditional support for the project is that it is the necessary condition for Alberta's participation in the federal government's GHG emissions reduction plan. In other words, tripling the capacity of a pipeline giving tar sands access to tidewater is a necessary concession towards putting a price on carbon that may eventually shift the economy in a more "natural" way towards less carbon-intensive forms of prosperity.

Me. Bélanger was able to put this argument successfully to the judge in the case of the *rainette*:

> At the hearing, the judge looked at the government and said: "I have a simple question to ask you. If you give the green light to this project as you wish, we come down to eight mega-populations [of rainette], right? The next project that will impact the eighth mega-population, will you say no or can we come down to seven? To six? When will you say no?" It didn't mean that that's what the judge would decide, but I thought, "You understood. What you understood, Mr. Justice, […] is the problem of endangered species. You've understood why I have been doing this for 30 years. You've understood what our society today on a global scale must begin to decide, because otherwise we will blow up. You've understood that we must impose these decisions unto ourselves, even if" — the *rainette*, that's what's amazing, she's big like the tip of my finger. And the other thing that the judge said — we were explaining the *rainette* to him and he interrupted us and said: "Listen, just to draw a parallel to make sure I understand properly, if we were in Africa, it would be an elephant?" I said exactly, elephants are just as threatened as the *rainette* is here.

Given that political will, as enmeshed as it is in deeply entrenched short term economic incentives, can hardly be relied upon, Me. Bélanger decided that he would fight on the level of

[273] This was pointed out by Me. Jean Baril, environmental law professor and CQDE vice-president, in his seminar on Quebec's proposed LQE reform that I attended on October 20, 2016.

[274] You can view it here: https://www.youtube.com/watch?time_continue=1349&v=hztimYv1_RU

processes, which is why the integrity of processes — such as the way EA commissioners are appointed to their position, or how scientists are consulted on environmental impacts — is crucial for him. It is also why he is very deliberate with his use of litigation, because using the courts as site of moral vindication when legal arguments are weak can set dangerous precedents.

As for the belugas, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) changed the beluga whale's status from at risk to endangered in November 2014. In April 2015, TransCanada announced it was dropping its plans for the Cacouna terminal, stating the COSEWIC's reclassification as the primary cause.

Procedural temporality and the visibility of specificity

There are two additional aspects I want to emphasize from the above discussion. First is the relation of a project to the preliminary work required to finalize its conception. The work TransCanada wanted to do in Cacouna during the spring and summer of 2014 was not to build its marine terminal but to collect the geophysical data necessary to formulate the terminal's design. There are two things to say about this. On the one hand, for some localities, these kinds of surveys were a source of discontent themselves. Some, like the Vaudreuil-Soulanges MRC, would withhold municipal permits required by TransCanada to perform preliminary tests, in their case in the Ottawa river.[275] On the other hand, the inability to collect data was tied to the pipeline's regulatory vagueness, which itself was a source of bitter contention. Indeed, as we have seen, one of the principle critiques that municipalities and citizens expressed was the lack of definite information about the project, namely in terms of how TransCanada planned to cross major rivers. When the BAPE hearings were held in March 2016, TransCanada had still not decided which techniques it would use to cross the Ottawa and St. Lawrence rivers. While both the company and the government were lambasted for this, TransCanada retorted that the MRC was preventing it from gathering the necessary data.

There is a wider problem of differential temporal expectations for regulatory proceedings here, but one that also plays into ethical expectations. There's an inherent tension between a pipeline company's expectations of a certain logical procedural sequence and municipal expectations of prior detailed disclosure. The Vaudreuil-Soulanges MRC explained that they

[275] While seismic tests on land do not require permits, those in water habitats do. One of the primary engineering challenges TransCanada was facing were water-crossings, namely that of the Ottawa and St. Lawrence rivers.

would not deliver the permits until the company provided answers to questions the MRC had formulated as early as May 2013. Interactions with the company, charged the MRC, had been multiple but fruitless. The spokesperson said that despite many exchanges and meetings, "Every time, they conduct public relations. They refuse to answer our requests, they provide no documents. Yes, there are discussions. But are these discussions appropriate? No. Do they produce anything? No" (Shields 2016b, my translation). The MRC's demands were repeated in two subsequent 2014 resolutions asking for impact assessments and emergency plans.

But there were no impact assessments because the company was refusing to comply with Quebec's full environmental law procedure. And there were no emergency plans because, typically, these are typically formulated *after* a project is approved. Whereas, for municipalities, emergency plans are tied to their legally prescribed responsibilities, and for the public more generally are an essential component of a project's completeness, quality, and hence a condition for whether it should be approved, for the company they are a technical afterthought. They cannot precede the regulatory hearings because the pipeline project is only finalized *after* approval. While this is more time- and cost-effective for the company, and certainly logical on some level depending on what you expect regulatory hearings are meant to accomplish, it does beg the question of exactly *what* is being evaluated. As should be clear by now, my contention is that what is being evaluated is in large part aspirational depictions couched in pseudo-scientific form — that is to say, in systematized, abstracted representations. While citizens and municipalities want determinate substance before consenting to the project, both about the pipeline and about emergency response, the company will only finalize the pipeline and formulate emergency plans *after* the project is approved.

So TransCanada was not forthcoming to municipalities in part because it simply did not have the information they were demanding. But there is more than this. The problem is also about visibility, and about power. Municipalities and citizens have every interest in having as much of the pipeline's design and evaluation take place in a public and collaborative setting. The company's interests are precisely the opposite: that what is observed in a public setting be as *generic* as possible, so that the project's specifics be decided upon in the most discretionary manner, delegated to appropriate expertise. The underlying assumption is that there is only one possible best outcome, the determination of which is purely technical; any other consideration is deemed intrusive and inappropriate. In the controversy over TransCanada's pipeline project, the

public was not just pushing back against oil and its potentially devastating effects. They were also pushing back against a regulatory infrastructure which evacuated too much of its political agency and normalized the particular interests of some as the inevitable future for all.

The second element I want to underline ties into this question of interests, or as is generally stated "costs and benefits." With the abandonment of the Cacouna terminal, Quebec moved one step closer to being a purely transitory space for outside interests. This fed into the figuration of the controversy as a battle between Quebec sovereignty and Canadian imperial petro-power, of which both TransCanada and the NEB were agents.

Facts, values, and generating social licence

Let us re-situate ourselves within the overarching timeline for a moment. The Cacouna affair occurred between March and October 2014. On October 30, 2014, TransCanada filed its 30,000-page regulatory application with the NEB.

Early on, in 2014, TransCanada put up a kind of advocacy website for Energy East, which vaunted the merits of the project and featured a public support section for would-be enthusiasts.[276] On the site, they described the pipeline as a national "*trait d'union*" (a hyphen). It is worth describing the page in some detail, to give a sense of the tone. The predominant color was verdant green. There was a banner at the top with a picture of a simple everywoman mid-laughter, a green speech bubble saying, "I support building Energy East, a project that will benefit us all. Click to hear my story." Below, a title informed, "Here's how you can help right now," in three simple steps: "Sign the petition," "Tell a friend," "Share your story." Each step would turn green as you hovered your mouse over it. And then below that:

> Stand up and speak out. Support a safe, secure West-East pipeline.
> From Alberta to Quebec to New Brunswick, Energy East is more than just a pipeline: it's a uniting force connecting abundant resources with industry centres in the east. The project will create thousands of jobs and investments in local communities along the way. Federal, provincial and local governments need to hear from you to understand how many people support this project.

The website boasted "14,000 skilled, good-paying jobs throughout pipeline development and construction" and "over $36 billion in economic growth": "The benefits are clear. A vision for a better Canada is at stake. Our country needs Energy East."

[276] The website is no longer available. The July 2015 iteration I am citing here can be found in the web archive: https://web.archive.org/web/20150721113522/http://action.oleoducenergieest.com/

But the benefits were not clear to all. In Quebec, as we have noted, the opposition could take a "cultural" tone — understood loosely as involving political, economic, and symbolic means of managing collective life — or a more strictly "economic" one. In terms of the latter, the eventual cancelation of the Cacouna terminal gave statistical force to opponents of the pipeline, who began circulating the "60 long-term jobs" argument. When apposed to potentially catastrophic risks such as full-bore ruptures — easily visualizable since the 2010 Kalamazoo spill — risks could easily appear to outweigh the shrinking visible benefits.

