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CONSTRUCTING CANADA, THE PIPELINE NATION:
Discourse and Indigeneity in the Trans Mountain Expansion

by
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MARITIMES

PEI threatens to cut off New Brunswick's potato shipments unless they approve new potato pipeline

APRIL 18, 2018 by ALEX HUNTLEY (@AJHUNTLEY)

POLITICS

Notley to flood BC so pipelines reach Pacific

APRIL 11, 2018 by ALEX HUNTLEY (@AJHUNTLEY)

(These will make a lot more sense after you've read the rest of this thesis.)^{1,2}

¹ Alex Huntley, "Pei Threatens to Cut Off New Brunswick's Potato Shipments Unless They Approve New Potato Pipeline," *The Beaverton* (blog), April 18, 2018, <https://www.thebeaverton.com/2018/04/pei-threatens-cut-off-new-brunswicks-potato-shipments-unless-approve-new-potato-pipeline/>.

² Alex Huntley, "Notley to Flood BC so Pipelines Reach Pacific," *The Beaverton* (blog), April 11, 2018, <https://www.thebeaverton.com/2018/04/notley-flood-bc-pipelines-reach-pacific/>.

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INTRODUCTION

Constructing the Nation

In 1971, the Government of Canada, under Prime Minister Pierre Elliott Trudeau, declared that Canada would adopt a multicultural policy and affirm its dedication to diversity, tolerance, and inclusivity. In 1988, Prime Minister Brian Mulroney enacted the *Canadian Multiculturalism Act*, enshrining multiculturalism in Canadian policy. On June 27, 2018, designated as Canadian Multiculturalism Day, Prime Minister Justin Trudeau gave a statement highlighting Canada's achievement as the first country in the world to adopt a policy of multiculturalism: "May we never forget, or take for granted, that Canada is an accepting, compassionate, and respectful country—and an example to the world—because we are accepting, compassionate, and respectful to each other."³

Canada prides itself in its tolerance and recognition of the variety of citizens that constitute the country's cultural mosaic. Peaceful inclusivity has become part of the official construction of Canada's national identity; Canada differentiates itself from other countries, particularly the United States, by highlighting difference instead of forcing assimilation. Though Canada's policy of multiculturalism is intended for immigrants, Indigenous peoples have been swept under the term. Critics argue that Canada's ostentatious displays of tolerance merely serve to manage and utilize difference for its Western nation-building project. Instead of breaking the colonial structures of domination imposed by the settler state upon Indigenous peoples, Canada's liberal politics of recognition absorbs and uses difference to perpetuate the state's authority and its mythical story of inclusive, multicultural progress.⁴

In my thesis, I build upon critiques of Canada's dominant narrative—that is, the story of the country's progressive march towards an inclusive, tolerant, and free society. Eva Mackey,

³ Justin Trudeau, "Statement by the Prime Minister on Canadian Multiculturalism Day," June 27, 2018, <https://pm.gc.ca/eng/news/2018/06/27/statement-prime-minister-canadian-multiculturalism-day>.

⁴ See Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada*, Anthropological Horizons (University of Toronto Press, 2002); Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6, no. 4 (2007): 437–60; David Bruce MacDonald, "Reforming Multiculturalism in a Bi-National Society: Aboriginal Peoples and the Search for Truth and Reconciliation in Canada," *The Canadian Journal of Sociology* 39, no. 1 (2014): 65–86.

whose work inspires and guides my project, says the following about her own analysis on cultural politics and national identity in Canada:

[I] explore how representations of [the relationship between British and French colonizers and Indigenous peoples] have been configured in constructions of Canadian national identity. I do not provide a ‘history’ of Canada, but rather examine particular moments in history, and specific ‘telling cases’ (Mitchell 1984), in order to explore the contradictory cultural politics of the process of managing and representing difference.⁵

My specific ‘telling cases’ revolve around the Trans Mountain Expansion (TMX), a planned crude oil pipeline from Alberta to the British Columbian coast. I use these cases to examine topics like Canada’s relationship with Indigenous nations, how discourse is framed and used to serve broader agendas, and Canada’s national identity. My research stems from my first academic foray into Canadian politics the spring of my sophomore year, when I took Environmental Economics with Professor Sarah Jacobson and wrote a final research paper on the Trans Mountain Expansion. The spring of my junior year, I undertook an independent study with Professor Pia Kohler (who is also my thesis advisor) on Canadian pipeline politics, where I did a case study on Indigenous resistance in the Northern Gateway pipeline, a similar project that was eventually scrapped by the federal government.

I am Canadian and grew up in Vancouver, the terminus of the Trans Mountain Expansion and a city founded on the unceded territories of the Musqueam, Squamish, and Tsleil-Waututh First Nations. Studying at an American college has made me realize how much of Canada’s identity is rooted in its apparent differences from the United States—in its tolerance and appreciation of minorities, in its relative lack of political polarization, and in its approach to cultural difference as mosaic instead of as melting pot. My thesis examines the often unchallenged assumptions behind Canada’s official narrative and explores the tension between Indigenous sovereignty and the asserted sovereignty of the Canadian state.

Literature Review

I build upon literature that examines policies of recognition as methods for managing difference in favour of the ultimate authority, i.e. the settler colonial nation-state. Some praise

⁵ Mackey, *The House of Difference*, 24.

Canada for its recent efforts to improve its relationship with Indigenous peoples based on a “recognition of rights, respect, and partnership”⁶ and a nation-to-nation approach. An emerging body of work, however, analyzes the power dynamics behind the Crown⁷-Indigenous relationship and how the state uses liberal policies of tolerance and recognition to further entrench the nation-building project.

In *The House of Difference: Cultural Politics and National Identity in Canada*, Eva Mackey explores the uniquely Canadian method of nation-building, in which those in power use and manage the recognition of difference to achieve certain goals. Instead of obliterating difference, as may be the case in countries like the U.S. or U.K., political supremacy in Canada works through the “institutionalisation of differences.”⁸ Rather than engaging with binary oppositions like erasure / inclusion and homogeneity / heterogeneity, Canada uses inconsistency and contradiction. The state may shy away from repressive homogeneity and the erasure of difference, but Mackey suggests that its embrace of hybridity may not be as revolutionary as many believe: “Multiple cultures—as long as they are properly managed, institutionalised, and hierarchised—are not a problem so long as these cultures are loyal to the Western project of nation-building, a project which entails creating unified totalities of governable populations according to progressive principles.”⁹ Mackey does not ask, ‘How does the dominant power erase difference?’ but rather, ‘How might we map the ways in which dominant powers maintain their grip despite the proliferation of cultural difference?’¹⁰

Glen S. Coulthard offers a similar critique of the Canadian state by using Frantz Fanon’s critique of Hegel’s master-slave dialectic to argue that “the politics of recognition in its contemporary form promises to reproduce the very configurations of colonial power that Indigenous peoples’ demands for recognition have historically sought to transcend.”¹¹ This “politics of recognition” refers to “the now expansive range of recognition-based models of

⁶ Government of Canada, “Indigenous Justice, Recognition and Reconciliation,” January 11, 2019, <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/index.html>.

⁷ The Crown is a symbol for the state and its government, and I use it interchangeably with Canada (for the Canadian government).

⁸ Mackey, *The House of Difference*, 17.

⁹ Mackey, 162.

¹⁰ Mackey, 5–6.

¹¹ Coulthard, “Subjects of Empire,” 439.

liberal pluralism that seek to reconcile Indigenous claims to nationhood with Crown sovereignty via the accommodation of Indigenous identities in some form of renewed relationship with the Canadian state.”¹²

Colonial domination relies on both the state’s overt force and the internalization of state-imposed racist recognition. Granting limited rights and concessions to Indigenous nations does not address the material base of the colonial relationship, such as a “racially stratified capitalist economy,”¹³ nor does it change the inherently unequal relationship between oppressor and oppressed. The liberal paradigm of recognition is not a regime of reciprocal recognition amongst equals and instead creates ‘emancipated slaves’ living under “white liberty and white justice; that is, values secreted by [their] masters.”¹⁴

Mackey traces representations of Indigenous peoples from Canada’s founding until her present day (1999) to argue that though Canada has promoted the myth of tolerant nationhood from the beginning, its history is actually “one long confrontation.”¹⁵ The politics of recognition depends on a power imbalance that allows the tolerator to choose whether to accept or reject difference. Furthermore, Mackey uses Goldberg (1993) to argue that “tolerance... presupposes that its object is morally repugnant, that it really needs to be reformed, that is, altered... The commitment to tolerance turns only on modernity’s ‘natural inclination’ to *intolerance*: acceptance of otherness presupposes and at once necessitates ‘delegitimation of the other.’”¹⁶

Mackey suggests that the Canadian nationalist vision of progress “begins with Native peoples in harmony with the land and ends with Canadians of all cultures in harmony with the land. [It] is a story of *tolerant, inclusive, multicultural* progress that functions by appropriating Aboriginal people, cultural pluralism, and environmentalism into its plot.”¹⁷ In discussions of what it means to be a Canadian, comparisons to the United States often come up—that Canada is nicer, more inclusive, and more humane. Celebrations of Canada often consist of “national self-congratulation.”¹⁸ But, as Mackey warns, unquestioned pride in “Canadian tolerance, and

¹² Coulthard, 438.

¹³ Coulthard, 446.

¹⁴ Coulthard, 449.

¹⁵ Mackey, *The House of Difference*, 24.

¹⁶ Mackey, 162.

¹⁷ Mackey, 79.

¹⁸ Mackey, 63.

how far Canada has come by celebrating how far the nation has let ‘them’ come, erases the difficult question of how far the nation still needs to go in order to have genuine justice and equality for Aboriginal people.”¹⁹

Also engaged with debate on the Canadian identity, Darin Barney argues that national infrastructure, such as pipelines, materialize the Canadian nation.²⁰ Barney shows how technological nationalism shapes the country’s physical and ideological geographies. As contention over the harms and benefits of the oil industry threatens the state’s exploitation of the resource, pipelines have emerged as the latest medium of technological nationalism—Barney calls Canada a ‘pipeline nation.’ The danger is that this technological nationalism “represent[s] the particular, private interest of the (increasingly transnational) capitalist class in developing commodity infrastructure as the general, collective interest of the nation.”²¹ A collective investment in the national interest, which has become reduced to that of the economy, becomes a moral imperative for all. Yet who does this “all” include? The infrastructure that unites Canadians in the literal sense, such as the Canadian Pacific Railway and the postal system, can also divide by mobilizing those who are willing to “commit to the collective project of delivering the country and its resources to capital”²² and marginalizing those who are not.

The national narrative of progress, especially in the name of economic growth, recognition, and tolerance, conceals colonial exploitation in the Crown-Indigenous relationship. Citing Povinelli (2002), Coulthard asserts that colonial powers “will only recognize the collective rights and identities of Indigenous peoples insofar as this recognition does not throw into question the background legal, political and economic framework of the colonial relationship itself.”²³ To transcend this seemingly all-encompassing domination, we must critically examine the discourses behind influential narratives. Only when we have identified the unchallenged assumptions behind authoritative statements like court decisions and government speeches can we begin the process of emancipation.

¹⁹ Mackey, 87.

²⁰ Darin Barney, “Who We Are and What We Do: Canada as a Pipeline Nation,” in *Petrocultures: Oil, Politics, Culture*, ed. Sheena Wilson, Adam Carlson, and Imre Szeman (McGill-Queen’s University Press, 2017), 79, <https://www.jstor.org/stable/j.ctt1qft0q7.9>.

²¹ Barney, 87.

²² Barney, 100.

²³ Coulthard, “Subjects of Empire,” 451.

Methodology

Critical Discourse Analysis

I use critical discourse analysis as the main method of inquiry in my thesis. My goal is not to tell *the* story behind Canada's narrative, for there is no singular story, but rather one of many stories. Critical discourse analysis focuses on the "role of discourse in the (re)production and challenge of dominance."²⁴ It emerged in the late 1980s as a development in European discourse studies led by Norman Fairclough, Ruth Wodak, Teun van Dijk, and others. I use van Dijk's paper, "Principles of Critical Discourse Analysis," to guide my work.

For van Dijk, critical discourse analysis "should deal primarily with the discourse dimensions of power abuse and the injustice and inequality that result from it."²⁵ It is political and normative and aims to effect change through critical understanding. Focused on the implications of social power relations, critical scholars should not take a neutral position or worry about the interests of those in power.²⁶ Rather, critical discourse analysis can serve as a tool for challenging existing hegemonies and structures of domination like colonialism. It requires a multidisciplinary approach that takes positions and perspectives "against the power elites and in solidarity with dominated groups."²⁷

I use critical discourse analysis because of, not in spite of, its political and activist nature. Academia is often criticized for its lofty position in the ivory tower, and I want to work against the aloofness and 'neutrality' of scholarship by analyzing and critiquing how the state organizes power and dominance. Critical discourse analysis has the ability to penetrate into the foundation of power: language. In examining how rhetoric creates and entrenches hegemonies, critical discourse analysis targets "power elites that enact, sustain, legitimate, condone or ignore social inequality and injustice."²⁸ My project, in countering Canada's official narratives, aims to further the literature and work of decolonization.

²⁴ Teun A. van Dijk, "Principles of Critical Discourse Analysis," *Discourse & Society* 4, no. 2 (1993): 249.

²⁵ van Dijk, 252.

²⁶ van Dijk, 253.

²⁷ van Dijk, 279.

²⁸ van Dijk, 252.

Selection of Focus

In *Carbon Democracy: Political Power in the Age of Oil*, Timothy Mitchell explores the relationship between oil extraction and political institutions, suggesting that the rise in oil as an energy resource in the 20th century gave birth to a modern ‘economy’ predicated on the delusional premise of infinite growth. Economics became a “science of money [whose] object was not the material forces and resources of nature and human labour, but a new space that was opened up between nature on one side and human society and culture on the other.”²⁹ This abstraction allows us to believe in infinite growth by separating the idea of wealth from finite natural resources. Economics is now a study of the laws of markets, and markets, if removed from physical resources, seem limitless. We are lulled into a false sense of optimism regarding development and believe that wealth can grow exponentially without hitting ecological limits. Moreover, by separating ‘the economy’ from both nature and politics, we place it out of reach of democratic debate. The economy becomes a monolithic institution to be governed by experts—namely, economists and policymakers—and not everyday citizens.

According to Mitchell, oil extraction shapes how governments manage their economies. Oil is less democratic than coal because it decreases the power of organized labour. Oil requires a smaller workforce, places workers in less isolated conditions (above ground) compared to coal mines (underground), and moves across oceans more easily, allowing for outsourced energy production. Furthermore, the use of pipelines and tankers instead of railways reduces the ability of humans to interrupt the flow of energy—fewer workers, less sabotage.³⁰

While oil workers may have less resistance power compared to the coal industry due to more diffuse networks, the oil industry today faces a myriad of political challenges, and the increasing visibility of pipelines has made these infrastructure projects the battleground for environmental and Indigenous rights activists. Workers might not organise themselves, but other groups can and will. Motivations behind sabotage have shifted from labour considerations to those of climate change and human rights. As flashpoints for political contest, pipelines provide invaluable insights into the shifting Canadian identity and the country’s grand narrative.

²⁹ Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (Verso, 2013), 132.

³⁰ Mitchell, 36.

Barney suggests that pipeline politics reflect an “uncertainty about who we are and what we do, about whether exploiting resources such as the oil sands, for the profit of the few, is what it means to be Canadian.”³¹ My thesis focuses on a current pipeline project, the Trans Mountain Expansion, and the narratives that surround it. I hope to uncover the identities and ideologies at stake and what discourse, when placed in the context of the Canadian legal and legislative systems, can tell us about how these battles play out. I suggest that Canada’s politics of recognition is insufficient to break the colonial domination of Indigenous nations by the Crown and that the discourse behind official, authoritative narratives demonstrates that we have yet to reach a regime of reciprocal recognition amongst equals.