And as discussed in the previous chapters, November 2014 turned out to be a bit of a bummer for TransCanada. On November 18, Greenpeace leaked a public relations plan for Energy East in Quebec, authored by public relations firm Edelman, dated May 20, 2014. Greenpeace subtitled their release as follows:

> Having a vigorous debate about pipelines and Canada's energy future is something Greenpeace endorses — but what happens when one side of the debate creates fake groups to make it seem like they have more people on their side than they really do? That's what appears to be happening regarding the Energy East pipeline and it's a troubling development.[277]

The proposal is an interesting document. It underlines "the new realities of designing, building and operating a major pipeline project in North America" (Edelman 2014: 35-36), which include: "[p]ermanent, persuasive, nimble and well-funded opposition groups"; the framing of pipelines as "proxies for the broader 'off-oil' public debate"; and "record low levels of public trust in government" (36). The report also identifies Quebec as a "distinct nation" (5) with a stronger environmental concern than the rest of Canada, and with a distinct economic ethos given its dissociation of "oil sector success with [the region's] economic growth" (11). Edelman identifies some Quebec regions we have already discussed as being particularly sensitive — Lanaudière, Chaudière-Appalaches, L'Islet — given their relation to a rich agricultural tradition and protected natural ecosystems.

Edelman's proposal was controversial because it prescribed the manufacture of "true champions" (39) who would lead a public advocacy campaign and "mobilize local advocates" (25). "Third-party voices must be identified, recruited and heard to build an echo chamber of aligned voices" through various media platforms like "op-ed pieces, blog posts or letter to the

[277] You can view the release here, which also makes the leaked documents available: http://www.greenpeace.org/canada/en/recent/Leaked-documents-show-TransCanada-planning-dirty-tricks-campaign-to-support-Energy-East-pipeline/

editor" (30). In addition to the positive mobilization, "In order to add layers of difficulty for opponents, we will work with third parties and arm them with the information they need to pressure opponents and distract them from their mission" (30). This "information," for example, could come from research into key opposition groups, "including financial disclosures, legal databases and legislative record" to identify potential weaknesses of groups like the Council of Canadians and the Suzuki Foundation (31).

One element that is particularly interesting in the report is how, for Edelman, the road to active opposition to the pipeline project is paved with false information. As depicted in the diagram on page 41, a neutral observer starts from a "no information" point somewhere near the center of a bi-directional arrow. To the right — on the way to "active support" — the observer would step through "some information" to "passive/assent" and then "weak support." The observer, however, would be dragged towards "active opposition" by being first "mis-informed," and then "mal-informed" (41). Correcting mis-information in a timely manner through close monitoring and engagement is a recurrent strategy in the report.

Edelman describes some of the important claims made by opposition groups in Quebec as follows: the threat to belugas in Cacouna; the considerable risk of spills; the threat to clean water supply (27); the toxicity of oil sands and difficulty to clean it up; low benefits for Quebec (low job count after construction, no price reduction at pump); contribution to the climate crisis; the threat to arable land; TransCanada's safety record; the location in Calgary of TransCanada's monitoring center (28). What is interesting is that, for the most part, these are valid concerns that do not necessarily hinge on factual accuracy. Of course, the strategy does not suggest taking these concerns seriously but rather to pull the factual blanket in the right direction and organize counter-activists.

Each side, in a way, needs to exaggerate their factual claims — not to deceive people into believing self-interested falsehoods as much as to entice them into adopting the appropriate set of facts. To be clear, I am not arguing that factuality does not exist, but rather that what on the surface may appear as contradictory factual claims about the same thing are often either epistemological disagreements about how a fact should be constituted or the apposition of alternate propositions of value. In both cases, knowledge claims are evaluated by each party from the standpoint of already knowing the deeper — or more general — truth of the matter. In a

circumstance such as this, arguments and claims are not stepping stones to a deeper, wider truth but acts of seduction.

Epistemic seduction, for protagonists engaged in a pitched battle between equally valid but differentially constituted concerns, implies constructing a compelling corpus of claims that cumulate into cohesive aspirations for a desirable society. They do not cumulate into better understanding but particularized commitments. Given that the objective is the discursive constitution and dissemination of a vision for a self-evidently better future (and not the collection of scientific proof), manipulating the impactfulness of claims by exaggerating their factual reach does not threaten the advocate's epistemic and moral fabric because the generally correct, or perhaps more to the point the righteous position is already known. From the start, then, any information that contradicts each party's "master narrative" is necessarily mis-information, not necessarily because it is inaccurate but because it pulls in the wrong political and ethical direction. In this sense, counter-information is not an epistemological challenge as much as a political threat.[278]

On the Edelman diagram, there are two big arrows pulling in the right direction: broad "digital literacy and engagement programs" that "cast a wide net to build knowledge and awareness and challenge myths about TransCanada, Energy East, and the industry"; and more pointed "digital advocacy programs," discussed above (41). Which leads to another interesting aspect. In a sense, depending on how you frame it, there is nothing particularly controversial with the report. In a way, all that Edelman is doing is attempting to emulate the successful advocacy strategy that ENGOs have been using to mobilize engaged publics and undermine the power of looming corporate entities. It just appears cynical when a corporate giant concocts schemes to manufacture and manipulate "grassroots advocates" toward supporting their financial success. But ENGO advocacy campaigns, even though they can more legitimately don the grassroots mantle, of course also curate information to bait and engage potential supporters.

Indeterminacy and municipal empowerment

TransCanada quickly tried to dissociate itself from Edelman and the proposal but the damage had been done. Later, "TransCanada readily admit[ted that it had] failed in Quebec on

[278] This in part explains depictions of TransCanada's open house initiative as "nothing more than a process of corporate propaganda from TransCanada, a brainwashing attempt and a distribution of sedatives to citizens." See the comment section in Maynard (2014a).

the public relations front." As noted in chapter two, this failure motivated the hiring of Louis Bergeron as vice-president for Quebec and New Brunswick in September 2015 as he had already overseen the construction of another controversial pipeline project, the Pipeline Saint-Laurent (PSL), which had met fierce opposition from landowners along the path.[279] Some of these carried their experience over to the mobilization against Energy East.[280]

Despite the repudiation, TransCanada's apparent cynical plans to gain public consent were seared into the public imaginary and propelled municipalities into further action. The *Union des municipalités du Québec* (UMQ), which represents more than 80% of Quebec's population, formed a *Comité sur le tranport de pétrole par oléoduc*, which met for the first time in November 2014. The November 19 press release expressed concerns about the safety of water sources, about how TransCanada's NEB application did not reflect negotiations that MRCs had had with the company, and deplored the overall lack of information provided to them by TransCanada. The Montreal Metropolitan Community (MMC), together with the UMQ, for reasons that should sound familiar by now, declared their opposition to Energy East in its current form on November 27, 2014, arguing that the project was unacceptable due to its lack of transparency (impact studies not shared), risky river crossings, and incomplete data (route not finalized), judging it "inadmissible that the NEB would evaluate an incomplete project."

As mentioned earlier, from the start the MMC and other municipalities were not content with delegating better judgement to the company but demanded that the latter make more precise information available and more visible its reasoning process as well. When it became obvious that this would not be forthcoming, municipalities mobilized to generate their own expertise. Two landmarks of this are the D'Autray report mandated by the D'Autray MRC in late 2014, and the Savaria report[281] mandated by the MMC to support the work of its *Comité de*

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[279] PSL had been planned for 2008 but only came into service in 2012. It carries refined petroleum along the St. Lawrence river's South shore between the Valero refinery in Lévis to a terminal in Montreal-East. There were 61 landowners who refused to sign agreements with Ultramar and who were given expropriation notices by the courts in January 2011. The PSL is yet another "modern" pipeline which suffered significant corrosion, in this case one year after construction. The proximity to Hydro Quebec power lines was identified as having played an important role.

[280] The most vocal of these was France Lamonde, president and spokesperson for the *Association de propirétaires privés, agricoles (acéricoles) et forestiers*, which had been constituted in their previous efforts against the PSL. Lamonde already had easements from PSL, two CN rails, and a Hydro Quebec line on her farmland, to which Energy East would add its own. She contributed significant expertise about the subtle impacts of pipelines for farmers and the differences that mattered.

[281] The Savaria study, released on May 6, 2015, modelled the impacts of a breach on three of the MMC's rivers — the Ottawa, Milles-îles, and L'Assomption rivers — and three wetlands and aquifer recharge zones. The dramatic numbers circulated widely, for example that oil spilling into the Ottawa river would reach the first

vigilance métropolitain. The committee was created in April 2014[282] to follow developments with the reversal of Enbridge's Line 9B pipeline, and was tasked in May 2014 to track developments with Energy East as well.

The MMC applied to participate directly in the NEB hearings in February 2015, bypassing provincial representation. In addition to generating its own knowledge about the pipeline, the MMC announced in May 2015 that it would also hold its own public consultations in the fall. In a letter dated August 27, 2015, TransCanada declined to participate, stating that it was following NEB protocol given that the interprovincial pipeline was under the latter's jurisdiction, and referred the MMC's committee to the information presented there. TransCanada added that given the September-October timing of the MMC's consultation, the latter would not benefit from the updated version of TransCanada's NEB application, planned for the fourth trimester of 2015. The MMC retorted that "the potential impacts on people and the environment remain the same, regardless of the infrastructure's exact location."[283]

For reasons of brevity, I will only say a few things about these consultations. Held between September 15 and October 1, 2015, the consultations were open to all who wished to participate, by way of presentation, brief, or written comment. The pattern of presentation I

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municipal water intake in four hours; ten would breached within eight hours, and 26 within 12 hours. Savaria used two possible reaction times between the breach and valve closures: Enbridge's aspirational delay (13 minutes), and Enbridge's observed delay in a 2011 spill at a pumping station in Terrebonne (60 minutes). Reaction time impacts how much oil gets into the water, and so does the distance between shut-off valves. TransCanada criticized the report during the BAPE hearings as being simplistic, even though the company used similar models for its own "worst case scenario." Jacques Harvey, author of the report produced for the D'Autray MRC, argued at the MMC consultations and later at the BAPE that models like Savaria's should be conducted for every type of oil transported and every season.

Savaria also evaluated municipal tax returns from Energy East, finding that the province of Quebec would receive less land tax than other provinces, especially when contrasted with Ontario — an average of $5,273/km versus $10,167/km — which they attribute to Ontario having a specific fiscal category for pipelines, which Quebec does not. By calculating industrial and residential development that could occur on the right-of-way, they found that the MMC would end up with a negative fiscal return of $1.9 million over 60 years.

Savaria later produced a spill dispersal model for the Ottawa-Gatineau region, released in September 2016 at the request of two ENGOs, the Council of Canadians and Ecology Ottawa. The report, combined with a march against Energy East organized by *Stop Oléoduc Outaouais* in August 2016, seemed to have had an influence on the Gatineau councilors, who voted a resolution against the pipeline in its current form and all pipelines that endanger citizens' health and environment, on October 18, 2016. Even though Energy East did not pass through Gatineau itself, the mayor noted that it passed through its watershed (Radio-Canada 2016).

Savaria's MMC report can be consulted here:
http://cmm.qc.ca/fileadmin/user_upload/documents/20150514_oleoduc-energie-est_rapport.pdf

[282] This committee worked alongside another, the *Comité technique d'aménagement*, tasked with analyzing Energy East's path and proposing alternatives more suited to the PMAD.

[283] TransCanada's letter can be viewed here, the MMC's reply is no longer available on the web:
http://cmm.qc.ca/fileadmin/user_upload/documents/20150904_transcanada_lettreCMM.pdf

witnessed there was very similar to that which I observed in other consultative venues in Quebec on the pipeline project, hydrocarbon development more generally, or EA reform between 2015 and 2017. At the most, a handful of intervenors supported the project. A usual suspect was the *Fédération des chambres du commerce du Québec* (FCCQ),[284] who presented on October 8, advocating on the basis of billions of dollars invested, hundreds of permanent jobs, and support for local industry. The *Manufacturiers et exportateurs du Québec* (MEQ),[285] who presented on September 23, also emphasized local impacts beyond individual refineries by way of a contribution to the local petrochemical chain. The argument rested on the purported better price refineries would get from western oil compared to imported oil, which would help local industries remain competitive.[286] The MEQ "guarantee[d] that Energy East's oil will be refined in Montreal." Another recurrent argument given was that, given our ongoing use of oil,[287] the realistic question was not whether but how we should transport it.[288] For the MEQ, "numbers answer this question without ambiguity: with pipelines."[289]

The *Association industrielle de l'est de Montréal*,[290] deploring the fact that "we will unfortunately be using oil for a long time still," humbly asked for the opportunity to remain competitive — to at least "run faster than the person next to us, not necessarily the bear" — which Energy East would make possible. When pressed, they did not quite have the MEQ's confidence, arguing that what mattered was the principle: refineries needed flexibility, regardless of whether or not they would actually use the oil itself, because "you never know what will happen in the future." Building the pipeline would send the right message — refineries needed to know that there was a future for them here. The FCCQ, when pressed, was equally non-

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[284] Quebec Federation of Chambers of Commerce.

[285] Quebec Manufacturers and Exporters.

[286] Five refineries used to be located in Montreal. Today, only one remains.

[287] The MEQ cited that Quebecers consume 20 billion liters of oil per day.

[288] As noted in chapter one, "how" has been the dominant question from the start, and for the most part remains so today. This is reflected in the mandate that the Standing Senate Committee on Transport and Communications received on March 9, 2016, to "examine and report on the *development of a strategy to facilitate* the transport of crude oil to eastern Canadian refineries and to ports on the East and West coasts of Canada" (my emphasis). The interim report, released in December 2016, is entitled *Pipelines for Oil: Protecting our Economy, Respecting our Environment*. http://publications.gc.ca/collections/collection_2016/sen/yc19-0/YC19-0-421-6-eng.pdf

[289] The FCCQ and the MEQ relied heavily on numbers contained in a Conference Board of Canada 2012 report titled, *Fuel for Thought: The Economic Benefit of Oil Sands Investment for Canada's Regions*. The MEQ cited big numbers: a $364 billion investment in the Canadian economy over 25 years; $21 billion in tax, income tax, and royalty revenue in 2012 to the different levels of government in Canada from the oil and gas industry; 4,039 jobs in Quebec during construction and 500 jobs during the first 20 years.

[290] Montreal East Industrial Alliance.

committal in terms of where the oil itself would end up, arguing that direct supply to refineries mattered less than the stability of potential supply.

The MEQ pointed out that, contrary to ideologically informed groups, they "stick to the facts." Reacting to the growing opposition in Quebec, they made a sortie on November 5, 2015, claiming that, "It is completely false to say that Quebec takes on all the risks without receiving any benefits." After citing a list of impressive numbers — 18,000 quality jobs in Quebec; $80 million in yearly revenue for Hydro Quebec; the elimination of Quebec's hydrocarbon trade deficit because "all the oil we consume here is foreign"; $2 billion in fiscal revenue for Quebec during construction; $10 million per year in land tax revenue for municipalities, etc. — the MEQ stated that studies demonstrate that the risk of a major spill is minute, close to zero," and that we should defer "to the work of authorities and experts to evaluate the project's stakes and answer legitimate questions rather than demand its abandon from the outset."[291]

The annoyance and progressive outrage of groups like the MEQ was palpable. When the FCCQ representatives left after their presentation to the MMC commissioners, they had an embattled air about them. The MMC panel showed tangible impatience and even a degree of aggressiveness towards the FCCQ presenters, targeting factual contradictions, namely in terms of job creation and the oil's destination. The vast majority of presenters during the MMC consultation argued against the project from a variety of perspectives. ENGOs, municipal officials and civil servants, concerned individual and mobilized citizens, research groups and academics, students — all attacked the project on multiple fronts, from counter-facts to ethical principles. One First Nations representative spoke at the hearings, Chief Serge Simon for the Mohawk Council of Kanesatake, despite being "tired of First Nations trying to convince non-natives to save their own future."[292]

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[291] See the press release here: https://www.newswire.ca/fr/news-releases/manufacturiers-et-exportateurs-du-quebec-salue-lannonce-de-loleoduc-energie-est-540796031.html

[292] First Nations opposition to the Energy East pipeline was as strong, diverse, and politically complex as any other. Because most of my research was devoted to the public controversy as it unfolded and to the consultative and regulatory processes as they arose, the data I have in this respect is somewhat marginal. Because of this and of the sensitive nature of Indigenous sovereignty, this aspect is largely untreated in my thesis. Be that as it may, many of the same issues arose: concerns over global environmental threat, risks to water, divisive corporate tactics, and empty consultations. First Nations opposition was especially strong in other provinces. In Quebec, Chief Simon was at the forefront of First Nations resistance leading to the January 2016 declaration of opposition by the Iroquois Caucus. He was also a key actor in a nation-wide initiative that led to the September 22, 2016 Treaty Alliance Against Tar Sands Expansion, signed by 50 First Nations across Canada at the time. The Treaty Alliance can be viewed here: http://www.treatyalliance.org/treaty/