Selection of Subjects

(1) Court decisions

The court serves as a symbol of truth and is an arena in which contending narratives are debated until the ‘truth’ emerges. In legal discourse, “some ‘truths’ or state of affairs are given legitimization and others marginalised.”³² Legal discourses can silence other discourses because they appear uncontested and objective. With the backing of the state behind them, court decisions have binding effects on our actions and beliefs. I analyze two key decisions, *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 and *Gitxaala Nation v. Canada*, 2016 FCA 187. The former, which revoked the government’s Order in Council that approved TMX, is the defining decision for the project. The latter overturned the Northern Gateway pipeline and is in many ways a precursor to the *Tsleil-Waututh* decision.

(2) Political speeches and interviews

I analyze the discourses of three key politicians in the Trans Mountain debate: Justin Trudeau (prime minister of Canada), Rachel Notley (Alberta premier), and John Horgan (B.C.

³¹ Barney, “Who We Are and What We Do,” 105.

³² Johanna Niemi-Kiesiläinen, Päivi Honkatukia, and Minna Ruuskanen, “Legal Texts as Discourses,” in *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism*, ed. Åsa Gunnarsson and Eva-Maria Svensson (London: Routledge, 2007), 84, <https://www.utu.fi/en/units/law/faculty/people/Documents/Legal%20Texts%20as%20Ds.pdf>.

premier). These individuals speak on behalf of their governments, which hold lots of power in agenda-setting and decision-making.

Overview

In Chapter 1, I begin with a history of Canadian energy policy from the early 1900s. I explain provincial-federal relations, the evolution of energy policy, and relevant changes to the Constitution. I then provide an overview of the Canadian and global oil market today, followed by an introduction to the pipeline landscape. I conclude with a summary of the Trans Mountain Expansion, including a timeline of key events. I bind my analysis to relevant events on or before February 22, 2019, when the National Energy Board released its Trans Mountain Expansion Reconsideration report. Though subsequent events, such as the election of Jason Kenney as the new Alberta premier and the defeat of incumbent Rachel Notley in April 2019, hold great relevance to my topic, they are beyond the scope of my project.

In Chapter 2, I summarize the regulatory framework for pipeline projects and explain the functions of relevant agencies. I provide a brief introduction to the main legal principles surrounding pipeline disputes—namely, administrative deference, sustainability and environment, and Aboriginal consultation and accommodation—before conducting discourse analysis on *Gitxaala Nation v. Canada*, 2016 FCA 187 and *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153. I find that the judicial system’s current interpretation of Crown sovereignty treats Indigenous peoples as subjects instead of as equal partners in Confederation with the Crown. Reconciliation cannot be achieved under the current legal regime; the courts cannot effectively reconcile Indigenous law with Canadian settler law because Indigenous law challenges the very foundation of the Canadian state.

In Chapter 3, I analyze the political discourses of Justin Trudeau (prime minister of Canada), Rachel Notley (Alberta premier), and John Horgan (B.C. premier), using speeches, interviews, and op-eds to draw out themes and assumptions. I highlight salient themes, such as environmental protection, economic growth, protecting the middle-class and oil industry workers, the national interest and the Canadian identity, the authority of the judiciary, and selective engagement with Indigenous peoples. Both Trudeau and Horgan spoke about

reconciliation efforts, following the recent trend amongst institutions and political leaders to focus on the topic.

In the conclusion, I synthesize my preceding analysis by drawing on a body of literature on reconciliation and the liberal politics of recognition. I argue that, under the guise of recognition, the legal and political state narratives I examine actually further entrench colonial domination. Using Glen Coulthard and Eva Mackey as theoretical inspiration, I suggest methods for moving forward, including institutional reform, a return to local knowledge and practices, physical protest, settler solidarity through provision of capital, and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) legislation.

CHAPTER 1: ENERGY POLICY AND THE TRANS MOUNTAIN PIPELINE

History of Energy Policy

A Trickle and a Flood

Canada's oil industry began with slow and sporadic trickles. Business started in 1858 in Ontario, then moved west to Alberta in the early 1900s. Companies came and went, and most found nothing. Between 1917 and 1939, Imperial Oil spent more than \$5 million on surveys and drilling, only to discover fifty-four mostly dry holes.³³ From 1924 to 1929, Imperial Oil developed the Turney Valley field in Alberta into Canada's most important producing oil field. However, following World War II, Canada fell back on imported oil as Turner Valley became depleted.³⁴

There were no major oil discoveries after Turney Valley until November 20, 1946, when Vernon ("Dry Hole") Hunter spudded Imperial Leduc No. 1, unleashing the flood that would give rise to a new age of oil exploration and production in Alberta.³⁵ Leduc No. 1 was actually hole no. 134 and one of the six "last chance" wells for Imperial Oil, which had drilled 133 consecutive dry wells prior to that day.³⁶ On February 13, 1947, Leduc No. 1 started production with a staggering 1000 barrels per day. By mid-July that year, Alberta oil production had reversed a five-year decline. Five years later, 825 oil wells had been brought into production.³⁷

The taps in Alberta have not slowed since. Leduc No. 1, along with the wells that followed, transformed Alberta's economic, social, and political structures, bringing growth and urban development. Between 1946 and 1956, the province's population increased by 40 percent, personal income more than doubled, and the net value of production tripled.³⁸ By 1957, Alberta possessed 85 percent of Canada's crude oil reserves and had produced over 137 million barrels

³³ All dollar values in CAD unless otherwise specified; Sandy Gow, "The Development of the Oil Business and Oil Well Drilling in Alberta, 1883–1970," in *Roughnecks, Rock Bits, and Rigs: The Evolution of Oil Well Drilling Technology in Alberta, 1883-1970* (University of Calgary Press, 2005), 6, <https://www.jstor.org/stable/j.ctv6gqt9d.5>.

³⁴ Gow, 11.

³⁵ Gow, 17.

³⁶ Wallis Snowdon, "Leduc No. 1: Seven Decades Ago, a Single Oil Well Changed Alberta History," *CBC*, February 13, 2017, <https://www.cbc.ca/news/canada/edmonton/leduc-oil-discovery-anniversary-oil-boom-history-1.3980331>.

³⁷ Gow, "The Development of the Oil Business and Oil Well Drilling in Alberta, 1883–1970," 18.

³⁸ Gow, 25.

of oil.³⁹ By the 1970s, the torrent of investment money rushing into Alberta had transformed the provincial economy from one based on agriculture to one based on oil, gas, and associated services.⁴⁰ The petroleum industry breathed life into many parts of the province that had been struggling to survive. Today, Alberta, and Canada by extension, is an energy superpower.

Pipelines and Parliamentary Pandemonium

The Natural Resources Transfer Agreement given constitutional status by the *Constitution Act, 1930* gave Alberta control over its natural resources.⁴¹ Following the Leduc discovery, the federal government focused on industry growth via infrastructure development and exports, leading to jurisdictional conflicts with Alberta; the federal government wanted to use oil revenues to assist in nation-building after World War II, but Alberta wanted to focus on transforming its economy from agriculture to oil and avoid another Great Depression.⁴² In 1949, the Pipelines Act granted the federal government power over interprovincial and international oil and gas pipelines. Alberta, fearing a loss of recently-gained ownership over its natural resources, responded by requiring permits for the removal of gas from the province.⁴³ The federal government wished to ensure secure supplies of energy to industries nationwide and carry out responsibilities like equalization obligations⁴⁴ between provinces, but the producing provinces, including Alberta, viewed these measures as threats to their long-term development.⁴⁵

In the 1950s, the Liberal federal government led by Louis St. Laurent wanted to build the country's first long-distance interprovincial natural gas pipeline from western Canada to Montreal: the TransCanada Pipeline.⁴⁶ The federal government insisted on having the route cross through the Canadian Shield instead of through a cheaper United States. Private sector sponsors

³⁹ "Legacy of the Leduc Era," Alberta Culture and Tourism, accessed October 20, 2018, <http://www.history.alberta.ca/energyheritage/oil/the-leduc-era-1947-to-1970s/legacy-of-the-leduc-era.aspx>.

⁴⁰ Gow, "The Development of the Oil Business and Oil Well Drilling in Alberta, 1883–1970," 25.

⁴¹ Luanne A. Walton, "The Exploitation of Natural Resources in the Federation," in *The Oxford Handbook of the Canadian Constitution*, ed. Peter C. Oliver, Patrick Macklem, and Nathalie Des Rosiers (New York: Oxford University Press, 2017), 535.

⁴² Walton, 536.

⁴³ Walton, 536.

⁴⁴ The federal government transfers cash between provinces to offset differences in available revenue or cost of providing services. Alberta, with one of the higher provincial GDPs, has relatively high payment obligations.

⁴⁵ Walton, "The Exploitation of Natural Resources in the Federation," 537.

⁴⁶ Sonya Savage, "Bill C-38 and the Evolution of the National Energy Board: The Changing Role of the National Energy Board from 1959 to 2015," *Canadian Institute of Resources Law*, February 2016, 5.

refused to fund the all-Canadian route, believing it to be uneconomic. In May 1956, federal Trade Minister C.D. Howe brought a bill to spend \$118 million (\$1.1 billion today) to bridge that gap, arguing that government intervention was necessary for a nation-building project: “Once again, as in the days of railway building, the difficult and sparsely populated Pre-Cambrian shield appeared to present an almost insurmountable barrier to economic transportation between Western and Central Canada.”⁴⁷

The Progressive Conservatives, led by John Diefenbaker, opposed the plan, challenging the project’s American control. The nature of government funding and nationalism drove parliamentary debate, which was marked with tension and animosity. The Liberals, anxious about construction deadlines, used parliamentary closure to end the debate and push their legislation through the House in less than 15 days, leading to what some have described as “pandemonium and the most raucous debate in Parliament to that date.”⁴⁸ M.J. Coldwell, leader of the Co-operative Commonwealth Federation, called the ruling government’s tactics “those exactly followed by Hitler in the German Reichstag.”⁴⁹ Liberal MPs were called “trained seals” and “jackals.” A Liberal MP from Vancouver died of a heart attack in a House of Commons washroom following a debate that lasted past three in the morning. (Prime Minister Louis St. Laurent was allegedly seen leisurely reading a book throughout most of the debacle.)

The Liberals eventually got their pipeline, but the subsequent 1957 elections ended twenty-two years of Liberal rule and ushered in the Progressive Conservatives. According to public opinion polls, the biggest factor in the defeat of the Liberal government was the pipeline and the government’s use of parliamentary closure.⁵⁰ The TransCanada Pipeline had brought down a government.

⁴⁷ Canada, *House of Commons Debates*, 21st Parl (15 March 1956) in Savage, 6.

⁴⁸ Savage, 6.

⁴⁹ The citations that follow in this paragraph are taken from Gavin Fisher, “The NEB May Be Ending... But How Did It Begin?,” *The 180’s* (CBC, May 19, 2017), <https://www.cbc.ca/radio/the180/not-all-opioids-are-bad-pizza-is-a-sandwich-and-what-you-call-the-may-long-week-end-1.4118745/the-neb-may-be-ending-but-how-did-it-begin-1.4121907>.

⁵⁰ Savage, “Bill C-38 and the Evolution of the National Energy Board,” 6.

The Changing Federation

Canada is a federation with one federal Crown and ten provincial Crowns. The provinces receive their power and authority from the *Constitution Act, 1867* and its amendments. Canada also has three territorial governments, but I focus on federal-provincial relations only, for Alberta and British Columbia are both provinces. Some sectors are under federal jurisdiction, such as foreign affairs and telecommunications, whereas others are under provincial jurisdiction, such as education and healthcare. To change the division of powers between federal and provincial government, a constitutional amendment must occur.

From post-World War II to the early 1970s, resource disputes in Canada were relatively sporadic. Resource policies were mostly localized and narrow,⁵¹ and private producers, provincial governments, and the federal government shared the objective of encouraging resource exploration and development.⁵² Up until the 1960s, federal and provincial governments frequently participated in the joint construction of the Canadian welfare state.⁵³ In the 1960s, the relatively centralized regime that had been established after World War II began to disintegrate, resulting in decreased federal power and increased provincial power.⁵⁴ In an analysis written in 1974, Donald Smiley argues that a major deficiency in federal-provincial relations at the time was the failure to deal with ‘interjurisdictional externalities,’ i.e. when provinces develop individually without regard to national implications, which could result in skewed advantages for the prosperous provinces and disadvantages for the others.⁵⁵

Conflict between Ottawa⁵⁶ and the western provinces (B.C., Alberta, and Saskatchewan) increased in the 1970s as provinces became more assertive and developed state-like capacities

⁵¹ One important exception is the National Oil Policy of 1961, which promoted the Alberta oil industry by expanding exports to the United States and creating a protected domestic market to which Alberta could export at a premium rate relative to the world price. (Robert D. Cairns, Marsha A. Chandler, and William D. Moull, “The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism,” *Osgoode Hall Law Journal* 23, no. 2 (Summer 1985): 256.)

⁵² Cairns, Chandler, and Moull, 255–56.

⁵³ Éric Montpetit and Martial Foucault, “On the Relative Neglect of Horizontal Intergovernmental Relations in Canada,” in *Canada: The State of the Federation, 2011: The Changing Federal Environment: Rebalancing Roles*, ed. Nadia Verrelli (McGill-Queen’s University Press, 2014), 203.

⁵⁴ Donald V. Smiley, “Federal-Provincial Conflict in Canada,” *Publius* 4, no. 3 (Summer 1974): 8, <https://doi.org/10.2307/3329406>.

⁵⁵ Smiley, 22–23.

⁵⁶ The term “Ottawa” refers to the federal government of Canada.

due to years of province-building.⁵⁷ The producing western provinces viewed oil and gas as scarce, non-renewable, and depleting economic assets. They saw the federal government as a representative for the industrialized provinces, such as Ontario, and poor regions, such as the Maritime provinces. The federal government and the governments of the producing provinces often disagreed over the pricing, production, and distribution of natural resources. To establish more control over the industry by setting oil prices in the absence of federal-provincial agreement, the federal government enacted the *Petroleum Administration Act, 1974*. The National Energy Board, established in 1959, gave the federal government control over energy exports. Through the National Energy Program, established in 1980, Ottawa unilaterally set the price of oil in Canada. The western provinces deemed such legislation as unconstitutional interference with provincial resource ownership rights.

The National Energy Program was a response to skyrocketing oil prices in the 1970s caused primarily by OPEC (the Organization of the Petroleum Exporting Countries) in 1973. It proved to be a top-down effort that “prompted policy failure and regional alienation... because it did not reconcile the interests of producing [western] and consuming [eastern] regions.”⁵⁸ The political bargaining process during this time has often been compared to a “zero-sum game, and the continual bickering between levels of government has been considered by some to be a failure of federalism.”⁵⁹ Provinces embarked on distinctive economic development paths due to the uneven distribution of natural resources, which, coupled with rising energy prices, has encouraged hostility towards any national energy policy to date.⁶⁰

Resource disputes often sought resolution through the legal system, although a reference to the Supreme Court can be viewed as “comparable to going to war”⁶¹ in the context of political negotiations. The courts’ all-or-nothing decisions obstruct cooperation, and broad political

⁵⁷ Montpetit and Foucault, “On the Relative Neglect of Horizontal Intergovernmental Relations in Canada,” 204.

⁵⁸ Christian Leuprecht, “Go With The Flow: The (Im)Plausibility Of A Grand Canadian Intergovernmental Bargain On Energy Policy And Strategy,” in *Canada: The State of the Federation, 2012: Regions, Resources, and Resiliency*, ed. Loleen Berdahl, André Juneau, and Carolyn Hughes Tuohy (McGill-Queen’s University Press, 2015), 12.

⁵⁹ Cairns, Chandler, and Moull, “The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism,” 261.

⁶⁰ Montpetit and Foucault, “On the Relative Neglect of Horizontal Intergovernmental Relations in Canada,” 204.

⁶¹ Cairns, Chandler, and Moull, “The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism,” 261.

questions are better addressed via negotiation and compromise. In two leading cases, *CIGOL*⁶² in 1977 and *Central Canada Potash*⁶³ in 1978, the Supreme Court struck down two provincial legislative initiatives that tried to exert greater provincial control over resource development, essentially expanding federal trade and commerce power at the expense of provincial legislative powers and perhaps provincial Crown proprietary rights.⁶⁴

Tensions ran high until a series of federal-provincial negotiations culminated in the *Constitution Act, 1982*, which added section 92A, giving provinces greater control over non-renewable natural resources like oil. Section 92A gives provinces exclusive power to make laws for the exploration, development, conservation, and management of non-renewable and forestry resources, as well as the ability to regulate (without price or supply discrimination) the export of these natural resources within Canada.⁶⁵ It is the only section of the *Constitution Act, 1982* that alters the balance of federal-provincial legislative powers.⁶⁶ However, though section 92A confirms and enhances provincial powers, it does not confine federal powers.⁶⁷ The federal government still has paramount jurisdiction over interprovincial and out-of-Canada export trade in natural resources, as well as full taxation powers.

Canadian Oil Today

Richly endowed with natural resources, Canada is the third largest exporter of crude oil and fourth largest exporter of natural gas. It also has the third largest proven crude oil reserves, with 171.4 billion remaining established barrels, 97 percent of which come from the Albertan tar

⁶² *Canadian Industrial Gas & Oil Ltd. v. Government of Saskatchewan et al.*, [1978] 2 SCR 545 (Supreme Court of Canada 1977).

⁶³ *Central Canada Potash Co. Ltd. et al. v. Government of Saskatchewan*, [1979] 1 SCR 42 (Supreme Court of Canada 1978).

⁶⁴ Cairns, Chandler, and Moull, "The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism," 262.

⁶⁵ "Constitution Act, 1982," § 92A (1982), <http://laws-lois.justice.gc.ca/eng/const/page-4.html>.

⁶⁶ Cairns, Chandler, and Moull, "The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism," 253.

⁶⁷ Cairns, Chandler, and Moull, 266.

sands.⁶⁸ About 80 percent of Alberta’s oil is too deep for conventional mining and thus uses in-situ production, which requires less water and land, but emits more greenhouse gasses.⁶⁹

Canada’s endowment of crude oil is unevenly distributed. In 2016, Alberta accounted for nearly 80 percent of crude oil production, followed by Saskatchewan at 12 percent.⁷⁰ As a result, resource governance is strongly regional, and Canada has one of the “most divided and decentralized constitutional arrangements for energy among Western industrialized countries.”⁷¹ Canada is now in a state of “hyper-competitive energy federalism,” in which revenue-generating producer provinces such as Alberta largely dictate their resource extraction while the federal government looks on from the sidelines, stepping in only to regulate interprovincial pipelines. The country faces a patchwork of independently and simultaneously developed provincial policies that often conflict at the interprovincial level—as is the case with interprovincial pipeline projects.

The Oil Market

The global oil market has historically been volatile and susceptible to price shocks, resulting in busts and booms. From 2000 to 2008, prices spiked from US\$25 per barrel to US\$150 per barrel⁷² as the emerging economies of China and India grew and OPEC cut production. In 2008, the global recession dropped prices to US\$40 per barrel, but prices returned to US\$100 per barrel a year later. In 2014, prices dropped again as a result of multiple factors: emerging economies like China, Russia, India, and Brazil slowed, the U.S. and Canada increased production due to technological innovations with fracking and the tar sands, and OPEC refused to cut production in an attempt to outcompete the U.S. and Canada.⁷³ Oil prices fell below

⁶⁸ “Crude Oil Facts,” Natural Resources Canada, September 13, 2018, <https://www.nrcan.gc.ca/energy/facts/crude-oil/20064>; “Oil Resources,” Natural Resources Canada, July 25, 2017, <http://www.nrcan.gc.ca/energy/oil-sands/18085>.

⁶⁹ “In-Situ Bitumen Extraction,” Oil Sands Magazine, accessed August 28, 2018, <http://www.oilsandsmagazine.com/technical/in-situ>.

⁷⁰ “Crude Oil Facts.”

⁷¹ Monica Gattinger, “A National Energy Strategy for Canada: Golden Age or Golden Cage of Energy Federalism?,” in *Canada: The State of the Federation, 2012: Regions, Resources, and Resiliency*, ed. Loleen Berdahl, André Juneau, and Carolyn Hughes Tuohy (McGill-Queen’s University Press, 2015), 5.

⁷² Oil prices, unless otherwise specified, are for Brent crude, a major trading classification of sweet light crude oil that serves as a benchmark price for purchases of oil worldwide.

⁷³ Clifford Krauss, “Oil Prices: What to Make of the Volatility,” *The New York Times*, May 15, 2017, <https://www.nytimes.com/interactive/2017/business/energy-environment/oil-prices.html>.

US\$30 per barrel in 2016. Then, OPEC and Russia subsequently carried out production cuts and Venezuela, another major producer of crude, plunged into political and economic crisis. The reduced global supply, combined with a solid global economy, pushed oil prices up, and Western Texas Intermediate (WTI), a sweet light crude often used as the U.S. benchmark, hit US\$70 per barrel in May 2018.⁷⁴ Oil prices then plummeted near the end of 2018 from increased OPEC output and higher-than-expected production in the US, Libya, and Venezuela.⁷⁵

Alberta's crude oil, traded on the market as Western Canadian Select (WCS), is a heavy blended crude classified as a stream of non-upgraded, diluted bitumen. WCS is the world's lowest value crude and trades with a price differential to WTI.⁷⁶ As of April 2019, this price differential is US\$8; WTI is trading at US\$64 per barrel and WCS is trading at US\$72 per barrel.⁷⁷ The differential exists because WCS is a low quality crude that costs more to extract and refine. There is also a transportation bottleneck for WCS due to lack of access to tidewater (i.e. the Asian market) and excess supply going south to American refineries; 99 percent of total Canadian crude oil exports go to the United States.⁷⁸

Pipelines

Canada has an extensive network of transmission, gathering, and distribution pipelines, totalling over 840,000 km. About 73,000 km are federally regulated interprovincial or international pipelines. Crude oil can also be transported by rail, but pipeline is the most used method due to lower costs and risks.⁷⁹ Once crude oil reaches tidewater, it can then be transported across the ocean to Asian markets via marine tankers.

In the wider context, infrastructure has always played a key part in Canada's development, from the Canadian Pacific Railway to the Trans-Canada Highway to the postal

⁷⁴ Matt Phillips and Stanley Reed, "U.S. Oil Prices Hit \$70 a Barrel for First Time Since '14," *The New York Times*, May 8, 2018, <https://www.nytimes.com/2018/05/07/business/energy-environment/crude-oil-prices.html>.

⁷⁵ Stanley Reed, "What's Happening to the Price of Oil?," *The New York Times*, November 20, 2018, <https://www.nytimes.com/2018/11/20/business/energy-environment/oil-prices.html>.

⁷⁶ "Western Canadian Select Explained," *Oil Sands Magazine*, accessed August 28, 2018, <http://www.oilsandsmagazine.com/technical/western-canadian-select-wcs>.

⁷⁷ "Crude Oil Price," *Markets Insider*, 2019, <https://markets.businessinsider.com/commodities/oil-price?type=wti>.

⁷⁸ "Energy Fact Book 2016–2017" (Natural Resources Canada, 2017),

https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/pdf/EnergyFactBook_2016_17_En.pdf.

⁷⁹ "Crude Oil Facts."

system. Darin Barney highlights the role of technological nationalism in Canadian nation-building, in which “infrastructure [is] idealized not only as instrumental to the Canadian economy but, moreover, as materializing the Canadian nation.”⁸⁰ Beyond its functional value, infrastructure creates a psychological consciousness that shapes the Canadian identity. If Canada was a railway nation in the time of Sir John A. Macdonald, then it is a pipeline nation now under Justin Trudeau.

In recent decades, pipelines have increased in visibility and become flashpoints for political contest. The benefits to Canada’s oil wealth are concentrated—namely, in Alberta, whose prosperity from natural resource exploitation has been “so distorting that the province has had to be excluded from calculations of revenue averages so as not to make the federal government’s obligations to other provinces through the equalization program excessively high.”⁸¹ As capital becomes more concentrated amongst a small group, disparities in tangible wealth and in intangible power grow larger.

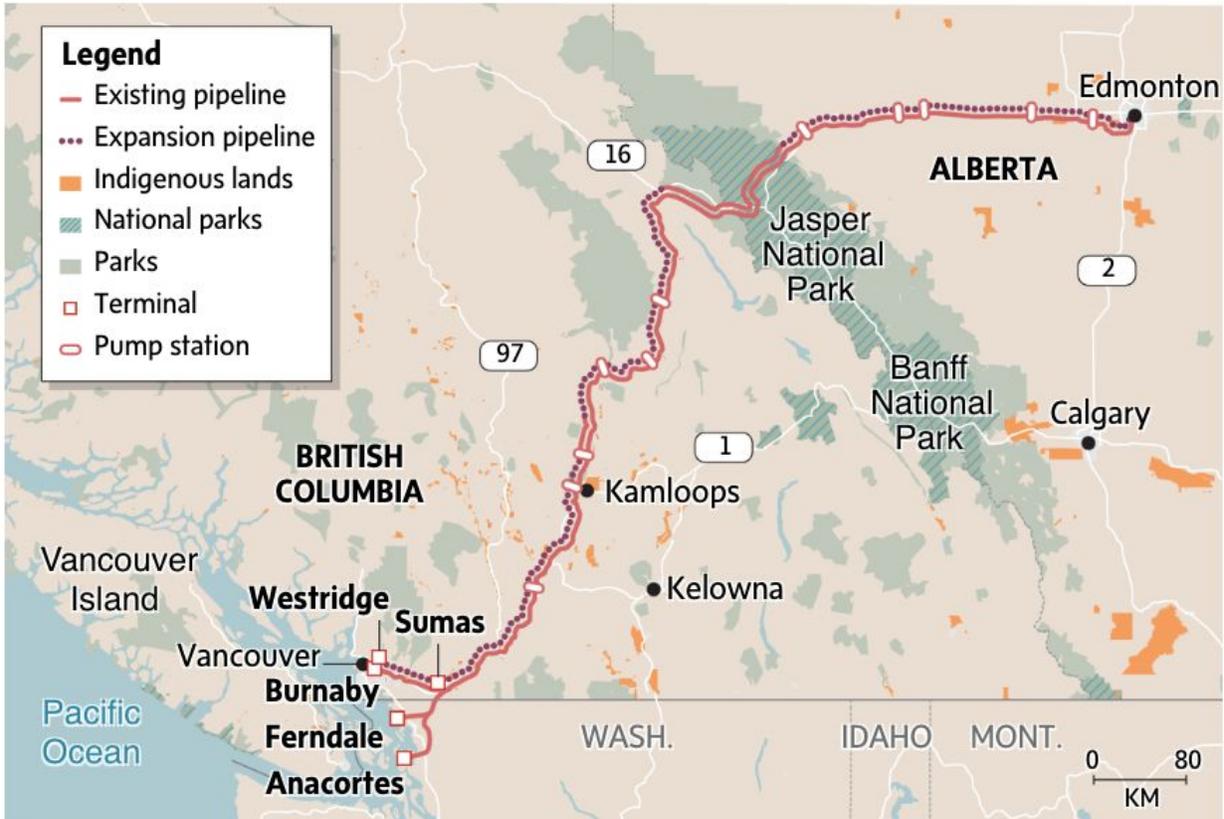
Pipelines provide insightful case studies for the tensions at play in Canada’s oil management. Interest groups such as extraction companies, workers, Indigenous peoples, and environmental groups clash in their support or opposition of such projects, espousing values such as economic growth, environmental sustainability, and social justice. Darin Barney claims that the “politics really brewing around these pipelines might actually reflect an uncertainty about who we are and what we do.”⁸² In examining pipeline conflicts, I hope to uncover the identities and ideologies at stake and what politics, when placed in the context of the Canadian legal and legislative systems, can tell us about how these battles play out.

⁸⁰ Barney, “Who We Are and What We Do,” 79.

⁸¹ Patrick Malcolmson et al., *The Canadian Regime: An Introduction to Parliamentary Government in Canada, Sixth Edition* (University of Toronto Press, 2016), 231.

⁸² Barney, “Who We Are and What We Do,” 105.

The Trans Mountain Expansion



MURAT YÜKSELİR AND JOHN SOPINSKI / THE GLOBE AND MAIL, SOURCE: TILEZEN; OPENSTREETMAP CONTRIBUTORS; HIU; NATURAL RESOURCES CANADA; OPEN GOVERNMENT; GRAPHIC NEWS; KINDER MORGAN

Figure 1. Map of Trans Mountain Expansion.⁸³

The Trans Mountain Pipeline carries crude and refined oil from Strathcona County, Alberta to Burnaby, British Columbia. It moves product to terminals and refiners in central B.C., Greater Vancouver, the Puget Sound, California, the U.S. Gulf Coast, and overseas through the Westridge Marine Terminal. Up until August 2018, it was wholly owned by the Canadian division of Kinder Morgan (headquartered in Texas, USA), which owns and operates petroleum product, natural gas, and carbon dioxide pipelines, related storage facilities, terminals, power

⁸³ “Trans Mountain, Trudeau and the B.C.-Alberta Feud: A Guide to the Political Saga so Far,” *The Globe and Mail*, August 17, 2018, <https://www.theglobeandmail.com/politics/article-trans-mountain-kinder-morgan-pipeline-bc-alberta-explainer/>.

plants, and retail natural gas in the U.S. and Canada. It is currently owned by the Government of Canada under the Trans Mountain Corporation.⁸⁴

The 1,150 km pipeline began operation in October 1953 with an initial capacity of 150,000 barrels per day. In 2008, the Trans Mountain Anchor Loop project resulted in a second pipeline along a 158 km section of the existing Trans Mountain system between Hinton, Alberta and Hargreaves, B.C., increasing capacity from 260,000 to 300,000 barrels per day.⁸⁵ In 2013, Kinder Morgan filed an application with the Canadian National Energy Board (NEB) to twin the existing pipeline by paralleling the 1,150 km route, adding 980 km of new pipeline and activating 193 km of existing pipeline. There will be 12 new pump stations, 19 new tanks, and 3 new berths at the Westridge Marine Terminal in Burnaby, B.C. to expand tanker capacity from 5 per month to 34 per month. 89 percent of the new pipeline will parallel existing infrastructure, and transport capacity will increase from 300,000 barrels per day to 890,000 barrels per day. The initial projected capital cost was approximately \$7.4 billion.⁸⁶

The 2013 Trans Mountain Expansion proposal underwent two and a half years of review. On May 29, 2016, the NEB concluded that the pipeline is in the public interest and recommended approval. On November 29, 2016, the Government of Canada, under Prime Minister Justin Trudeau, approved the project, subject to 157 binding conditions that will “address potential Indigenous, socio-economic and environmental impacts.”⁸⁷ On the same day, the federal Liberal government also sanctioned the Enbridge Line 3 pipeline replacement project, but rejected the Enbridge Northern Gateway proposal.

TMX was controversial well before the Trudeau government approved it in November 2016. Over 100 people were arrested at a protest on Burnaby Mountain (east of Vancouver) in

⁸⁴ “Trans Mountain Corporation: Who We Are,” Trans Mountain, September 5, 2018, <https://www.transmountain.com/news/2018/trans-mountain-corporation-who-we-are>.

⁸⁵ “Past Project: Mount Robson & Jasper Park Expansion,” Trans Mountain, accessed August 26, 2018, <https://www.transmountain.com/past-project-mount-robson-jasper-park-expansion>.

⁸⁶ “Trans Mountain Expansion Project,” Kinder Morgan, 2015, <https://www.kindermorgan.com/pages/business/canada/tmep.aspx>.