My objective here is not to exhaust the range of arguments for and against the pipeline but to give a sense of the kinds of arguments that circulated in different consultative venues on the pipeline specifically, and hydrocarbon production generally, at the time of the controversy. Concern that had been voiced at the outset had shifted into a tide of opposition through 2015 and into 2016. The above might give the impression that the pattern of support and opposition followed a general division between business and ecological sensitivities, but worker unions in Quebec undermined this interpretation by taking position against the pipeline. The *Fédération des travailleurs du Québec* (FTQ), representing some 600,000 workers, explained its opposition in their brief presented to the BAPE, arguing that "the construction of this pipeline is deeply irreconcilable with the fight against climate change and the protection of the environment," that few jobs would be created and most of the oil would be exported, and that it would probably never have social licence.[293] The *Confédération des syndicats nationaux* (CSN) — another major union in Quebec, representing some 325,000 workers — protested the August 2016 opening of the NEB hearings in Montreal, arguing that "Energy East is not worthy of the 21st century."[294]

The MMC announced the official results of its consultations in January 21, 2016, declaring itself in opposition to the Energy East pipeline because environmental risks outweighed the economic benefits, suggesting that perhaps western premiers had not fully done their homework.[295] While recognizing that the last word would not fall to municipal officials, MMC president Denis Coderre argued that they had become politically "unavoidable." This was in part a reflection on the now widespread displays of municipal opposition and in part a nod to the growing recognition that municipalities were "governments of proximity,"[296] on the front lines of

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[293] A section of the FTQ, *FTQ-construction* (representing 77,000 workers), disagreed, arguing that job creation should take precedence over decarbonization, which will not happen overnight anyway.

[294] Available here: https://www.csn.qc.ca/actualites/energie-est-nest-pas-digne-du-21e-siecle/
For reasons behind the CSN's position see: https://www.csn.qc.ca/actualites/5-raisons-pour-lesquelles-la-csn-soppose-a-loleoduc-energie-est/

[295] The backlash from the West was immediate. Saskatchewan premier Brad Wall tweeted, "I trust Montreal area mayors will politely return their share of $10B in equalization supported by West #EnergyEast." The Alberta Wildrose Party leader declared that he wasn't "going to take any environmental lessons from a mayor that would release 8 billion liters of raw sewage into the river right in front of his community" (CBC 2016a). Federal Conservative Party leader Rona Ambrose threw her outrage around, arguing that instead of taking selfies Prime Minister Trudeau should be fighting for our national resources and that the pipeline was a matter of national unity. Trudeau remained vague and grandiloquent, saying they would consult everyone to ensure social licence, environmental responsibility, and responsible resource development because "that is what is needed in the 21st century" (Vastel 2016a).

[296] Legally, the argument is based on the "principle of subsidiarity" contained in Quebec's *Sustainable Development Act*, which affords the delegation of responsibility to the appropriate level of authority with the objective closing the gap with impacted communities. Globally, there is a growing tension between states and municipalities in

climate change mitigation and adaptation.[297] As such, at least insofar as Coderre was concerned, their administrative agency should not be dismissed, and hence their political weight should not be discounted.

Quebec's *Union des producteurs agricoles* (UPA), emboldened by the momentum, took an official stand against the project in May 2016. The syndicate, which had been resisting the pipeline while at the same time negotiating a framework agreement for its members with TransCanada, explained its position in a brief it had prepared for the BAPE hearings. The overarching points were: the incoherence between the pipeline project and the province moving towards a decarbonized future; that 75% of the right-of-way crossed agricultural and sylvan lands in Quebec, despite the fact that farmland makes up only 2% of the province's territory; that pipelines bring significant stress to farmers[298] and depreciate property value; and that the impacts on aquifers in the case of a spill would be disastrous.

The sentiment behind the UPAs combined collaboration and resistance reflects how the distribution of political agency was understood in Quebec: nobody within the province had constitutionally sanctioned power to stop the pipeline. But everything contained in-between total consent and delegation on the one hand, and constitutionally excessive obstruction on the other, was a grey zone — one that was harnessed to great effect by the CQDE. The jurisdictional

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that metropoles, because of rising urbanization, have been the seat of modern development without having the political power or fiscal resources to match. Local measures like the PMAD discussed above, and international efforts like the United Nations Human Settlements Programme, reflect the growing sentiment that "the sustainable development battle will be lost or won in cities" (Delgado 2015, my translation).

[297] Take for example the *Global Covenant of Mayors for Climate and Energy*, a voluntary alliance of more than 7,500 cities and local governments "to advance city-level transition to a low emission and climate resilient economy, and to demonstrate the global impact of local action." Montreal signed on to the Compact of Mayors in April 2015, stating a reduction target of 30% by 2030. The Compact has since folded into the above cited Covenant. See the website here: https://www.globalcovenantofmayors.org/about/

A similar argument about the relation between climate change mitigation and territorial sovereignty has been made about provinces and states. In Canada, this change was partly accelerated by federal sluggishness on climate action during the Harper years, with provinces stepping in to fill the "legislative void" (McCarthy 2015). As noted in an earlier chapter, federated states in general have also made the claim of being a privileged site for climate action, e.g. at the July 2015 *Sommet des Amériques sur le climat*, where Quebec premier Couillard announced subscribing to the *Protocole d'accord sur le leadership climatique mondia*l which aimed for GHG reductions of 80% to 95% from 1990 by 2050 (Shields 2015b). Couillard co-chairs the Climate Group's States & Regions Alliance, created in 2005 with the signing of the *Montreal Declaration of Federated States & Regions* "because [states and regions] are setting some of the most ambitious climate targets, developing a new generation of climate and energy policies, committing to measurement, reporting and transparency — and driving global standards of climate leadership." You can read the declaration here: https://www.theclimategroup.org/sites/default/files/archive/files/Montreal-Declaration-Signatories-as-of-Jan2010.pdf

[298] See Bouchard-Bastien et al. (2016) for the impacts that potential risks and perceived inequities in the process of pipeline development can have on the health of populations.

dynamic that played out in the Cacouna was about to play out again over the province's BAPE evaluation of the pipeline.

Discounted agency

Quebec's *Assemblée Nationale* voted the following motion on November 6, 2014:[299]

> That the National Assembly deplore that the National Energy Board conducts it environmental assessments without considering impacts on climate change and greenhouse gas emissions;
> That the National Assembly deplore that no greenhouse gas emission regulation for Alberta's tar sands industry has been enacted to this day;
> That the National Assembly ask the Quebec government to assume its environmental competency and to renounce delegating its environmental assessments to the National Energy Board;
> That the National Assembly ask the Quebec government to include namely Energy East's global contribution to climate change and to greenhouse gas emissions in the mandate it will soon give to the *Bureau d'audiences publiques sur l'environnement* [BAPE] to evaluate the entire impacts of TransCanada's Energy East project.

Remember the clear and strong language, especially as pertains to the pipeline's total impacts and the assertion of Quebec's environmental sovereignty. You might recall the letter exchange between TransCanada and the Quebec government in early March, 2014, where Quebec insisted on TransCanada's project being automatically subject to the province's environmental law procedure. Quebec sent two more letters, on November 18 and December 2, stating again that "Energy East is subject to the environmental impact assessment and review procedure under article 2, paragraph j,"[300] asking TransCanada to comply with article 31.1 of the LQE by submitting an *avis de projet* and thereby initiating the procedure.[301] Once an *avis de projet* — or project description — is submitted, the ministry emits a directive which sets out the concerns the government wants the company to address in its impact assessment. You can see why this is important. The directive is designed to meet provincial specificities, both in terms of its territorial particularities and its jurisdictional responsibilities, so an impact assessment conducted to meet these particular exigencies is substantively different than one designed to meet

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[299] My translation. You can consult the original here: https://www.sqrc.gouv.qc.ca/relations-canadiennes/positions-historiques/motions/2014-11-06-energie-est.pdf

[300] We have already discussed this regulation in chapter one, which subjects any pipeline longer than 2 km to Quebec's Environmental Quality Act (LQE).

[301] 31.1 is a shorthand for articles 31.1 through 31.9, abbreviated as 31.1 and ss (sections). 31.1 reads: "No person may undertake any construction, work, activity or operation, or carry out work according to a plan or program, in the cases provided for by regulation of the Government without following the environmental impact assessment and review procedure provided for in this subdivision and obtaining an authorization from the Government." Quebec's Environment Quality Act (LQE) is accessible here: http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/Q-2/

federal requirements. Each impacted ministry has an opportunity to vet the company's impact assessment before it is approved and used to inform subsequent public hearings.