⁸⁷ “Government of Canada Announces Pipeline Plan That Will Protect the Environment and Grow the Economy,” Government of Canada, November 29, 2016, <https://www.canada.ca/en/natural-resources-canada/news/2016/11/government-canada-announces-pipeline-plan-that-will-protect-environment-grow-economy.html>.

2014, where they opposed Kinder Morgan’s survey work at the site.⁸⁸ In 2016, B.C. Liberal government under Premier Christy Clark opposed the project and argued that Kinder Morgan had not provided enough information around its proposed spill prevention and response program.

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On January 11, 2017, then-B.C. Premier Christy Clark reversed her decision and announced support for TMX and a revenue-sharing agreement with Kinder Morgan worth up to \$1 billion over the next two decades. Clark stated that the project had met the five conditions she had set nearly five years prior on issues including spill response capacity, Aboriginal and treaty rights, and environmental protection.⁹⁰ In May 2017, the B.C. New Democratic Party (NDP) and Green Party formed a coalition to topple the Liberal party, which had won a minority government in the election that month. The coalition promised to “immediately employ every tool available” to stop the project, and NDP leader John Horgan became B.C. Premier after the Liberal party lost a no-confidence vote on June 29, 2017.⁹¹ The B.C. government then sought intervener status in *Tsleil-Waututh Nation v. Canada (Attorney General)*. It also asked the B.C. Court of Appeal whether it can enact legislation to restrict oil shipments within the province.⁹²

On May 25, 2017, Kinder Morgan made a final investment decision to proceed with the project with an estimated cost of \$7.4 billion. Nearly a year later, following the pivotal B.C. election and substantial opposition, Kinder Morgan suspended non-essential TMX spending on April 8, 2018, setting a May 31 deadline to reach an agreement with stakeholders regarding the future of the project. Kinder Morgan chairman and CEO Steve Kean reiterated the company’s

⁸⁸ Jessica Sinclair, “Kinder Morgan Protests Take Over Burnaby Mountain, B.C.,” *CBC*, December 1, 2014, <https://www.cbc.ca/news/canada/british-columbia/kinder-morgan-protests-take-over-burnaby-mountain-b-c-1.2852860>.

⁸⁹ “B.C. Government ‘Unable to Support’ Trans Mountain Pipeline Expansion,” *CBC*, January 11, 2016, <https://www.cbc.ca/news/canada/british-columbia/transmountain-b-c-government-kindermorgan-1.3398689>.

⁹⁰ Justine Hunter, “B.C. Approves Kinder Morgan Pipeline Expansion,” *The Globe and Mail*, January 11, 2017, <https://www.theglobeandmail.com/news/british-columbia/bc-gives-kinder-morgan-environmental-green-light/article-33588586/>.

⁹¹ “Timeline: Key Dates in the History of the Trans Mountain Pipeline,” *Global News*, May 29, 2018, <https://globalnews.ca/news/4239520/trans-mountain-pipeline-timeline/>.

⁹² Justine Hunter, Shawn McCarthy, and Jeff Lewis, “B.C. Takes Pipeline Fight to Court, Asking for Power to Restrict Oil Shipments,” *The Globe and Mail*, April 26, 2018, <https://www.theglobeandmail.com/canada/british-columbia/article-bc-seeks-jurisdiction-over-oil-shipments-with-court-reference/>.

need to mitigate financial loss if the project misses key construction timelines.⁹³ On May 29, 2018, the federal government announced a deal to buy TMX for \$4.5 billion plus remaining construction costs—to be determined, but estimated at the time to be around \$3.4 billion, for a total of \$7.9 billion—nationalizing what Ottawa considers to be a critical-infrastructure project. It intends to own the pipeline for the “medium-term” and eventually privatize it. This deal is the largest federal intervention since 2009, when Ottawa and Ontario advanced over \$13.3 billion to save Chrysler and General Motors after the financial crisis.⁹⁴ In August 2018, Kinder Morgan estimated three possible outcomes and costs for the project: (1) \$8.4 billion with on-time delivery by December 2020; (2) \$9.3 billion with delay to December 2021; or (3) cancellation. These estimates indicate possible capital cost increases of \$1 billion to \$1.9 billion from the original \$7.4 billion projection.⁹⁵

On August 30, 2018, the Federal Court of Appeal released its decision to *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, which consolidated a number of actions against TMX brought by First Nations, municipalities, and environmental organizations. The court found that the National Energy Board had unjustifiably excluded project-related tanker traffic in its scope of review. It also found that Canada had failed to meaningfully consult Indigenous peoples during Phase III of its consultation process. Therefore, the court quashed the Order in Council approving the project, remitting the matter back to the Governor in Council for action and proper redetermination.⁹⁶ After 155 days of reconsultation and reconsideration of oil tanker marine impact, the NEB released its Reconsideration report on February 22, 2019 and recommended, once again, that the project be reapproved.⁹⁷ Indigenous consultations continue.

⁹³ Stephanie Ip and Patrick Johnston, “Kinder Morgan to Halt Its Spending on Trans Mountain Pipeline,” *Vancouver Sun*, April 9, 2018, <https://vancouver.sun.com/news/local-news/kinder-morgan-to-halt-its-spending-on-trans-mountain-pipeline-due-to-b-c-opposition>.

⁹⁴ Steven Chase, Kelly Cryderman, and Jeff Lewis, “Trudeau Government to Buy Kinder Morgan’s Trans Mountain for \$4.5-Billion,” *The Globe and Mail*, May 29, 2018, <https://www.theglobeandmail.com/politics/article-trudeau-government-to-buy-kinder-morgans-trans-mountain-pipeline/>.

⁹⁵ “Canada’s Trans Mountain Oil Pipeline May Cost More, Face Delays: Proxy,” *Reuters*, August 7, 2018, <https://www.reuters.com/article/us-kinder-morgan-cn-pipeline-trans-mount/canadas-takeover-of-trans-mountain-pipeline-to-close-in-late-2018-proxy-idUSKBN1KS1XX>.

⁹⁶ *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (Federal Court of Appeal 2018), at paras. 5-7.

⁹⁷ National Energy Board, “NEB Releases Reconsideration Report for Trans Mountain Expansion Project,” Press Release, National Energy Board, February 22, 2019,

Timeline of Key Events⁹⁸

Given the convoluted nature of events, the following is a timeline of key events so you can stay oriented as you proceed through discourse analysis in Chapter 2 and Chapter 3. I confine my analysis to events on or before February 22, 2019, when the NEB released its TMX Reconsideration report following environmental reassessment.

Date	Event
Oct 1953	Trans Mountain pipeline begins operation at initial capacity of 150,000 bpd.
Jan 14, 1985	In Edmonton, nearly 10,000 barrels of oil are released in Trans Mountain's biggest spill to date.
2006-2008	Anchor Loop project adds 160 km of new pipeline through Jasper National Park and Mount Robson Provincial Park, increasing capacity to 300,000 bpd.
Feb 21, 2012	Kinder Morgan announces intention to expand TMX.
Dec 16, 2013	Kinder Morgan submits application to NEB to expand pipeline, proposing construction in 2017 and operations by December 2019.
Nov 2014	Over 100 people are arrested in anti-pipeline protest on Burnaby Mountain, east of Vancouver.
Jan 12, 2016	In written submission to NEB, Alberta Premier Rachel Notley claims TMX is in best interests of Alberta and Canada.
Jan 27, 2016	Federal Liberal government adds conditions to pipeline project review process, including assessment of greenhouse gas emissions during extraction and processing, as well as improved Indigenous consultation.
May 17, 2016	Ottawa appoints three-member panel for TMX environmental review.
May 29, 2016	NEB concludes pipeline is in public interest and recommends approval, subject to 157 conditions.
Nov 29, 2016	Prime Minister Justin Trudeau sanctions TMX and Enbridge Line 3 pipeline replacement, but rejects Enbridge Northern Gateway proposal.
Jan 11, 2017	B.C. Premier Christy Clark announces support for TMX and revenue-sharing agreement with Kinder Morgan worth up to \$1 billion.

https://www.neb-one.gc.ca/bts/nws/nr/2019/nr04-eng.html?fbclid=IwAR1mAirGuZbIp3ZNOYOnRQxSIWceWi3iUvw9_YFqs09HHmIr_5FLyq9G16Q.

⁹⁸ Unless otherwise specified, citations in timeline are from "Timeline."

May 25, 2017	Kinder Morgan makes final investment decision to proceed with project, estimated to cost \$7.4 billion.
May 29, 2017	B.C. NDP and Greens form coalition to topple Liberal party, which won minority government in election earlier in the month. Coalition agrees to “immediately employ every tool available” to stop project.
June 29, 2017	B.C. NDP leader John Horgan to become premier.
Aug 10, 2017	B.C. NDP hires former judge Thomas Berger as it seeks intervener status in legal challenges against TMX filed by municipalities and First Nations.
Oct 26, 2017	Kinder Morgan asks NEB to allow work to begin, despite failure to obtain municipal permits from City of Burnaby.
Dec 7, 2017	NEB allows Kinder Morgan to bypass Burnaby bylaws.
Jan 17, 2018	Kinder Morgan warns that TMX could be a year behind schedule.
Jan 18, 2018	NEB establishes process to resolve permitting issues between Kinder Morgan and provincial and municipal authorities.
Jan 30, 2018	B.C. government moves to restrict any increase in diluted bitumen shipments until it conducts more spill response studies.
Feb 6, 2018	Alberta bans imports of B.C. wine in escalating pipeline dispute. ⁹⁹
Feb 22, 2018	Alberta suspends B.C. wine ban after B.C. agrees to consult courts regarding legality of restricting B.C.’s oil imports. ¹⁰⁰
Mar 9, 2018	B.C. Supreme Court grants interim injunction preventing anti-pipeline activists from protesting construction at two terminals in Burnaby.
Mar 15, 2018	B.C. Supreme Court grants indefinite injunction preventing protestors from coming within five metres of two project work sites.
Mar 23, 2018	(1) Green Party leader Elizabeth May and NDP MP (current Vancouver mayor) Kennedy Stewart arrested at protest against pipeline expansion. (2) Federal Court of Appeal dismisses B.C. government appeal of NEB ruling

⁹⁹ Dean Bennett, “Alberta Bans B.C. Wine, Urges Residents to Drink Craft Beer Instead, as Pipeline War Hits Home,” *Financial Post*, February 6, 2018, <https://business.financialpost.com/commodities/energy/cp-newsalert-notley-says-alberta-to-stop-importing-b-c-wine-in-pipeline-feud-2>.

¹⁰⁰ Dirk Meissner, “Alberta Suspends Ban on B.C. Wine After Horgan Backs down on Restricting Bitumen,” *Global News*, February 22, 2018, <https://globalnews.ca/news/4042334/albertas-rachel-notley-expected-to-announce-next-steps-in-trade-dispute-with-b-c/>.

	that allows Kinder Morgan to bypass Burnaby bylaws.
Apr 8, 2018	Kinder Morgan suspends non-essential spending on TMX, setting May 31 deadline to reach agreement with stakeholders regarding future of project.
May 29, 2018	Federal government announces deal to buy TMX for \$4.5 billion.
Aug 7, 2018	Kinder Morgan estimates three possible outcomes for project: (1) \$8.4 billion with on-time delivery of Dec 2020; (2) \$9.3 billion with delay to Dec 2021; (3) cancellation. These estimates show possible capital cost increases of \$1 billion to \$1.9 billion. ¹⁰¹
Aug 17, 2018	Canada's purchase of Trans Mountain pipeline project clears U.S. CFIUS national security review. ¹⁰²
Aug 30, 2018	(1) The Federal Court of Appeal releases <i>Tsleil-Waututh</i> decision, quashing the Order in Council that gave approval to TMX. (2) Kinder Morgan shareholders vote to finalize TMX sale to Ottawa. ¹⁰³ (3) Alberta pulls out of federal climate plan until construction resumes. ¹⁰⁴
Sep 15, 2018	Canada gives NEB until late February 2019 to undertake a new environmental assessment of oil tanker impact.
Oct 3, 2018	Canada hires former Supreme Court of Canada Justice Frank Iacobucci to oversee a new round of Indigenous consultations. No deadline is set.
Feb 22, 2019	Following environmental reassessment, NEB releases TMX Reconsideration report recommending that TMX is in the national interest and should be approved. ¹⁰⁵ Indigenous consultations continue.

¹⁰¹ "Canada's Trans Mountain Oil Pipeline May Cost More, Face Delays: Proxy," *Reuters*, August 7, 2018, <https://www.reuters.com/article/us-kinder-morgan-cn-pipeline-trans-mount/canadas-takeover-of-trans-mountain-pipeline-to-close-in-late-2018-proxy-idUSKBN1KS1XX>.

¹⁰² Brennan MacDonald and Vassy Kapelos, "Canada's Purchase of Trans Mountain Receives All Regulatory Approvals," *CBC*, August 17, 2018, <https://www.cbc.ca/news/politics/powerandpolitics/trump-security-review-clearance-1.4789726>.

¹⁰³ John Gibson, "With Project in Doubt, Kinder Morgan Shareholders Vote to Sell Trans Mountain Pipeline to Ottawa," *CBC*, August 30, 2018, <https://www.cbc.ca/news/canada/calgary/kinder-morgan-canada-shareholders-vote-sale-trans-mountain-pipeline-1.4804503>.

¹⁰⁴ John Paul Tasker and Kathleen Harris, "Alberta Pulling Out of Federal Climate Change Plan Until Pipeline Construction Resumes," *CBC*, August 30, 2018, <https://www.cbc.ca/news/politics/trans-mountain-federal-court-appeals-1.4804495>.

¹⁰⁵ National Energy Board, "NEB Releases Reconsideration Report for Trans Mountain Expansion Project," Press Release, National Energy Board, February 22, 2019, https://www.neb-one.gc.ca/bts/nws/nr/2019/nr04-eng.html?fbclid=IwAR1mAirGuZbIp3ZNOYOnRQxSIWceWi3iUvw9_YFqs09HHmIr_5FLyq9G16Q.

CHAPTER 2: LEGAL NARRATIVES

Regulatory Framework

National Energy Board

The National Energy Board (NEB) is an independent economic regulatory agency that reports to Parliament through the Minister of Natural Resources. It oversees the construction, operation, and abandonment of pipelines that cross international borders or provincial boundaries, as well as related pipeline tolls and tariffs. It regulates international power lines and designated interprovincial power lines; imports of natural gas; exports of crude oil, natural gas liquids, natural gas, refined petroleum products, and electricity; onshore and offshore development in Yukon and Nunavut; and offshore development in Northwest Territories. Furthermore, the NEB ensures the safety and security, environmental protection, and development of efficient energy infrastructure and markets in the Canadian ‘public interest.’ In reviewing energy project proposals, it must consider the overall public good and potential negative impacts.¹⁰⁶

According to the NEB, the Canadian public interest “includes all Canadians and refers to a balance of environmental, economic, and social interests that changes as society’s values and preferences evolve over time.”¹⁰⁷ However, this definition is vague and nebulous. There are no specific guidelines for determining the public interest in any given project, and power imbalances between interest groups often result in the prioritization of certain voices over others—for example, of industry over Indigenous nations.

The NEB derives its authority from the *National Energy Board Act, 1985*, which the Harper government amended via Bill C-38 in 2012. Prior to Bill C-38, the NEB made the final decision regarding the issuance of a certificate for energy projects. Following Bill C-38, all final decisions are now made by the federal Cabinet, following a recommendation by the NEB.¹⁰⁸

¹⁰⁶ National Energy Board, “Who We Are,” February 14, 2018, <https://www.neb-one.gc.ca/bts/whwr/index-eng.html>.

¹⁰⁷ National Energy Board, “Regulating in the Public Interest,” December 4, 2017, <https://www.neb-one.gc.ca/bts/nws/rgltrsnpshts/2016/22rgltrsnpsht-eng.html>.

¹⁰⁸ Brenda Heelan Powell, “An Overview of Bill C-38: The Budget Bill That Transformed Canada’s Federal Environmental Laws” (Environmental Law Centre), 3, accessed April 12, 2019, http://elc.ab.ca/Content_Files/Files/Bill38AnalysisArticlefinal.pdf.

In February 2018, the Trudeau government introduced legislation intended to overhaul the environmental assessment process on major energy projects like pipelines. Currently, three separate agencies—the National Energy Board, the Canadian Nuclear Safety Commission, and the Canadian Environmental Assessment Agency—run environmental assessments based on three different sets of rules.¹⁰⁹ The new legislation intends to streamline this process by replacing the NEB with the Canadian Energy Regulator and reviewing project proposals under a newly created Impact Assessment Agency of Canada.¹¹⁰

Federal and Provincial Acts

Under Bill C-38, the *Canadian Environmental Assessment Act, 1992* was repealed and replaced with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Any designated ‘major resource project’ is subject to environmental assessment under CEAA 2012. A standard assessment has a 365-day limit, but time limits do not apply to all steps in the process, so the actual timeline might be longer.¹¹¹ CEAA 2012 reduced the number and scope of federal environmental assessments. For example, the definition of ‘environmental effects’ was limited to effects on fish, aquatic species at risk, migratory birds, and federal lands. Furthermore, public participation was restricted to ‘interested parties,’ who must apply for standing and demonstrate that they are directly affected or have relevant information or expertise.¹¹²

In Alberta, the Alberta Energy Regulator and the Alberta Utilities Commission oversees the oil and gas industry. The *Alberta Environmental Protection and Enhancement Act* applies to the environmental assessment process and review for larger energy projects. The *Alberta Land*

¹⁰⁹ Elizabeth Thompson, “Trudeau Government Poised to Overhaul Environmental Assessment Process on Energy Projects Like Pipelines,” *CBC*, February 5, 2018, <https://www.cbc.ca/news/politics/trudeau-pipelines-environment-rivers-1.4519461>.

¹¹⁰ John Paul Tasker, “Ottawa to Scrap National Energy Board, Overhaul Environmental Assessment Process for Major Projects,” *CBC*, February 8, 2018, <https://www.cbc.ca/news/politics/liberal-environmental-assessment-changes-1.4525666>.

¹¹¹ Shawn Denstedt, “Regulatory Approvals for Energy Projects,” *Doing Business in Canada* (Osler, Hoskin & Harcourt LLP, 2009), https://www.osler.com/uploadedFiles/News_and_Resources/Publications/Guides/Doing_Business_in_Canada_-_2011/DBIC-Chapter15.pdf.

¹¹² Powell, “An Overview of Bill C-38,” 2.

Stewardship Act grants the Lieutenant Governor in Council the authority to make and implement land-use plans for certain regions within Alberta.¹¹³

In British Columbia, the Oil and Gas Commission, under the *Oil and Gas Activities Act*, regulates the oil and gas industries. The province's *Environmental Assessment Act* requires environmental assessment for proposals that exceed thresholds under the *Reviewable Projects Regulation*. If thresholds are not exceeded, the Oil and Gas Commission has jurisdiction over environmental review, subject to provincial and federal statutes.

Timeline of Pipeline Review Process

1. The proponent of a project submits a preliminary information package to the NEB. If other federal departments or agencies could be involved in the review for regulatory or statutory reasons (e.g. the Canadian Environmental Assessment Agency, Fisheries and Oceans Canada, Transport Canada), the NEB can begin coordination. Under CEAA 2012, each agency must conduct an environmental assessment prior to issuing permits or authorizations under their sole purview.¹¹⁴
2. The proponent submits an application for a Certificate of Public Convenience and Necessity, which is required for energy projects to commence. The Major Projects Management Office, separate from the NEB, provides “project management and accountability for major resource projects in the federal regulatory review process... and facilitate[s] improvements to the regulatory system for major resource projects.”¹¹⁵
3. The NEB can recommend that the Minister of the Environment refer the project to a review panel.
4. Upon receiving the project review report(s), the Governor in Council¹¹⁶ has three options:

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¹¹³ Denstedt, “Regulatory Approvals for Energy Projects.”

¹¹⁴ Joseph Doucet, “Unclogging the Pipes: Pipeline Reviews and Energy Policy,” Energy/Infrastructure & Environment (C.D. Howe Institute, February 2012), 6, https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_342_0.pdf.

¹¹⁵ Doucet, 6.

¹¹⁶ The Governor in Council is appointed by the Governor General and acts on behalf of the Canadian federal government.

¹¹⁷ *Gitxaala Nation v. Canada*, 2016 FCA 187 (Federal Court of Appeal 2016), at para. 113.

- a. Direct the NEB to grant Certificates, subject to additional conditions (under section 53 of CEAA 2012);
 - b. Direct the NEB to dismiss the Certificate application;
 - c. Ask the NEB to reconsider its recommendations (under section 53(1) of the NEB Act and section 30(1) of CEAA 2012), specifying issues and time limit.
5. If Certificates are issued, the proponent has to undergo further regulatory processes, such as obtaining routing approval, acquiring land rights, gaining approval to start construction and operations, and acquiring other approvals under federal and provincial legislation, which may involve further consultation with Aboriginal groups.¹¹⁸

Legal Principles

Pipeline disputes have often played out in courts regarding three main areas: administrative deference, sustainability and environment, and Aboriginal consultation and accommodation.

(1) A ‘deference as respect’ concept drives judicial deference to administrative bodies regarding interpretations of acts and statutes.¹¹⁹ In *Forest Ethics Advocacy Association v. The National Energy Board*, [2014] FCA 245, the Federal Court of Appeal interpreted the ‘standard of reasonableness’ regarding administrative decisions (established in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190) by stating that the NEB “is entitled to a margin of appreciation that can be wide or narrow, depending on the circumstances.”¹²⁰ The *National Energy Board Act* has not concretely defined terms like ‘public interest’ or ‘climate change,’ and the courts have generally decided that the NEB should be given deference regarding such interpretations. Jason MacLean argues that such decisions represent an “excessively deferential administrative pivot to legislative paramountcy.”¹²¹ Ron Ellis takes this critique one step further and claims that the “Supreme Court will [eventually] confirm that Canada’s Constitution does not permit judicial

¹¹⁸ *Gitxaala Nation*, 2016 FCA 187, at para. 67.

¹¹⁹ Jason MacLean, “Like Oil and Water? Canada’s Administrative and Legal Framework for Oil Sands Pipeline Development and Climate Change Mitigation,” *The Extractive Industries and Society* 2 (December 26, 2015): 14.

¹²⁰ *Forest Ethics Advocacy Association v. The National Energy Board*, [2014] FCA 245 (Federal Court of Appeal 2014), at para. 64.

¹²¹ MacLean, “Like Oil and Water?,” 9.

functions to be exercised by tribunals dependent on and controlled by the executive branch”¹²²—referring to the NEB. Perhaps the Trudeau government’s proposed regulatory agency overhaul will reshape administrative deference. However, given current case law, movement towards less judicial deference will be slow, if any.

(2) Although the *National Energy Board Act* does not require the Board to consider broader issues such as climate change, the *Federal Sustainable Development Act, 2008*, acknowledges the “need to integrate environmental, economic, and social factors in the making of all decisions by government.”¹²³ In Section 2, it defines ‘sustainable development’ as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹²⁴ When the NEB does not consider climate change or social costs of energy and oil pipeline projects in its review process, it acts inconsistently with the *Federal Sustainable Development Act*.

(3) The landmark Supreme Court decision *Tsilhqot’in Nation v. British Columbia*, [2014] SCC 44 recognized the validity of an Aboriginal land claim for title, placing greater emphasis on the need for Aboriginal consultation and accommodation in the project review process. Referencing the *sui generis* (unique) dimensions of Aboriginal title, the Court held that such collective title is held “not only for the present generation but for all succeeding generations... mean[ing] that it cannot be alienated except to the Crown or encumbered in ways that would prevent future generations of the group from using and enjoying it.”¹²⁵ The decision limited the Crown’s entitlement to infringe upon Aboriginal title under Section 35 of the Constitution and extended sustainability principles from Aboriginal title-holding groups to the Crown.¹²⁶

¹²² MacLean, 14.

¹²³ MacLean, 9.

¹²⁴ “Federal Sustainable Development Act” (2008), <https://laws-lois.justice.gc.ca/eng/acts/F-8.6/page-1.html>.

¹²⁵ *Tsilhqot’in Nation v. British Columbia*, [2014] 2 SCR 257 (Supreme Court of Canada 2014).

¹²⁶ MacLean, “Like Oil and Water?,” 10.

Legal Discourse Analysis

Using Niemi-Kiesiläinen et al.'s "Legal Texts as Discourses"¹²⁷ as a starting point, I conduct critical discourse analysis on two key cases, *Gitxaala Nation v. Canada*, 2016 FCA 187 and *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153. Discourse analysis takes an anti-realistic approach in which reality is intertwined with language and facts are socially constructed, regardless of who presents them. This social constructionist approach has four underlying assumptions. First, it holds a critical view of taken-for-granted knowledge. In practice, the law is rarely questioned and the words of the court stand above all. Discourse analysis is not necessarily interested in the legal implications of decisions, but rather in how the court's discourse constructs social categories such as Indigeneity and knowledge. Second, we must recognize that legal concepts have a historical and cultural background and that laws are not created and decided in a vacuum. Third (related to the second point), social processes create and mediate knowledge. Discourse analysis considers how definitions are created and what consequences different definitions have. Fourth, knowledge goes hand in hand with social action; how we understand a certain phenomenon affects the way we deal with it. Niemi-Kiesiläinen et al. raise the example of treating drunkenness as a crime versus as a sickness. In my case, I consider how the courts understand the duty to consult, reconciliation, Indigeneity, and traditional knowledge.

¹²⁷ Johanna Niemi-Kiesiläinen, Päivi Honkatukia, and Minna Ruuskanen, "Legal Texts as Discourses," in *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism*, ed. Åsa Gunnarsson and Eva-Maria Svensson (London: Routledge, 2007), 69–88, <https://www.utu.fi/en/units/law/faculty/people/Documents/Legal%20Texts%20as%20Ds.pdf>.

Tsleil-Waututh Nation v. Canada (Attorney General), 2018 FCA 153¹²⁸

Case Summary

A short summary of the decision can be found in the “Trans Mountain Expansion” section of Chapter 1. I elaborate on the case’s main findings.

(1) The FCA found that the NEB unjustifiably excluded the increase in project-related marine traffic in its scope of review. Because TMX is a “designated project” within the meaning of subsection 52(3) of the *National Energy Board Act*, the NEB had to provide an environmental assessment report pursuant to CEEA 2012. Section 29 of CEEA 2012 requires the NEB’s environmental assessment report to set out its recommendation with respect to the likelihood of a project resulting in “significant adverse environmental effects,” plus mitigation measures, if applicable. Section 31 authorizes the Governor in Council to decide whether the project is likely to result in such effects and, if so, whether such effects can be “justified in the circumstances.”¹²⁹

(2) The FCA found that Canada’s execution of Phase III of the consultation process was “unacceptably flawed and fell short of the standard described by the jurisprudence of the Supreme Court. As such, the consultation process fell short of the required mark for reasonable consultation.”¹³⁰ The court stressed that consultation must focus on rights, but also that “the public interest and the duty to consult do not operate in conflict.”¹³¹ Canada is not expected to consult ‘perfectly,’ but rather to make every reasonable effort to do so.¹³²

Canada wanted Phase III of its four-phase consultation process to address outstanding concerns about impacts on potential or established Aboriginal or treaty rights and any

¹²⁸ **The applicants:** Tsleil-Waututh Nation, City of Vancouver, City of Burnaby, the Squamish Nation (also known as the Squamish Indian Band), Xàlek/Sekyú Siyám, Chief Ian Campbell on his own behalf and on behalf of all members of the Squamish Nation, Coldwater Indian Band, Chief Lee Spahan in his capacity as Chief Of The Coldwater Band on behalf of all members of the Coldwater Band, Aitchelitz, Skowkale, Shxwhá:Y Village, Soowahlie, Squiala First Nation, Tzeachten, Yakweakwioose, Skwah, Chief David Jimmie on his own behalf and on behalf of all members of the Ts’elxwéyeqw Tribe, Upper Nicola Band, Chief Ron Ignace and Chief Fred Seymour on their own behalf and on behalf of all other members of the Stk’emlupsemc Te Secwepemc Of The Secwepemc Nation, Raincoast Conservation Foundation and, Living Oceans Society. **The respondents:** Attorney General of Canada, National Energy Board, and Trans Mountain Pipeline ULC. **The interveners:** Attorney General of Alberta and Attorney General of British Columbia.

¹²⁹ “Canadian Environmental Assessment Act, 2012” (2012), <https://www.canlii.org/en/ca/laws/stat/sc-2012-c-19-s-52/latest/sc-2012-c-19-s-52.html>.

¹³⁰ *Tsleil-Waututh*, 2018 FCA 153, at para. 557.

¹³¹ *Tsleil-Waututh*, 2018 FCA 153, at para. 507.

¹³² *Tsleil-Waututh*, 2018 FCA 153, at para. 508.

accommodation measures.¹³³ The court found three major impediments to meaningful consultation: (1) the Crown consultation team was a mere note-taker and documented concerns and complaints without engaging in meaningful two-way dialogue; (2) Canada was too reluctant to depart from NEB findings; and (3) Canada erroneously believed that it couldn't impose additional conditions on Trans Mountain based on their findings in Phase III.¹³⁴

Tsleil-Waututh builds on a significant series of case law in the duty to consult, expanding what it takes for the Crown to adequately discharge its duty. Robert Hamilton argues that there are two limitations to the duty to consult doctrine: (1) the lack of legal obligation to obtain Indigenous consent for development projects and (2) the uncertainty created by litigation.¹³⁵ The 'Free, Prior and Informed Consent' (FPIC) standard in the *United Nations Declaration on the Rights of Indigenous Peoples*, which Trudeau has endorsed without qualification, does not apply to the duty to consult. Hamilton suggests parties negotiate to achieve consent *before* a project goes through litigation, since lawsuits often have high costs and uncertain outcomes.

Litigation can drag on. Under the current regime, courts determine the adequacy of consultation. Following the *Tsleil-Waututh* decision, Canada is attempting to remedy deficiencies via further consultation and a supplemental environmental assessment. However, if Indigenous parties are still opposed to the project—and many have given indication that they are unquestionably opposed—then there will be more litigation regardless. The duty to consult is only one of the multiple issues that applicants can bring up in their case. It is “not a final determination of the Indigenous rights at issue;”¹³⁶ even where the Crown has satisfied the duty, applicants can claim determinations on the scope of asserted Aboriginal or treaty rights or infringement of these rights. If the government manages to push the pipeline through, Indigenous nations can turn to the international arena (as the Hul'qumi'num Treaty Group did in bringing a case to the Inter-American Commission on Human Rights) or take direct action—many

¹³³ *Tsleil-Waututh*, 2018 FCA 153, at para. 530.

¹³⁴ *Tsleil-Waututh*, 2018 FCA 153, at para. 562.

¹³⁵ Robert Hamilton, “Uncertainty and Indigenous Consent: What the Trans-Mountain Decision Tells Us About the Current State of the Duty to Consult,” *ABlawg* (blog), September 10, 2018, <https://ablawg.ca/2018/09/10/uncertainty-and-indigenous-consent-what-the-trans-mountain-decision-tells-us-about-the-current-state-of-the-duty-to-consult/>.

¹³⁶ Hamilton.

Indigenous peoples consider Canada's court doctrines to be founded on the illegitimate authority of an imposed foreign legal system.

Negotiation should aim to achieve consent before a project is approved so that judiciary will not always have to determine the adequacy of consultation. Otherwise, every development project will likely be challenged by opposing Indigenous groups. Litigation is expensive, time-consuming, and uncertain for all parties involved and should not become a regular part of the project review process. A systems change is needed to integrate the obligations of consultation with the government's broader reconciliation agenda. Otherwise, litigation, which is adversarial in its nature, will serve as an impediment to reconciliation.