The Quebec government also established seven conditions required for their approval of the project, namely: adequate consultation of citizens; following the highest technical standards; legal compliance with First Nations consultation and participatory requirements; economic and fiscal benefits for all of Quebec; emergency measures and intervention plans prior to approval; full corporate economic and environmental responsibility; and adequate natural gas supply. The Quebec-Ontario Joint Meeting of Cabinet Ministers adopted Quebec's seven conditions as a common position on Energy East on November 21, 2014[302].

TransCanada did not answer the letters, nor did it change its stance on the project being solely subject to federal constitutional authority. Despite its authoritative gambit, the Quebec government quickly faltered. On February 3, 2015, the NEB opened its applications to participate in the Energy East hearings, giving March 3, 2015 as a deadline. On February 11, the Quebec government announced its intention to present its case at the NEB, and ultimately mandated its Energy and Natural Resource ministry (MERN) to represent it there.[303] This led to the mobilization of departmental resources from different ministries to analyze TransCanada's NEB application and present ministerial opinions.[304] On June 8, 2015, Quebec Environment Minister David Heurtel mandated a BAPE by a different article of the LQE, 6.3 rather than 31.1. This would mark the beginning of the "BAPE tronqué" controversy.

Internal documents suggest the extent to which the government had accepted its lack of political clout. For example, the Environment ministry had asked the Energy and Natural

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[302] View the press release here: https://news.ontario.ca/opo/en/2014/11/agreements-reached-at-quebec-ontario-joint-meeting-of-cabinet-ministers.html. The show of evaluative autonomy from Ontario and Quebec — that is, the refusal to entirely delegate the assessment of the project to the NEB — proved somewhat contagious. In New Brunswick, following a complaint filed by Green Party leader David Coon with the province's ombudsman in June 2015, the latter assigned an investigator to find out why provinces like Quebec and Ontario were conducting their own environmental impact assessments and whether NB should follow suit instead of deferring to the NEB. Coon criticized the Environment minister for giving TransCanada a "free pass" given the "empty shell" that federal EAs had become (Huras 2015). But the NB government, who were vocal supporters of Energy East, toed the line on delegating full jurisdiction over the pipeline to the NEB (Poitras 2016).

[303] Centralization of provincial concerns into a single representative voice seems to have either been enacted somewhat retroactively or have required some measure of effort to enforce. I came across one instance where a separate application to intervene in the NEB process by a Transport ministry (MTQ) engineer citing the ministry's specific infrastructural concerns, dated February 25, was later retracted, on March 11, by another engineer on behalf of the MTQ, pointing to the MERN's assigned responsibility.

[304] The analyses began in the fall of 2015 and were eventually submitted to the BAPE in 2016.

Resources (MERN) ministry for its opinion on the adequacy of TransCanada's original NEB application. In a February 19, 2015 report, the MERN set out the context:

> The project cited in the heading crosses multiple provinces and so is of federal competency. It is subject to the NEB's regulatory authority. The project is also subject to the Canadian Environmental Assessment Act. The project is not officially subject to Quebec's environmental impact assessment and review procedure. However, the impact assessment is currently publicly available, in digital format, on TransCanada's website. […] The Environment ministry will submit questions to the promotor, who is however not obliged to respond. Exceptionally, the Environment ministry has not emitted a specific directive and there will be no decree nor authorization permit. The MERN's comments will be useful for the elaboration of the position the government of Quebec will defend during the NEB hearings.[305]

It is striking the extent to which Quebec's MERN had entirely adopted TransCanada's theory of constitutional federalism. It is not as if more nuanced interpretations of constitutional power were not readily available, especially in Quebec where cooperative federalism is prevalent. For example, constitutional expert David Robitaille explained to the MMC commissioners during their municipal consultation on Energy East that federal jurisdiction does not "evacuate local legislation": provinces and municipalities have their own competencies on security and territorial planning.[306] He pointed out that since the 2007 Canadian Western Bank v. Alberta Supreme Court judgement, "we are in a favorable period for the subjection of businesses to local competencies — there are no more exclusive and distinct competencies.[…] Competencies are not subordinated but coordinated, it is a key aspect of jurisprudence at the moment." Canada Research Chair in Environmental Law Paule Halley concurs, arguing that on these grounds, TransCanada had to submit to Quebec legislation and verdicts — and hence must follow the full BAPE procedure. She cited a similar case in British Columbia's Supreme Court, where the Northern Gateway pipeline was found to be subject to provincial environmental legislation (Halley 2016).

Where there is general agreement is on the fact that when federal jurisdiction is clearly established, as is the case of inter-provincial pipelines, the intervention of other jurisdictions cannot interfere with the viability of the project. The ambiguity lies in the question of how much and what quality of intervention might be reasonably considered to be making a project

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[305] My translation. See the document below, which was made available at the request of the BAPE commissioners during the hearings.
http://www.bape.gouv.qc.ca/sections/mandats/oleoduc_energie-est/documents/AV5.1.pdf

[306] Me. Robitaille presented with Me. Bélanger on behalf of the CQDE on September 25, 2015.

unfeasible, or as the CQDE put it, the point at which they have "impose[d] excessively heavy conditions on activities essential to these companies."[307]

So there are two kinds of power here. One is procedural and collaborative, where agency hinges on the right and capacity to significantly influence the quality of the project. As we have seen, there are many ways in which the government and proponents try to enact inclusive procedure while evacuating opportunities for agentic determination. The other is often simply referred to as "political": it focusses not on process but on conflicting outcomes. This is where climate change has changed the politics of pipeline approval. Whereas Lewington (1991) was content with pragmatic compromises, climate change seems to be demanding that power over differential outcomes — and hence social futures — be more evenly distributed. But power over futures requires not only the negative power to obstruct but also an entirely different procedural temporality of development that would allow for positive power to bring social imaginaries into the design process of large-scale projects. But this kind of positive power — that is of actual shared democratic agency — does not coexist with political certainty and procedural predictability.[308]

These are very different kinds of politics and should not be conflated. Harper's drastic legislative measures were in response to the latter species of politics, which had rendered pipeline development virtually inoperable. But the restrictions themselves were equally inoperable, given the population's democratic expectations and the country's infrastructural opportunities (legal challenges, advocacy campaigns, electoral pressures, etc.) to enact these expectations. For the CQDE, the restrictions imposed by bill C-38 on citizen participation "baffle the human rights to consultation and participation recognized in international law and the rights to a safe environment respectful of biodiversity proclaimed in the Quebec Charter of Human Rights and Freedoms." For them, while it is constitutionally impossible for Quebec to outright refuse the project, it is also "desirable for jurisprudence to evolve" and adapt to evolving social circumstances. For example, the current distribution of jurisdictional authority over interprovincial transportation was negotiated at a time when the national imperatives for building East-West connective infrastructure was strong and environmental matters did not have the weight they have today. It is not difficult to argue that the entire geographical, political, and

[307] I failed to catalogue this intervention and am no longer able to locate it.

[308] See Rancière (2005) for a discussion of the ironic existential threat that too much democracy presents for Democracy.

administrative circumstances of "Canada" are so radically different today as to undermine the kind of continuity implied on some levels of discursive representation. In the current context where development and environmental imperatives grind against each other in a variety of ways, local agency is given increasing political weight relative to the needs to maintain a coherent political superstructure across vast expanses of territory like Canada.

A tale of two BAPEs and the indeterminacy of legal infrastructure

Heurtel's June 2015 mandate to the BAPE was two-fold.[309] The first part required that the BAPE validate, before the end of the month, an "expert committee" nominated by the ministry to approve TransCanada's preliminary work plan to finalize the pipeline's path. The company was hoping to conduct "seismic surveys in terrestrial and marine environments" and "geotechnical surveys in terrestrial environments" during the summer. Once the committee had validated that the ministry's requirements corresponded to best practices, then the ministry would issue the permits.

The second part of the mandate would begin when the company had confirmed the route, or when the NEB process had restarted. It would involve: 1) Conducting an investigation and public hearings on the Quebec portion of the project, "including an evaluation of GHG emissions" (from the Quebec portion of the pipe, not the whole contribution); 2) "consult local communities to ensure the project's social licence"; 3) make sure that the company "respects the highest technical standards to ensure citizen safety and environmental protection" and guarantees an emergency plan "according to highest standards and assumes its entire economic and environmental responsibility" in case of incident, including setting up an indemnity fund and a guarantee of its financial capacity. The BAPE would rely on studies produced for Quebec's ÉES.[310] The ministry of Energy and Natural Resources, along with the Finance ministry, would have the mandate "to analyze the economic aspect of the project."

The press release made somewhat contradictory statements, highlighting the ambiguous nature of Quebec's sovereign agency. The goal of the mandate was to inform citizens and allow them to "express their preoccupations about the Energy East project," so that the government

[309] You can find Environment ministry's press release and the mandate letter to the BAPE below. All translations are mine. http://www.mddelcc.gouv.qc.ca/infuseur/communique.asp?no=3176, http://www.bape.gouv.qc.ca/sections/mandats/oleoduc_energie-est/documents/CR4.pdf

[310] You might recall, these were assessments conducted by the provincial government to formulate a framework for hydrocarbon development on its territory.

may "have in hand all the analyses and arguments necessary to defend Quebec's interests at the NEB hearings."[311] Which begs the question, what exactly did the government mean when it mandated the BAPE to "ensure the project's social licence"? On the face of it, social licence did not imply any form of consent but rather being afforded the opportunity to express preoccupations, regardless of how these preoccupations would circulate thereafter. The press release concluded with a direct quote from Heurtel: "As with all development projects, the government does intend to exercise its competencies fully and to have its laws respected. The security of people and the protection of the environment are a priority for this government."

But it was clear to most that it had not exercised its competencies fully. In fact, it had compromised on a few fronts: it had restricted the scope of both the evaluation of the project and the assertion of sovereign authority that had been voted on by the national assembly; and it had given up on the mandatory legal process that Energy East should have been subjected to in the province. As already mentioned, this had to do with the differences between LQE article 6.3, designed for generic and flexible studies of general industries, and article 31.1, which sets out a pre-defined procedure for pre-specified types of projects. For pipelines, as stated above, any project longer than 2 km is automatically subject to this procedure.

There are many significant differences between 6.3 and 31.1. At the outset, article 6.3 does not require the company to submit an *avis de project*, nor does it lead to a province-specific directive and subsequent impact assessment. This was the province's first workaround. Given TransCanada's unresponsiveness and the NEB timeline apparently moving forward, and given the pressure the provincial government was receiving from citizens, municipalities, and other elected representatives at the National Assembly, it found a way to perform its legal sovereignty without having to enforce it (Baril 2015).

Another significant difference was that a BAPE 6.3 would not lead to a legally binding decision and enforceable conditions but only to a brief submitted at the NEB. The absence of an authorization permit as a procedural outcome would also preclude citizens from using environmental injunctions to enforce authorization conditions, as provided for in the LQE. Also, no ministry could demand further information other than that voluntarily offered by the company. And importantly, provincial First Nations consultations are triggered only within the 31.1 procedure, after a company submits an *avis de projet*, so in this case all that remained were

[311] The stated deadline for the report was at the latest 60 days before the start of NEB proceedings.

corporate consultations which were conducted outside of provincial legal requirements.[312] While the 31.1 procedure cannot be restricted and so subjects all aspects of a project to public scrutiny, Heurtel's 6.3 mandate deliberately, and controversially, excluded First Nations consultations, the impact on gas supply in Quebec, and the consideration of economic aspects of Energy East, which the government would conduct *in camera* (see chapter one). For environmental groups, this kind of fragmentation of a project's evaluation was antithetical to the principles of sustainable development which demanded the integrated consideration of economic, social, and environmental matters.

TransCanada's filing of amendments to its NEB application on December 17, 2015, by confirming Energy East's Quebec facilities, fulfilled the Environment ministry's condition to initiate the BAPE hearings, which would hold the first investigative part of its process between March 7 and March 17, 2016. It might be worth repeating here that this is the application that the NEB deemed difficult to parse, even for experts, and only considered complete on June 16, 2016, well *after* the BAPE hearings had taken place — a point that many objectors of Quebec's watered-down environmental sovereignty gravitated to.

What followed was on some levels a reiteration of the Cacouna affair. The CQDE, arguing that the environment is a shared competency which subjects Energy East to Quebec's LQE article 31.1, filed with the Quebec Supreme Court on February 18, 2016 a request for proceedings for a declaratory judgement to compel TransCanada to comply with Quebec's full legislation, and for an injunction to halt the BAPE 6.3 process.[313] The CQDE also argued that since the crucial question of climate change would not be considered by the NEB, Quebec

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[312] And indeed, the BAPE hearings went ahead without any First Nations' participation, which exasperated First Nations in Quebec (Shields 2017).

[313] This is one of the visible impacts of the changes brought by Harper's bill C-38, which transferred the responsibility for environmental assessments of pipelines from the Canadian Environmental Assessment Agency to the NEB. Prior to bill C-38, the federal-provincial agreement meant to harmonize evaluation procedures for projects concerning both orders of governments would have initiated a joint evaluation. Me. Bélanger's argument was that despite bill C-38, the constitutional overlap remains. So the bill, rather than *remove* duplication and increase regulatory efficiency and predictability, *increased* regulatory indeterminacy. In the current context, political determinacy is not the result of infrastructural clarity but of one party's willingness to abdicate its political agency.

The CQDE filed its request in conjunction with Équiterre, the *Fondation coule pas chez nous*, Nature Québec, and André Bossinotte, a private landowner who also participated in the CQDE's legal action on linguistic rights. Bossinotte said he found out by chance that the pipe was going to pass some 25 meters from his house when he happened upon a surveyor. He said, "I am not taken into account, I am not important. […] You run this big beast next to my house, really close to my house, and I am not warned, I am not told anything." Bossinotte's case underlines the limits of "directly impacted," as understood by the NEB, as a measure for procedural inclusion.

You can find the CQDE's request here: https://cqde.org/wp-content/uploads/2016/02/Demande-en-justice-amende-.pdf

needed to step up and fulfill this obligation. For the CQDE, ultimately, Quebec's compromise — a first since the regulation had been put in place in 1980 — set a dangerous precedent for the abandonment of the province's environmental competencies.

Less than two weeks later, on March 1, 2016, Quebec followed suit and submitted its own injunction request to force the company to comply and file an *avis de projet* with the Environment ministry — while still having the BAPE 6.3 hearings go ahead as planned to inform its intervention at the NEB. TransCanada tried to have the court dismiss the CQDE's request as irreceivable, and planned to contest the government's request on the basis that exclusive federal jurisdiction was established in the 1867 Constitution. The court ordered for both litigations to be merged.

The first half of the BAPE hearings were held between March 7 and March 17, with the purpose of investigating the project and informing citizens by providing thematic sessions that combined presentations by relevant expertise and a question and answer period moderated by the three commissioners. In a surprising reversal, just four days before the April 25 scheduled beginning of the second phase of the hearings — where the public could come and present their briefs — TransCanada announced its intention to submit an *avis de projet* as required by LQE article 31.1, though still doing so with "all rights reserved" and on a "voluntary" basis, and conditionally to the Quebec government agreeing to expedite the timeline in order "to align its Procedure […] with the NEB's."[314]

Despite TransCanada's sudden alignment with Quebec's legal procedures, there was still plenty to contest. The government's expedited timeline provided only six weeks for the company to produce its impact assessment. This was considered absurd for two principle reasons. First, never before had the government been given the opportunity to benefit from a public investigation into a project *before* it put together its directive for the impact assessment study. All manner of advocates were scandalized that the approximately 300 briefs and 4,000 comments submitted for the 6.3 hearings would not be used to inform the directive. The CQDE reviewed

[314] As with many documents archived by either a Quebec government ministry or the NEB during the controversy, TransCanada's letter — originally published on the Environment ministry's website — is no longer available. But see the CQDE's letter to TransCanada, conveying the point that "the essentials of the question addressed by our litigation remain to be resolved, though they are now of a rather more theoretical nature." The CQDE worried that this "voluntary" basis would leave the door open for the company to subtract itself at any moment from some part of the procedure, such as "article 31.5, which deals with the government's power to authorize the project or not." https://cqde.org/wp-content/uploads/2016/02/2016-05-06-Lettre-de-MB-a-Me-Toralbo.pdf

and analyzed these documents, compiled 862 questions that had remained unanswered, and sent them to the government on June 2, 2016. The CQDE's repeated requests — on April 25, May 20, and June 2 — that the BAPE should submit an interim report to inform the new procedure fell on deaf ears.[315]

The second seeming absurdity was the expedited timeline itself: six weeks to produce an impact assessment, whereas historically these assessments could take years. The CQDE and like-minded groups, given the short timeline and absence of GHGs[316] from the *avis de projet* (which repeated the "voluntary" nature of the submission) and the ministry's directive, speculated that the maneuver was meant to accommodate TransCanada and short-circuit the legal measures undertaken by the CQDE, all while making a spectacle of environmental authority (Shields 2016a).