*Discourse Analysis*¹³⁷

The 266-page, 776-paragraph decision contains a substantial amount of summaries of procedure and arguments from the applicants (Indigenous nations, municipalities, and environmental groups) and respondents (Canada, the NEB, and Trans Mountain). The voice of the Federal Court of Appeal is sometimes referred to in third person as "the Court," but most often referred to in first person as "I," i.e. Eleanor R. Dawson, the judge who wrote the opinion that two other judges then affirmed. The court is authoritative, succinct in its judgments, and avoids flowery language or explicitly normative statements. But much of the court's values can be seen implicitly, despite its confident tone that injects notions of 'truth' into its opinion.

The ruling begins with a summary of its conclusions. In paragraph 5, the court states that its decisions apply "largely uncontested legal principles established by the Supreme Court of Canada to the factual record, a factual record that is also largely not contested." It establishes the authority of its opinion by rooting it in 'facts' and principles established by the Supreme Court, the state's highest legal authority. By emphasizing that the principles are "largely uncontested," the court bolsters its own validity, solidifying the foundation upon which it will make its judgment. By first concluding that "most of the flaws asserted against the Board's process and findings are without merit" [5], the court narrows the scope of the respondents' errors and foreshadows its later elaboration on the administrative deference given to tribunals like the NEB.

¹³⁷ Paragraph number citations from *Tsleil-Waututh* given in [square brackets].

In explaining Canada's Interim Measures for Pipeline Reviews, the ruling states that decisions about pipeline approval will be based on "science, traditional knowledge of Indigenous peoples and other relevant evidence" [118]. This statement reinforces the difference between Western science and Indigenous traditional knowledge. Interestingly, only the Stó:lō Nation formally objected to the NEB's procedure for introducing Indigenous oral traditional evidence—and didn't provide evidence for its objections, according to the court [98].

Though the court tries to sympathize with the parties it decides issues against, it ultimately remains deferential to the Supreme Court and to Parliament throughout. Judge Dawson claims to "well understand Burnaby's concern" [283] regarding the consequences of a potential pipeline disaster in the city, then explains that Burnaby's desire to independently review and assess matters that affect the city is "inconsistent with the regulatory scheme enacted by Parliament" [283]. The court explains that its role is to "apply the legislation as Parliament has enacted" [283] and not to opine on the appropriateness of the policy. The court then goes on to use the Supreme Court's authority to justify the NEB's authority, stating that the Supreme Court has "recognized the Board's 'expertise in the supervision and approval of federally regulated pipeline projects' and described the Board to be 'particularly well positioned to assess the risks posed by such projects'" [284]. The court repeatedly highlights its deference to the NEB, claiming, for example, that its role is "not to reweigh evidence considered by the Board" [328] and that "fact-based assessment[s] [are] well within the Board's area of expertise" [374].

The deference given to entities like the NEB is a feature of administrative case law in Canada, but also further solidifies existing power structures, making it more difficult for those who wish to challenge the legitimacy of the system. Instead, opponents must work within the confines of established institutions, critiquing targeted aspects of a specific process instead of the setup of the institutions themselves.

Perhaps the court first gives deference to the NEB so that it can later highlight where the NEB went wrong without destroying the legitimacy of the agency. On the other hand, the court doesn't spend much, if any, space on establishing the legitimacy of Canada when discussing the Crown's fulfillment of the duty to consult. This is likely because Canada, as the state itself, holds a legitimacy that is immanent and necessary to the case; the judicial system is built upon Canada.

Despite the court's much stronger attack on Canada's failure to fulfil its duty to consult in comparison to its verdict on the NEB's decision to ignore marine shipping, the court doesn't need to justify Canada as legitimate because nearly all who read the ruling will assume that the state's structure is already legitimate.

In 279 paragraphs, the court provides a step-by-step explanation on exactly how Canada failed in Phase III of its consultation process. The court emphasizes Canada's lack of meaningful, detailed responses and the lack of analysis on Indigenous concerns. Canada's consultation team had to be more than "note-takers" [562], for the consultation process, though not dictating a particular substantive outcome, is a "process of balancing interests [and] a process of give and take" [494]. Citing *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, the court stresses that the duty to consult stems from "what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake" [496]. The phrase "honour of the Crown" appears six times in the decision and plays a central role in the court's judgment. The court explicitly states that "the public interest and the duty to consult do not operate in conflict," but, rather, that as a "constitutional imperative, the duty to consult gives rise to a *special public interest* [emphasis added] that supersedes other concerns commonly considered by tribunals tasked with assessing the public interest" [507]. This 'special public interest' refers to Indigenous peoples as a unique group in the general public.

The court begins by commending Canada for its design and most of its conduct during consultations, comparing the Trans Mountain process to that of Northern Gateway in *Gitxaala Nation*. It states: "Without doubt, the consultation process for this project was generally well-organized, less rushed (except in the final stage of Phase III)... Ministers of the Crown were available and engaged in respectful conversations and correspondence with representatives of a number of the Indigenous applicants... Additional participant funding was offered to each of the applicants... The Crown Consultation Report provided detailed information about Canada's approach to consultation, Indigenous applicants' concerns and Canada's conclusions" [553-556]. Following the praise and acknowledgement of significant improvements since *Gitxaala Nation*, the court explains why Canada's execution of Phase III of the consultation process was

“unacceptably flawed and fell short of the standard prescribed by the jurisprudence of the Supreme Court” [557]. The court uses evidence from hearing transcripts and party correspondence to argue why Canada wasn’t responsive enough, how it failed to adequately explain its subsequent actions, and why it did not meaningfully engage in two-way dialogue with Indigenous nations.

Curiously, the court argues that the “jurisprudence of the Supreme Court on the duty to consult is clear” [563]. But is it really? The duty to consult has only emerged in the recent two decades or so, and what ‘meaningful’ consultation requires is, as the court admits, fact-specific and dependent on context [488-489]. Future resource development litigation will likely continue to centre on the duty to consult, as it is nearly impossible to develop a list of specific requirements that Canada can fulfill in order to meet its obligations. The duty to consult, being a process, should not be met using a checklist approach anyway.

After a detailed discussion of each applicant Indigenous nation’s experience with the Crown consultation team during Phase III, the court concludes: “More was required of Canada” [758]. The court shows a hint of disappointment when it concludes that, had Canada taken Phase III seriously, it “could well have fulfilled the duty to consult by the mandated December 19, 2016 deadline” [763].

Despite its strong critique of Canada’s failure to consult, the ruling concludes with a sudden statement that if Canada engages in “specific and focussed” [772] dialogue, a correction of the consultation process should be “brief and efficient,” resulting in only a “short delay” [772]. The court assumes that Canada will proceed by correcting its consultation and, following over 200 paragraphs on how Canada failed spectacularly during Phase III, jarringly wraps up its analysis by implying that corrections will be easy. But I doubt that it will be. Following the NEB’s Reconsideration report on TMX, scholars predict legal challenges on the new report.¹³⁸

The *Tsleil-Waututh* decision, though long, thorough, and eloquently argued, only tells Canada what *not* to do the next time around. The Crown could still fail at consultation and what it does next might not constitute as ‘meaningful.’ The decision ends by mentioning the

¹³⁸ Gordon Hoekstra, “More Court Challenges Expected Over New Trans Mountain Pipeline Decision,” *Vancouver Sun*, February 22, 2019, <https://vancouver.sun.com/business/local-business/more-court-challenges-expected-over-new-trans-mountain-pipeline-decision>.

“objective of reconciliation with Indigenous peoples” [772], though the word “reconciliation” appears only three times in the entire ruling. For the most part, the decision is specific and contextual, focused only on the issues raised within the confines of this case, and does not indicate a consideration of wider implications for the future. Perhaps the duty to consult will always face the difficulty of being defined, and an outline of what it is can only be established via trial and error in what the courts determine it is not. The court’s opinions and normative judgments decide what the duty to consult requires on a case-by-case basis. And what the court believes constitutes ‘meaningful’ consultation depends on what its judges think—thoughts and beliefs shaped by societal values in constant flux.

Furthermore, *Tsleil-Waututh* does not mention anything about climate change. Climate change issues haven’t entered legal discourse regarding pipeline projects, despite pipelines being used as symbols against climate change in protest movements, in the media, and generally in the non-legal world. Perhaps there just isn’t enough relevance in existing statutes and case law for anyone to bring up the issue. For now, pipeline resistance runs along two distinct, parallel threads: that of the duty to consult, which remains very much confined within the judicial system, and that of pipelines as projects that exacerbate climate change, which remains outside the legal sphere.

***Gitxaala Nation v. Canada*, 2016 FCA 187**

Case Summary

The Enbridge Northern Gateway Project was a proposal for a twin 1,178 km pipeline from Bruderheim, Alberta to Kitimat, British Columbia. The Trudeau government rejected the proposal on November 29, 2016, when it approved TMX. In *Gitxaala Nation*, the Federal Court of Appeal found that the Crown did not fulfill its duty to consult in Phase IV of its project review framework, despite the extensive efforts of Northern Gateway (the proponent of the Project) to work with Aboriginal groups. In all, “Northern Gateway engaged with over 80 different Aboriginal Groups across various regions of Alberta and British Columbia. It employed many methods of engagement, giving \$10.8 million in capacity funding to interested Aboriginal groups. It also implemented an Aboriginal Traditional Knowledge program, spending \$5 million

to fund studies in that area.”¹³⁹ The project underwent years of consultation and negotiation before the Joint Review Panel submitted its report to the Governor in Council. According to the court, everything went smoothly and according to plan until Phase IV, when Canada “fell well short of the mark”¹⁴⁰ in making reasonable efforts to inform and consult Aboriginal stakeholders.

*Discourse Analysis*¹⁴¹

Similar to *Tsleil-Waututh*, the *Gitxaala Nation* decision is lengthy, at nearly 150 pages and 346 paragraphs (excluding the dissent). The majority opinion is written by Judge Dawson (who wrote the *Tsleil-Waututh* decision) and Judge Strats, and therefore reflects the writing style in *Tsleil-Waututh*. It is authoritative, succinct in its judgments, yet thorough in its presentation and citation of evidence, and mostly uses first person. “The Court” appears 7 times, whereas “we” appears 145 times. There are numerous parallels between *Gitxaala Nation* and *Tsleil-Waututh*, especially in the phrasing used.

For example:

- “Fell well short of the mark” [8]
- “By and large—with the exception of certain aspects of Canada’s execution of the duty to consult, to which we return later in these reasons—the assessment and approval process was set up well and operated well. Given the challenges, this was no small achievement.” [20]
- “It is not for us to opine on the appropriateness of the policy expressed and implemented in this legislative scheme. Rather, we are to read legislation as it is written.” [123]
 - The court gave the same deference to tribunals and administrative agencies in *Tsleil-Waututh*.
- “By and large, many of the First Nations’ concerns were specific, focused and brief; Canada’s actions in response equally could have been specific, focused and brief.” [253]
- “Also of significant concern is the lack of meaningful dialogue that took place in Phase IV.” [263]
- “Missing was a real and sustained effort to pursue meaningful two-way dialogue. Missing was someone from Canada’s side empowered to do more than take notes, someone able to respond meaningfully at some point.” [279]
- “It would have taken Canada little time and little organizational effort to engage in meaningful dialogue on these and other subjects of prime importance to Aboriginal peoples. But this did not happen.” [325]

¹³⁹ *Gitxaala Nation*, 2016 FCA 187, at para. 58.

¹⁴⁰ *Gitxaala Nation*, 2016 FCA 187, at para. 86.

¹⁴¹ Paragraph number citations from *Gitxaala Nation* given in [square brackets].

- In *Tsleil-Waututh*, the court said that redoing Canada’s consultation process properly should only lead to a short delay.

The court frames the duty to consult as part of Canada’s broader goal of reconciliation and the furthering of “constitutionally-significant goals the Supreme Court has identified behind the duty to consult—the honourable treatment of Canada’s Aboriginal peoples and Canada’s reconciliation with them” [329]. In doing so, it ties in the duty to consult with wider, non-legal principles, heightening its importance and impact. The court also emphasizes what “reasonable” entails—the term appears 28 times.

Furthermore, the court assumes a seeming mutually exclusive dichotomy between economic development and environmental protection when it asks: “Does the economic benefit associated with the construction and operation of a transportation system that will help to unlock Alberta’s oil resources and make those resources more readily available worldwide outweigh the detrimental effects, actual or potential, including those effects on the environment and, in particular, the matters under the *Canadian Environmental Assessment Act, 2012*? [155]” Despite the efforts of Prime Minister Trudeau to reassure people that economic development does not have to go against environmental protection, especially in regards to the pipeline, it seems that even the FCA has adopted such rhetoric. The court assumes that the Governor in Council balances competing interests by asking these kinds of questions, thus pitting economic growth and the environment against each other, at least in this context.

This dichotomy can lead to anti-Indigenous rhetoric and the framing of Indigenous opponents of the pipeline as anti-progress. In *The House of Difference*, Mackey shows that Aboriginal peoples are often portrayed as frozen in the past, in teepees and headdresses.¹⁴² A romanticized, Western lens holds Aboriginal peoples as being ‘one’ with nature and intrinsically tied to the land. Images of nature, wilderness, and the north were used to construct the Canadian national identity.¹⁴³ Indigenous peoples have been symbolised as representing Canada’s ‘natural’ beginnings in a childlike way (before the colonial project of Western civilisation), as passive watchers, and as unnamed people subservient to white settler heroes.¹⁴⁴ The dominant vision of

¹⁴² Mackey, *The House of Difference*, 78.

¹⁴³ Mackey, 72.

¹⁴⁴ Mackey, 39.

progress is linear and requires resource development. Indigenous claims over land rights and ‘traditional’ use can easily be portrayed as obstacles to economic development and ‘progress’ if Indigeneity is still viewed as timeless, unsettled nature.

The court emphasizes: “Northern Gateway is not alone behind the Project. It has 26 Aboriginal equity partners representing almost 60% of the Aboriginal communities along the pipelines’ right-of-way, representing 60% of the area’s First Nations’ population and 80% of the area’s combined First Nations and Métis population” [16]. It lends legitimacy to and praises Northern Gateway for its efforts in the project, which underwent a ‘really long’ review and consultation period. By providing statistics that show the majority of Indigenous nations affected by the project support the project as Aboriginal equity partners, the court indicates that the case is brought by a (vocal) minority. Furthermore, it highlights Northern Gateway’s engagement efforts so as not to make the company look bad: “At this point, it is perhaps appropriate to note that this is not a case where the proponent of the Project, Northern Gateway, declined to work with Aboriginal groups. Far from it” [57].

In the dissent, Judge Ryer argues against the majority court’s conclusion that Canada had no right to withhold the information it held regarding each Indigenous nation’s asserted governance rights or title:

I reject any assertion that the construction and operation of the Project could affect the asserted governance rights or asserted Aboriginal title. These are purely legal rights that could not be damaged or extinguished by the activities undertaken in the course of the Project. An action that has the effect of sterilizing land near the Project right of way would, no doubt, damage a First Nation’s ability to use and enjoy the flora and fauna that would otherwise have been situated on the sterilized land. However, the sterilizing action would have no impact upon the First Nation’s ability to establish, at some future time, a right to Aboriginal title to, and governance rights in respect of, such land. [350]

But this argument is impractical and abstract. If the land that Indigenous peoples are trying to claim is destroyed or damaged in the process, then what use are ‘land rights’ in the abstract sense? What use is Aboriginal title to and governance rights in respect of the land “at some future time” if the land has been sterilized?