The new BAPE hearings were scheduled to begin sometime in October. But as you will recall, the NEB hearings, which began in August, fell apart after the August 29 Montreal hearing with the recusals of the Energy East panel announced on September 9, 2016. With the NEB process halted once again, the Quebec government started changing the tenure of its sovereign authority, stating that the BAPE's deadlines could be prolonged, qualifying the original deadlines set in April as having been "for guidance purposes only," and claiming that "in no way is Quebec bound in any strict way to that timeline." Suddenly, the only factor that seemed to matter to the Quebec government was the "rigorous application of the environmental evaluation process contained in the Environment Quality Act. The complete analysis by the ministry of the impact assessment submitted by Energy East will follow its course and will take the time necessary" (Shields 2016d, my translation).

[315] See this letter to the Environment minister: https://cqde.org/wp-content/uploads/2016/02/2016-06-02-Lettre_CQDE-MDDELCC.pdf

[316] Prime Minister Couillard, during this period, took the strong public position that it was up to the federal government to evaluate GHG emissions tied to the project. While the NEB had not changed its scoping, the Trudeau government had layered a federal review process over the NEB's which would examine the emissions. See Brunel (2016).

Conclusion: Indeterminacy and the Locus of Constitution

There are other reasons aside from inexperience that explain the exaggerated scope of what I have attempted to cover in this thesis. Having set out to find how power and agency moved through the Energy East controversy, I had long been engulfed in an unmanageable sea of material before I realized the problem: power and agency moved through *everything*. Writing this thesis has been an attempt to both represent the important variety of ways in which agency was negotiated and suggest a connection between them. What we think about power depends a lot on the angle and distance that we view relations from, which determines the scalar quality of what we can observe. Each shift in perspective changes the quality of objects we can observe, the visibility of their constitution, and the nature of their interactions. But there is more at play than simply the ideas we have about objects and their relations. These ideas are performative in indeterminate ways, for example by informing the quality and limits of democratic participation, the institutional life of objects, and ultimately the kinds of futures we enable.

But importantly, focusing too much on "futures" as some kind of ultimate destination belies the innumerable moments of constitution that make up reality in the present, where small differences matter. Thinking in terms of climate change and the transformation of national economies leads to very different kinds of politics than adhered to by actors like the CQDE and Me. Bélanger for whom the question of sovereignty is not one of final decisive power but of the sound integration of development goals into collective procedures. Remember Me. Bélanger's point: does the fact that an interprovincial pipeline is federal jurisdiction mean that we don't have a say? As I have attempted to demonstrate, there are innumerable contingencies to be determined in such a project as Energy East that reach across countless aspects of social and environmental life that far exceed both the question of where ultimate decisional power lies and the substantive purview of discrete institutions like the NEB.

The more you evacuate the agentic legitimacy of alternate public administrative frameworks from project negotiations — in other words, the more you make development about power rather than about the in-depth problematization, amelioration, and harmonization of substantive outcomes — the more you funnel a society's future through the centralized arbitrary determination of more or less narrowly constituted domains of interest. This was Me. Bélanger's

point in the Cacouna controversy, just as it was his point in the debate over the BAPE process. Where sovereignty matters is not over who has the final decision but in the procedural empowerment of emplaced concerns — so in all the cumulative differences between a BAPE 31.1 and 6.3 noted above. These are the ways that political agency is distributed beyond the centralized arbitrary purview of discretionary power.

This has been one of the impacts that the wider environmental crisis has had on Canada's political and regulatory infrastructure. While the first wave of environmental concern brought new kinds of visibilities and compromises in the 70s and 80s, worries about climate change have brought a deeper infrastructural concern to a public worried about the inertia of entrenched modes of development. This new kind of concern is forcing its way into traditional modes of political legitimacy, continually unsettling attempts by governments and companies to close down infrastructural access to Me. Bélanger's brand of political agency. As I have been arguing throughout this thesis in various ways, the battle is over where the locus of determination lies in relation to the stages of public visibility and influence. The Harper government's attempts at bending the regulatory framework to the exigencies of predictability and expediency were transparent, if not a little crude. But what TransCanada, the Trudeau government, and the Quebec government (in formulating its hydrocarbon law) have been attempting is to *expand* the visibility of participatory measures while restricting their constitutive influence, with the hopes of generating social licence without having to give up substantive control and procedural agency.

But nobody was duped, in part because climate change further intensified the infrastructural stakes. The NEB, as a locus of narrow discretionary determination exemplified precisely what many advocates in Quebec feared: the power of systemic inertia. As Torgerson and Paehlke (1990) argue, there are pre-determined normative assumptions about what constitutes prosperity that are embedded in the very architecture of public administration. Add to this the temporality of hydrocarbon infrastructural investment, and you begin to see why Energy East was such a threat to a public sensitive to the environmental imperatives of climate change. While the entanglements of political administration and economic prosperity generate constant exceptions to more precautionary modes of living[317] — advocating for sustainable principles in general while allowing contingent detractions in the moment — the decades-long return on investment for pipelines makes it hard to argue for just one last momentary fix. Here would be a

[317] Remember the CQDE's argument in the case of the *rainette faux grillon*.

pipeline *demanding* to be filled for at least four decades. This is the kind of argument that sociologist Éric Pineault made, qualifying Energy East as a "trap" (2016).

But there is something else to say about power. As noted by constitutional jurist David Robitaille during his intervention at the MMC, "the MMC's maneuvering room is tributary to the expertise to which they have access." Strictly speaking, he was making a point also raised by Jacques Harvey during the same consultation: the NEB is a quasi-judicial tribunal, so is proof-based in the sense that positions are valued through the ability to generate convincing expertise within the pre-determined boundaries of what counts as relevant issues. Expertise, in such a venue, is political in a number of ways. For one, it demands resources and time, which individual localities do not necessarily have.

Expertise is also political in a venue like the NEB in that the latter's list of issues draws arbitrary lines around what is considered as evidence. We have seen a number of these. The most glaringly controversial was the exclusion of upstream and downstream greenhouse gas emissions and the impacts on climate change from the evaluation, while including purported upstream and downstream economic benefits. Other, more subtle delineations of evidence crop up everywhere when such a project is dissected publicly as it was during the BAPE hearings. The delineation of impact zones is an obvious example. While the company considers a certain geographical span around the pipeline in its impact assessment, there are other ways to track the potential distribution of harm on a territory — watersheds being an obvious one that was noted by multiple intervenors.

Beyond this, there are yet more subtle normative delineations within "expertise" itself. One of them has to do with what counts as legitimate scientific evidence. For example, the criteria of reproducibility can lead to odd hierarchical considerations of what kinds of knowledge have value within decision-making processes. A central aspect of the regulatory debate is the enforced difference between scientific knowledge and expertise on the one hand, and lay accounts on the other (see Callon et al. 2001). As Fuchs argues (1992: especially 57-76), the difference between the two is not the degree of truthfulness but the networks of material and symbolic resources the former mobilizes towards producing its statements as factual rather than "subjective" and unsystematic. This is an important strategy used by proponents of fracking who dismiss anecdotal evidence as unscientific because not produced through those networks (Green 2016). As Green Party leader Elizabeth May derisively noted, a "scientific" method for

measuring the behavior of dilbit in sea water can be as crude (forgive the pun) as dropping bitumen into a bucket of salt water.[318] The scientific validity of the experiment hinges on its reproducibility, and whether the procedure is accepted and circulated as such. Once it is, the black-boxed "findings" can circulate with a power dismissive of the empirical observations of isolated individuals.

Repeatable experiments, and the ability to formulate systematizable and generalizable propositions from them, come to strangely replace real life experiences dismissed as "anecdotal." This leads to an uncanny abstraction in the context of hearings like the BAPE, where intervenors expect a discussion of the actual contingencies that arise during real-life pipeline emergencies and within real and complex environments, but instead get generalizable models generated from a variety of tangentially related data.[319] This is one of the reasons I have emphasized the aspirational quality of pipeline projects, because even in the most fact-driven, detail-oriented examinations their construction tends to break down into aspirational data which fit the company's desires more than the complicated past of pipeline operations.