Judge Ryer uses ‘majority rules’ rhetoric to legitimize his dissent, arguing that the project is a “massive undertaking” with the “support of a majority of the affected First Nations,” and that an assessment of the adequacy of Phase IV consultations must “consider these consultations in

the context of the Project’s duration, size and scope” [351]. He argues that ‘minor’ mistakes, such as some issues with Phase IV of consultation, can be overlooked because “even assuming that these imperfections have been established... taken together, in the context of such a large and complex project that has taken over 18 years to reach the present stage, they are insufficient to render the Phase IV consultations inadequate” [354]. The Supreme Court has established that the duty to consult is a spectrum based on factors like the strength of Aboriginal claims and title. It just so happened that the majority decision decided that Canada’s ‘minor’ mistakes were major enough to prevent it from fulfilling its duty.

Judge Ryer also gives the benefit of the doubt to the Governor in Council regarding Canada’s claim of Cabinet confidence:

[B]ecause of the claim of Cabinet confidence, under section 39 of the *Canada Evidence Act*, this Court is unaware of the entirety of the materials that were before the Governor in Council when it made its decision. Accordingly, with respect, it is not possible for this Court to make any assessment of the adequacy of the materials that were before the Governor in Council when it made its decision... Thus, in my view, any inaccuracies in the Crown Consultation Report are insufficient to render the Crown’s Phase IV consultations inadequate [356].

Ryer’s benefit of the doubt aligns with the majority’s deference to Parliament and the legislative process. Though he reached the opposite conclusion from the majority opinion, *Gitxaala Nation* makes evident that the court is an interpreter of legislation and not a suitable forum for addressing issues with consultation; it can only judge on a case-by-case basis, whereas Parliament has the power and authority to set the framework. Both *Gitxaala Nation* and *Tsleil-Waututh* reveal the tension between the courts and the Crown and the difficulties for all parties involved in agreeing on the ‘right’ way to consult. Ultimately, any controversial infrastructure project involving Indigenous nations will likely have to escalate to the courts for the time being, resulting in a mosaic of interpretations regarding the duty to consult.

Discussion

In a report on reconciliation written by Sarah Morales and Joshua Nichols for the Centre for International Governance Innovation, the authors argue that the judicial system’s current interpretation of Crown sovereignty treats Indigenous peoples as subjects instead of as equal

partners in Confederation with the Crown.¹⁴⁵ The definition of Crown sovereignty across cases has rarely changed, and the authors note that “its repetition seems to lend it the appearance of an *objective* definition.”¹⁴⁶ This definition becomes non-justiciable, even though there is no neutral or objective standard for the concept. Morales and Nichols conclude that, by attaching Crown sovereignty to legislative power and underlying title, the courts err by extending the non-justiciable status of Crown sovereignty to legislative power and underlying title and by relegating Indigenous peoples to the role of subjects.¹⁴⁷

Because the duty to consult is rooted in the honour of the Crown and therefore its sovereignty, it too relies on this inflated version of Crown sovereignty. As such, the courts are not an effective place for reconciling Indigenous law with Canadian settler law, especially since Indigenous law challenges the very foundation of the Canadian state. Reconciliation, then, cannot be achieved using only the current legal system. The Royal Commission on Aboriginal Peoples (RCAP), established in 1991, released a report in 1996 that argues:

The role of the courts is limited in significant ways. They develop the law of Aboriginal and treaty rights on the basis of a particular set of facts before them in a case. They cannot design an entire legislative scheme to implement self-government. Courts must function within the parameters of existing constitutional structures; they cannot innovate or accommodate outside these structures. They are also bound by the doctrine of precedent to apply principles enunciated in earlier cases in which Aboriginal peoples had no representation and their voices were not heard. For these reasons courts can become unwitting instruments of division rather than instruments of reconciliation.¹⁴⁸

Kim Stanton further elaborates on the RCAP’s argument, asserting that, so long as Canadian governments do not recognize Indigenous laws in resolving territorial disputes, the “courts’ version of reconciliation will necessarily be lacking in depth and, critically, truth.”¹⁴⁹ Courts “inherently [accept] the legitimacy of the initial assertion of sovereignty by the Crown,

¹⁴⁵ Sarah Morales and Joshua Nichols, “Reconciliation Beyond the Box: The UN Declaration and Plurinational Federalism in Canada,” CIGI Special Report (6 Degrees, September 19, 2018), 8, <https://www.cigionline.org/publications/reconciliation-beyond-box-un-declaration-and-plurinational-federalism-canada>.

¹⁴⁶ Morales and Nichols, 8.

¹⁴⁷ Morales and Nichols, 16.

¹⁴⁸ “Report of the Royal Commission on Aboriginal Peoples, Volume 1,” October 1996, 9, <http://data2.archives.ca/e/e448/e011188230-01.pdf>.

¹⁴⁹ Kim Stanton, “Reconciling Reconciliation: Differing Conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission,” *Journal of Law and Social Policy* 26 (2017): 27.

which seems to boil down to the idea that ‘yes, we are taking your land, but fairly.’¹⁵⁰ The duty to consult is rooted in this initial assertion, which gives the Crown the power to decide whether or not it can ‘justifiably’ infringe upon unceded territories. In my analysis above, we see these assumptions play out in the form of the administrative deference given to the NEB and the duty to consult being rooted in the irrevocable sovereignty of the Crown.

In the next chapter, I will analyze political discourse surrounding the Trans Mountain Expansion to see how the federal, Alberta, and B.C. government leaders portray the Crown-Indigenous relationship and what reconciliation means in the legislative realm.

¹⁵⁰ Stanton, 30.

CHAPTER 3: POLITICAL NARRATIVES

Overview

I analyze the discourses of three key politicians in the Trans Mountain debate: Justin Trudeau (prime minister of Canada), Rachel Notley (Alberta premier), and John Horgan (B.C. premier). I consolidated approximately the same amount of discourses for each individual, selecting speeches, interviews, and op-eds based on relevance and length. Longer discourses were more conducive to analysis, and interviews or press conferences offered less rehearsed, more improvised responses compared to traditional speeches. In my analysis, I highlight prominent themes that run across discourses and compare each individual with the others.

Justin Trudeau

The federal Liberal government supports the Trans Mountain Expansion. In early 2014, then-MP Justin Trudeau voiced interest in TMX, provided it was done in the “right way that is sustainable, that has community support and buy-in, and that fits into a long-term strategy of not just a sustainable environment but a sustainable economy.”¹⁵¹ When the anti-TMX B.C. NDP formed a minority government with support from the Green Party in May 2017, Trudeau doubled down on his support for the project, claiming that it is in Canada’s best interest.¹⁵² When B.C. and Alberta fought over bitumen transportation restrictions in early 2018, Trudeau restated that the pipeline will be built, claiming that the federal government will “look out for the national interest above various disagreements within the provinces” and that getting oil resources to overseas markets is “absolutely essential.”¹⁵³ After the U.S. national security review agency CFIUS (Committee on Foreign Investments in the United States) cleared the Trans Mountain

¹⁵¹ Jenny Uechi, “Justin Trudeau Favours Kinder Morgan Expansion Approval (If It’s ‘Done Right’),” *The Vancouver Observer*, February 26, 2014,

<https://www.vancouverobserver.com/news/justin-trudeau-comes-out-favour-kinder-morgan-pipeline>.

¹⁵² “Pipeline ‘Facts and Evidence Do Not Change,’ PM Says as B.C. Poised for New Government,” *CBC*, May 30, 2017, <https://www.cbc.ca/news/politics/trans-mountain-trudeau-tuesday-1.4137305>.

¹⁵³ Wallis Snowdon, “Trans Mountain Pipeline Project Will Be Built, Prime Minister Vows,” *CBC*, February 1, 2018, <https://www.cbc.ca/news/canada/edmonton/alberta-b-c-bitumen-restrictions-trans-mountain-trudeau-1.4514015>.

pipeline sale in August 2018, the federal government reiterated that the pipeline is “in the national interest and... must be built.”¹⁵⁴

I selected six speeches and two interviews by Prime Minister Justin Trudeau, dating from 2015, the year of his election, through the end of 2018. They focus on the Trans Mountain Expansion directly or on related issues, such as climate policy and Indigenous reconciliation. The following is a short summary of the context in which these discourses were given.

1. *Canada’s National Statement at COP21 (Paris, France - November 30, 2015)*: At the 2015 United Nations Climate Change Conference (COP21), Trudeau addressed the Assembly of Nations, promising climate leadership from Canada.
2. *Remarks at the World Economic Forum (Davos, Switzerland - January 20, 2016)*: At the annual meeting of the World Economic Forum, Trudeau sought to rebrand Canada following his election as Prime Minister a few months prior, framing Canada as forward-looking, resourceful, and safe to invest in.
3. *Decisions on Major Energy Projects in Canada (Ottawa, ON - November 29, 2016)*: The Trudeau cabinet approved the Trans Mountain Expansion and Enbridge Line 3 and rejected Northern Gateway, which had been previously overturned by the Federal Court of Appeal in a decision that found the Crown had failed to adequately consult Indigenous nations along the route regarding the project.
4. *Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework (Ottawa, ON - February 14, 2018)*: The Prime Minister unveiled a new legislative framework regarding reconciliation and the federal government’s relationship with Indigenous peoples. The government plans to implement the framework, following consultation, before the federal elections in the fall of 2019.
5. *Remarks on the Trans Mountain Expansion Pipeline Project (Ottawa, ON - April 15, 2018)*: A month before Kinder Morgan gave the federal government an ultimatum regarding the Trans Mountain Expansion, Trudeau spoke about the importance of the project for the country and promised that the federal government would pursue legislative options to reinforce its jurisdiction over the matter.
6. *Speaking Notes for the Assembly of First Nations (Ottawa, ON - December 4, 2018)*: Modelled on the United Nations General Assembly, the Assembly of First Nations represents approximately 900,000 First Nations citizens in Canada.¹⁵⁵ Trudeau told First Nations chiefs that the federal government was working towards reshaping the

¹⁵⁴ Brennan MacDonald and Vassy Kapelos, “Canada’s Purchase of Trans Mountain Receives All Regulatory Approvals,” *CBC*, August 17, 2018, <https://www.cbc.ca/news/politics/powerandpolitics/trump-security-review-clearance-1.4789726>.

¹⁵⁵ Tabitha Marshall, Michael Posluns, and Anthony J. Hall, “Assembly of First Nations,” in *The Canadian Encyclopedia*, February 29, 2016, <https://www.thecanadianencyclopedia.ca/en/article/assembly-of-first-nations>.

relationship between Canada and Indigenous peoples, detailing work on housing, water, education, jobs, and child welfare.

7. *Interview with Sandy Garossino (National Observer - February 14, 2018)*: Trudeau answered questions regarding TMX, discussing British Columbia's opposition and overhauling the NEB and the environmental assessment process.
8. *Interview with Dawna Friesen (Global National - June 6, 2018)*: Trudeau discussed TMX, the Crown-Indigenous relationship, and resistance to the project.

Environmental protection with economic growth

In his interview with Sandy Garossino, Prime Minister Justin Trudeau stated: “The national objective is, as we said many times, protecting the environment and growing the economy at the same time.”¹⁵⁶ Across speeches, he reiterated that Canada can combat climate change without sacrificing “growth and prosperity”¹⁵⁷—that is, economic gains from investing in the tar sands. When announcing the Trans Mountain Expansion approval in November 2016, Trudeau promised that his government would “build an economy that works for the middle class and protect [the] environment so [Canadians] can leave a better, cleaner country to [their] kids.”

¹⁵⁸ A year and a half later in April 2018, he emphasized the two pillars of his platform:

“Fundamental to [my] strategy is the truth that protecting our environment and growing our economy are not opposing values.”¹⁵⁹

By using the powerful word “truth,” Trudeau injected an air of unquestionable authority into his statements. He presented the country's exploitation of the tar sands as something inevitable, arguing that “there isn't a country in the world that would find billions of barrels of oil and leave it in the ground while there is a market for it.”¹⁶⁰ Whether Canada can meet its Paris Agreement commitment, which includes a 30 percent reduction in emissions from 2005 levels by

¹⁵⁶ Justin Trudeau, *Trudeau Spills on Kinder Morgan Pipeline*, interview by Sandy Garossino, February 14, 2018, <https://www.nationalobserver.com/2018/02/14/news/inside-interview-trudeau-spills-kinder-morgan-pipeline>.

¹⁵⁷ Justin Trudeau, “Prime Minister Trudeau Delivers Remarks at the World Economic Forum” (Speech, January 20, 2016), <https://pm.gc.ca/eng/video/2016/01/20/prime-minister-trudeau-delivers-remarks-world-economic-forum>.

¹⁵⁸ Justin Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada” (Speech, November 29, 2016), <https://pm.gc.ca/eng/video/2016/11/29/prime-minister-trudeau-announces-decisions-major-energy-projects-canada>.

¹⁵⁹ Justin Trudeau, “Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project” (Speech, April 15, 2018), <https://pm.gc.ca/eng/video/2018/04/15/prime-minister-trudeau-delivers-remarks-trans-mountain-expansion-pipeline-project>.

¹⁶⁰ Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada.”

2030, while continuing to invest in the tar sands remains a highly contentious topic.¹⁶¹ Trudeau remained firm in his belief that he can achieve both goals, even though there is research that suggests otherwise.

Tar sands development and production is implicitly subsidized by the Canadian government via its royalty system and tax deductions and directly subsidized via funding for development and exploration. While these subsidies may have been necessary when the tar sands sector was young in order to boost firms up to economies of scale, they may now be contributing to overproduction in a socially inefficient sector. Furthermore, current tar sands operations likely do not fully internalize the social cost of carbon. Economists Bošković and Leach from the University of Alberta have found evidence of a financial carbon bubble and that the “viability of [tar sands investment] depends on an assumption of limited action on greenhouse gases or on the costs of those actions being borne largely by oil consumers.”¹⁶²

In a paper written for my Environmental Economics course with Professor Sarah Jacobson, I use cost-benefit analysis to argue that the costs of TMX outweigh its benefits, even under optimistic price and production scenarios.¹⁶³ Furthermore, distributional issues abound; most of the benefits from increased revenues go to Alberta, whereas most of the costs and risk of spills fall on B.C. and Metro Vancouver in particular.

Despite these analyses, Trudeau presented TMX as a project with “many and obvious economic benefits,” approved because it “meets the strictest of environmental standards and fits within [the] national climate plan.”¹⁶⁴ By pairing environmental protection with economic growth, he tried to satisfy two groups of constituents that may not necessarily overlap.

¹⁶¹ See, for example: Thomas Homer-Dixon and Yonatan Strauch, “The Great Canadian Climate Delusion,” *The Globe and Mail*, June 1, 2018, <https://www.theglobeandmail.com/opinion/article-is-canada-going-to-be-the-first-country-to-break-apart-over-climate/>; Damien Gillis, “Justin Trudeau’s Two-Faced Climate Game,” *The New York Times*, June 9, 2018, <https://www.nytimes.com/2018/05/02/opinion/trudeau-climate-kinder-morgan-pipeline.html>; Mark Hume, “Critics Speak Out Against Approval of Trans Mountain Pipeline in B.C.,” *The Globe and Mail*, November 29, 2016, <https://www.theglobeandmail.com/news/british-columbia/critics-speak-out-against-approval-of-trans-mountain-pipeline-in-bc/article33097481/>.

¹⁶² Branko Bošković and Andrew Leach, “Leave It in the Ground? Incorporating the Social Cost of Carbon into Oil Sands Development,” University of Alberta School of Business Research Paper (University of Alberta, 2017), 2, <https://ssrn.com/abstract=2920341>.

¹⁶³ Angela Chan, “An Analysis of the Kinder Morgan Trans Mountain Pipeline Expansion” (Unpublished paper, May 17, 2017).

¹⁶⁴ Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada.”