Risk analyses were a good example of the factual presentation of aspirational claims, where TransCanada's statistical assessment of risk used "conventional" amelioration factors for "best practices and technologies" to modify historical numbers, which themselves were based not on its own track record but overall statistics compiled for the pipeline industry as a whole. As a result, their estimation of risk — 0.34 accidents per 1000 km/year, down from an initial 1.18 — varied widely from estimations by anti-pipeline advocates like the Council of Canadians. The latter calculated the probability of a full-bore rupture as follows:[320] From NEB statistics, they took

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[318] See her talk here: https://www.youtube.com/watch?v=pDrI8hCTpfQ
May's intervention was part of a wider debate over the behavior of dilbit in water, and whether we have the capacity to effectively clean it up.

[319] See Poovey (1998) for the relation of particular "description" to systematized knowledge in the constitution of facts.

[320] You can find the report here: https://canadians.org/energyeast-15percent. TransCanada was much less forthcoming with its methods of calculation, which remained obscure even after insistent questioning by the BAPE commissioners during the afternoon session of the March 8 hearing. See the transcript here: http://www.bape.gouv.qc.ca/sections/mandats/oleoduc_energie-est/documents/DT2.pdf (all translations are mine). TransCanada's never went further than saying that the method was "conventional." The commissioners eventually turned to the federal Transportation Safety Board representative, who explained that "we don't use those indicators, we use the real numbers of events reported to us, so my graphics are based on the number of accidents and incidents, not on a factor with a denominator, number of kilometers or others" (20). When asked if they had been consulted on the factors, as TransCanada claimed, the NEB representative said that "these are things that will be evaluated during the hearings by the NEB panel on Energy East" (22). Lastly, when asked how their ameliorated risk calculation accounted for the unique characteristics of Quebec's fluvial environment, TransCanada argued that 0.34 was a "global factor for the pipeline. What is done after that is at the level of conception [where] we will take

the number of ruptures on TransCanada's pipelines over the past six years divided by the number of kilometers of its network (39 880 km). They then divided that number by the number of years studied. This average of rupture per year per kilometer was multiplied by Energy East's pipeline length and time span of service — resulting in a 15% probability of rupture per year. Both of these are of course problematic if taken as a "factual" representation of events, either past or future, and their choices and assumptions say more about their political relation to the project than they do to the "truth" about pipelines.

Divergences such as these had less to do with a differential relation to "reality" than they exemplified different modes of measurement, accounting, and ultimately speculation. But statistics are just one mode of accounting for human relation to the future. When asked by the Standing Senate Committee on Energy, the Environment and Natural Resources on June 6, 2013[321] to conciliate his bleak depiction of pipeline construction practices and the 99.9% safety record of the industry, TransCanada whistleblower Evan Vokes put it this way:

> It is amazing. It is like a large act of providence. I have been on several projects that were very nearly disastrous. Under the category of things that are very nearly disasters, I am surprised that there actually are not more accidents. […] The problem is that, with pipelines, it waits a long time. Many times with the pipelines, it has to be disturbed before anything will happen. There has to be ground movement or something like that. There are thousands of cracks in the system; it is just which ones will become the problem. It is low probability and high consequence.

Vokes's narrative — which involved, *inter alia*, near disasters, underfunded integrity departments, self-inspected welds, and intentionally-set low threshold detection settings — was too complex and indeterminate for the Senators who struggled to conciliate his narrative with the NEB's and TransCanada's unproblematic depictions. For the Committee, the prevalent question was not about how knowledge about the world was produced, circulated and operationalized within the regulatory and policy-making spheres, but about Vokes's relative credibility.

Wynne (1992) notes that, "Science can define a risk, or uncertainties, only by artificially 'freezing' a surrounding context which may or may not be this way in real-life situations" (116, cited in Duncan 2004: 130), where these "real-life situations" are the intrusion of "social" issues into the merely natural and technical. The difference between the presumptive frames and "real-

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into account all the particular elements along the path" (22). Which does beg the question, what exactly does that global factor actually signify?

[321] You can find the transcript here: https://sencanada.ca/en/Content/Sen/committee/411/enev/50221-e. There are no page or paragraph numbers in the document.

life" social systems is that the former skirts the line between the descriptive and prescriptive, constructed as they are upon "normative" expectations of "how things ought to be" (130). A good example of this argument was TransCanada's representation of technological soundness as one that relied upon its future performance as a corporation with a culture of safety and excellence and that upholds best standards and practices. This depiction, black-boxed within statistical determinations of future events, left out a wide array of anecdotal contingencies revealed by Evan Vokes, such as the pressures and imperatives of corporate expediency, cost-effectiveness, and competitiveness — historical contingencies all too familiar to the NEB.

For reasons of space I cannot go into further detail about how "facts and evidence" — the grounds of regulatory legitimacy — broke down into assumptions and speculations during the BAPE hearings other than to say that the more I looked, the more it was impossible to find "real" ground at the bottom of competing facts in the controversy. All I could find were competing calculations and conflicting normative priorities. Circulated facts said a lot more about the normative commitments and future desires of the circulator than they did about a prior reality that everybody could agree on. This tension, for me, was especially glaring during NEB presentations, which occluded all of the risks, indeterminacies, and complicated histories of corporate non-compliance and conflicting imperatives that the Board had been intimately privy to. If anyone should be disseminating a *problematizing* view of the *actual* pipeline industry it was, I thought, the pipeline regulator who had been overseeing the industry since its infancy. But the NEB, in public, did precisely the opposite. It represented the industry exactly as that industry represented itself: in shimmering, aspiration terms — the future was bright with prosperity and safety for all. The underlying message was: never mind and just leave all that technical stuff to us.

The point here is how normativity was embedded not only within political and legal infrastructures but epistemological ones as well. In the controversy, purportedly "objective" knowledge was indissociably entangled with political commitments. My frustration with the way factual statements circulated grew not from their misrepresentation of reality but with the misrepresentation of what the representational performances actually indexed. Facts were mobilized as blunt rhetorical instruments sharpened to attack the specific weaknesses of one's adversary with as much exclusive authoritativeness as possible. For J. Gordon (2015), while all sides in the debate over bitumen extraction have mobilized logos and pathos, "the debate, in my view, is more and more about ethos," as "criticisms about development are now met with public

relations" rather than better arguments. "All sides in the debate are working to establish their character, to present themselves as on the side of truth" (90), distracting us from the basic, preliminary observation that what is at stake is not a matter of fact but a matter of concern (Latour 2004). Gordon's hope is that, in such polarized debates as prevail over tar sands development, shifting our relation from truth to politics might open up a space for *parrhesia*, whereby truthfulness is not tied to a correspondence between logos and reality, but to the absence of deceptiveness and rhetorical calculation in the speaker (2015: 91).

As Sawyer (2015) shows, quality — of the semiotic, not phenomenological kind — is inextricably tied to legibility. The social life of hydrocarbons is mediated by standardized categories of toxicity. What is being negotiated is not crude itself, because the contingent and heterogeneous matter and all its complicated relations cannot be mediated within the regulatory space. As Sawyer argues, "What is increasingly clear is that toxicity and chemical hazard are not inherent properties. Rather, they are probabilities and capacities […] that are made to matter through imbricated technical, chemical, and legal work" (146).

So I argue that the primary problem is not that institutions operationalize reductive conceptualizations, but that they occlude the indeterminate mess that they leave out, and the discretionary spaces where determination is arbitrarily effected. In the end, regardless of the venue, what was transacted and contested in the pipeline debate had less to do with debates over truth than with efforts to prevail in performative acts of delineation — attempts to define the sovereign nature of governmental bodies, the political reach of legislation, the material extension of proposed infrastructure, the substantive scope of regulatory reviews, the democratic reach of citizens, the relative weight of alternative futures, etc., etc. The point I am trying to make here is that power moved in similar ways regardless of whether one looked to constitutional debates, legal negotiations, consultative performances, or factual investigations. If we accept that social, legal, political, and other objects are constituted in much the same way as knowledge claims are — through a variety of transformations that become sedimented in subsequent iterations — then power worked through the black-boxing of constitutive and determining processes. In other words, while the legal, political, regulatory, and epistemic landscape was largely indeterminate, power moved through the successful mobilization of its potentiality towards one proposed outcome. For the government and proponents, this appeared largely to work by stripping democratic from of purchase — by circulating information and procedural opportunities stripped

of their power to inform (i.e. complicate) or empower. In other words, to perpetuate entrenched substantive goals by privileging sites of discretionary power. For those interested in enabling social change oriented towards other forms of prosperity, the challenge was to enact political infrastructure where power was indeterminate — i.e. available to decentralized sites of political agency through which contingent substantive contributions might be made — and where substantive environmental goals were made determinate, not subject to discretionary exception.

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