Trudeau also linked Alberta, which people often associate with tar sands exploitation and economic growth at the expense of the environment, to environmental protection. In his speech approving TMX, he stated “definitively” that the federal government “could not have approved [the] project without the leadership of Premier Notley and Alberta’s climate leadership plan.”¹⁶⁵ He then praised the plan for being “rightly celebrated as a major step forward both by industry and by the environmental community.”¹⁶⁶ Trudeau framed TMX as necessary to Canada’s climate change policy, stating: “You can’t have [environmental protection and economic growth] unless you have all those things together, that is the point.”¹⁶⁷ Despite the status of the tar sands as a major source of greenhouse gas emissions, under Trudeau’s rhetoric, the pipeline became “part of a larger plan on fighting climate change.”¹⁶⁸

Protecting middle-class families and oil industry workers

Trudeau humanized the Trans Mountain Expansion by choosing to focus on oil industry workers and middle-class families who will allegedly benefit from the project. He described TMX as a “major win for Canadian workers, for Canadian families, and for the Canadian economy now and into the future.”¹⁶⁹ He did not mention Indigenous nations. However, later in the same speech, Trudeau invoked Indigenous peoples when justifying his government’s rejection of the Northern Gateway Project, claiming that it is “not in the best interests of the local affected communities, including Indigenous peoples.”¹⁷⁰ He paired Indigeneity with descriptions of the Great Bear Rainforest and the Douglas Channel as “unique and beautiful” ecosystems that thrive with “diverse wildlife,”¹⁷¹ reinforcing notions of Indigeneity as rooted in a fixed vision of nature and history. Indigeneity, much like the environment, became the opposite of economic development, something to be reconciled.

In mid-April of 2018, during a tumultuous and uncertain time for TMX, Trudeau gave a speech in support of the pipeline. He called TMX a “vital strategic interest to Canada,”

¹⁶⁵ Trudeau.

¹⁶⁶ Trudeau.

¹⁶⁷ Trudeau, Trudeau Spills on Kinder Morgan Pipeline.

¹⁶⁸ Trudeau.

¹⁶⁹ Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada.”

¹⁷⁰ Trudeau.

¹⁷¹ Trudeau.

elaborating: “[This] means people in the oil patch are hurting, have been hurting for years, and we stand with them just as we stand with forestry workers in B.C., aerospace workers in Quebec, and auto workers in Ontario.”¹⁷² By aligning oil patch workers with manual labourers in the forestry, aerospace, and auto sectors—three industries that are often viewed as honest and vital to the Canadian economy—Trudeau attempted to make the oil industry more accessible and more relatable. Instead of an abstract, material portrayal of TMX as a mostly hidden pipeline that transports oil from one place to another, the imagery of oil workers likely helped the audience empathize with the project; after all, it will purportedly support Canadian families and, in the words of Trudeau, “every single Canadian’s family and future and dreams matter.”¹⁷³

Trudeau invoked patriotic sentiment when he spoke of his visit to the “new, state-of-the-art” Suncor facility in Fort McMurray: “The first thing that strikes you when you talk to people in Fort Mac is that they are from everywhere.”¹⁷⁴ By highlighting the origins of oil workers, from every “province and territory, big cities and small towns... and all parts in between,” Trudeau once again made the industry more relatable, accessible, and important to all of Canada. He implied that the tar sands are no longer a uniquely Albertan feature and that the project does not only benefit Alberta; rather, the Trans Mountain Expansion will create jobs and feed families everywhere. Thus, Trudeau stated, “It is with [the oil workers] in mind that we assert the Government of Canada’s constitutional authority to complete this vital project.”¹⁷⁵

The national interest and the Canadian identity

Through sweeping generalizations of what it means to be Canadian and what Canada stands for, Trudeau portrayed TMX as a project crucial to the national interest. In his address at the World Economic Forum in 2016, Trudeau highlighted Canada’s tolerance and compassion during the Syrian refugee crisis. He focused on Canada’s innovation, creativity, and optimism, using terms like diversity, resilience, positivity, and confidence to create an image of Canada as a stable, prosperous country to invest in. He wanted the world to “know Canadians for [their]

¹⁷² Trudeau, “Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project.”

¹⁷³ Trudeau.

¹⁷⁴ Trudeau.

¹⁷⁵ Trudeau.

resourcefulness.”¹⁷⁶ Yet he also stated that natural resources “will always be the basis of the Canadian economy,” viewing the land as material to be exploited, albeit ‘creatively.’ In the end, these resources still serve to accumulate capital.

The Trudeau government’s “vital mission” is “to make progress [and] leave a cleaner, more prosperous country to our kids than the one we inherited from our parents.”¹⁷⁷ So what is progress? For the federal government, it is economic growth and environmental protection. According to Trudeau, TMX will lead to both. In his April 2018 speech on the project, he called for everyone to “come together in common purpose for the good of the country” by charting a path forward for the pipeline.¹⁷⁸ An interprovincial pipeline from Alberta to B.C. became something of utmost importance for the entire country—for the entire ‘good’ of the country.

Trudeau used the national interest to strengthen his claim that the pipeline will lead to economic growth without compromising the environment. He argued that the project is an integral part of a larger plan to combat climate change and that without it the larger plan will fail. In his interview with Sandy Garossino, Trudeau said, “[I]f we don’t continue to stand strongly in the national interest... there is no agreement, and there is no capacity to reach our climate targets.”¹⁷⁹ He then followed: “It’s when you realize that all this ties together that we see what the national interest truly is, and that’s what we’re signing up for.” Once again, he used notions of truth and seeing to frame the issue as something that he is right about; those who disagree merely have to think differently and see that TMX is for the greater good.

Throughout his speeches, Trudeau used words like “we” and “our” to create a closer relationship with the audience. He stressed that the people of B.C. and Alberta are not opponents, but neighbours and “fellow countrymen and women who want the best for themselves and for each other.”¹⁸⁰ He also made claims for ‘all’ Canadians and tried to downplay geographic differences in spite of the country’s uneven resource distribution, stating: “[A]t the end of the day, no matter the province, territory, city or town we call home, all Canadians love this country

¹⁷⁶ Trudeau, “Prime Minister Trudeau Delivers Remarks at the World Economic Forum.”

¹⁷⁷ Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada.”

¹⁷⁸ Trudeau, “Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project.”

¹⁷⁹ Trudeau, Trudeau Spills on Kinder Morgan Pipeline.

¹⁸⁰ Trudeau.

and we are there for each other in times of need.”¹⁸¹ It is bold to claim that *all* Canadians love Canada, especially since the country is certainly not free from criticism by its own citizens. Furthermore, Trudeau’s words elevated the debate over the pipeline into a ‘time of need,’ implying that the project’s failure would plunge the country into dire circumstances.

Trudeau claimed that “everyone benefits if [Canada] reach[es] [its] climate targets and [its] Paris targets” and that his job as prime minister is to “hold the country together and do the things that are right for all Canadians.”¹⁸² The usage of blanket terms like ‘everyone’ and ‘all’ painted Canada as a monolithic entity with singular interests. There were few mentions of compromise. Instead, Trudeau held a confident, forceful tone that implied the federal government would push the project through, regardless of opposition. As prime minister, he took on a paternal role and stated that his “focus is on doing the right things for the country.”¹⁸³ Once again, Canada became one homogeneous mass, with the prime minister as the selfless caretaker; Trudeau even claimed that he didn’t think of the Trans Mountain Expansion debate in terms of political risk, but rather in terms of “what is the right thing to do for the country.”¹⁸⁴ The federal government wanted to assert that it knows what’s best for all Canadians, and therefore all Canadians should trust its decision-making.

Federal jurisdiction and the judiciary

In discussing TMX, Trudeau repeatedly emphasized the federal government’s overriding jurisdiction over interprovincial pipelines, as well as the legislative options it had in establishing and reinforcing this jurisdiction. Trudeau claimed that “only the Government of Canada has the capacity and the authority to resolve” the impasse between the B.C. and Alberta premiers.¹⁸⁵ He avowed that the pipeline will be built, stating: “This is an issue of federal jurisdiction... this is what we’re going to do.”¹⁸⁶

¹⁸¹ Trudeau.

¹⁸² Trudeau, *Trudeau Spills on Kinder Morgan Pipeline*.

¹⁸³ Justin Trudeau, *Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview*, interview by Dawna Friesen, June 6, 2018, <https://globalnews.ca/news/4256498/justin-trudeau-interview-pipelines-tariffs/>.

¹⁸⁴ Trudeau.

¹⁸⁵ Trudeau, “Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project.”

¹⁸⁶ Trudeau, *Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview*.

In her interview, Dawna Friesen asked Trudeau why TMX is not a risk for Canadian taxpayers when Kinder Morgan had found it to be too much of a risk (this interview occurred after the Government of Canada announced that it planned to nationalize the project). Trudeau responded: “[T]he federal government has a lot more understanding and awareness of [creating a Pan-Canadian project] than an oil company based in Texas... [W]e know the Canadian Constitution quite well and we have jurisdiction over projects that cross provincial boundaries. If not, there never would have been a railroad built way back when.”¹⁸⁷

Two salient themes stand out amongst these statements. First, Trudeau embodied a nationalist sentiment in deeming Kinder Morgan an “oil company based in Texas” and comparing it to the Government of Canada, which represents Canada as a whole and can therefore claim more legitimacy over its citizens. Prior to Kinder Morgan choosing to back out of the project, Trudeau would not have dismissed the company as a non-Canadian entity based in Texas. Part of the parliamentary debate in the 1950s over the TransCanada Pipeline was over the fact that it was sponsored by multiple American companies. For a project as large as an interprovincial pipeline, especially one that carries an allegedly crucial resource seen as the lifeblood of Alberta, many find it important for Canada, and not foreign interests, to maintain control. Thus, in highlighting Kinder Morgan’s American status, Trudeau made Canada’s choice to buy the project more palatable.

Second, Trudeau invoked the idea of technological nationalism when relating federal jurisdiction and the Canadian Constitution to the Canadian Pacific Railway, Canada’s first transcontinental railway and the project that convinced British Columbia to enter Confederation in 1871. Darin Barney argues that these material infrastructure projects, especially those spanning provinces and large expanses of land, serve not only to bolster the economy, but also to create a national identity.¹⁸⁸ Beyond nation-building via physical transportation, the Canadian Pacific Railway was built for profit and access to raw material in the western provinces. It was a capitalist venture that required intensive investment from the government. Trudeau used the railroad in a positive light to parallel the pipeline with it, but though TMX may be touted as vital to the nation, at the heart of these projects also lies the desire for owners to profit from

¹⁸⁷ Trudeau.

¹⁸⁸ Barney, “Who We Are and What We Do,” 79.

Canada's—specifically Alberta's—abundance of oil. Through technological nationalism, the “concrete interests of capital are abstracted and projected onto the body of the nation as whole, whose interests are reduced to those of something called ‘the economy.’”¹⁸⁹

Trudeau stated that the federal government was “actively pursuing legislative options that will assert plus reinforce the Government of Canada’s jurisdiction in this matter, which [it] know[s] [it] clearly [has].”¹⁹⁰ By invoking the court as a method of reinforcing jurisdiction, the federal government injected more authority and power into its statements. When asked how he would deal with protestors, Trudeau explained that while it is important for people to be able to voice their opinion, it is “also important that they do so safely and in a way that respects the law... [Canada is] a country of the rule of law.”¹⁹¹ By deferring authority to the courts regarding protests, which are often acts of civil disobedience, Trudeau tried to lessen the responsibility that his government would bear for shutting down protestors along the route.

From December 2018 through January 2019, Indigenous protestors set up blockades in Wet'suwet'en territory to block the construction of a natural gas pipeline being built by Coastal GasLink in British Columbia. TC Energy, the energy company attempting to build the pipeline, claims that it has the support of all elected Indigenous leaders along the route, but Wet'suwet'en hereditary chiefs reject the project and argue that elected band leaders do not have adequate authority to make such decisions.¹⁹² The court eventually granted an injunction for the company to proceed with construction, leading the Royal Canadian Mounted Police (RCMP), the federal police force, to arrest several protestors who violated the injunction.¹⁹³ Wet'suwet'en elders and leaders have likened the incident to previous episodes of forced removal by the RCMP, including residential schools and the pass system.

The RCMP stated: “The conflict between the oil and gas industries, [I]ndigenous communities, and governments all across the province has been ongoing for a number of years.

¹⁸⁹ Barney, 87.

¹⁹⁰ Trudeau, “Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project.”

¹⁹¹ Trudeau, Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview.

¹⁹² Leyland Cecco, “Canada: Indigenous Anti-Pipeline Protesters Call Police Presence ‘Act of War,’” *The Guardian*, January 7, 2019, <https://www.theguardian.com/world/2019/jan/07/canada-indigenous-anti-pipeline-protesters>.

¹⁹³ Angela Sterritt, “Wet'suwet'en Arrests Spark Debate About Indigenous Relations with RCMP,” *CBC*, January 18, 2019, <https://www.cbc.ca/news/canada/british-columbia/wet-suwet-en-conflict-spurs-debate-about-indigenous-relations-with-rcmp-1.4980695>.

This has never been a police issue. In fact, the B.C. RCMP is impartial and we respect the rights of individuals to peaceful, lawful and safe protest.”¹⁹⁴ But the RCMP cannot be impartial, for it is the federal and national police force of Canada. The paramilitary arm has a history of enforcing the federal government’s brutal policies against Indigenous nations, such as residential schools and the pass system. It is unsurprising, then, that Indigenous peoples are wary of their interactions with police during acts of protest and civil disobedience.

In his interview with Dawna Friesen, Trudeau stated:

We have an elected government in B.C. that approved this pipeline, the previous government. Our government approved this pipeline. We’re moving forward because either you’re a country of laws and principles, or you’re a country where whoever shouts loudest gets to do things or not do things. Well, I know we all want to live in a country where the rules are followed and that’s what we’re just going to make sure.¹⁹⁵

Trudeau gave off an air of unquestioned authority in his statement, selectively using the previous B.C. government (led by Christy Clark, who approved TMX) and choosing not to mention the current B.C. government (led by John Horgan, who rejects TMX). By saying that the B.C. government was “elected,” Trudeau drew on democratic principles to add legitimacy to his support of the pipeline. He also implied that protesters are unruly, loud, and disruptive lawbreakers. In assuming that Canadians “all want to live in a country where the rules are followed,” he glossed over the tumultuous history between Indigenous peoples and the Canadian government and the fact that many Indigenous nations do not view the ‘rules’ as legitimate or just. He also shaped the issue as a ‘law and order’ problem where Indigenous anger ought to be managed by the orderly state—where protest is acceptable only if done within the colonial framework and only if it does not disrupt existing systems.

Throughout his speeches and interviews, Trudeau stood his ground, reiterated his support for the pipeline, and stated that he would use the federal government’s powers and the court system to push the project through, regardless of opposition. By using the court and entities like the RCMP, he added a dimension of ‘legitimate’ force to back his words.

¹⁹⁴ Cecco, “Canada: Indigenous Anti-Pipeline Protesters Call Police Presence ‘Act of War.’”

¹⁹⁵ Trudeau, Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview.

Selective engagement with Indigenous peoples

Trudeau used Indigeneity selectively and strategically, usually to push a climate change agenda or argue for the federal government's new approach to reconciliation. At COP21, he stated: "Indigenous peoples have known for thousands of years how to care for our planet. The rest of us have a lot to learn."¹⁹⁶ He evoked the image of Indigenous peoples as environmental protectors and caretakers of the land. Glen Coulthard explains that Indigenous cultures view land as more than "some material object of profound importance... instead, it ought to be understood as a field of 'relationships of things to each other.'"¹⁹⁷ He calls this place-based ethic 'grounded normativity' and argues that adopting it means holding "certain obligations to the land, animals, plants, and lakes in much the same way that we hold obligations to other people."¹⁹⁸ Grounded normativity, unsurprisingly, did not appear in any of Trudeau's speeches or interviews, for the Canadian government views land as material instead of as a dynamic relationship, and the private interests behind TMX seek out land in terms of capital and economic gain.

Save for a mention of Indigenous peoples as environmental caretakers at COP21, which focused on climate change, Trudeau skirted around the issue of Indigenous opposition in most of his speeches and interviews on the pipeline. He cited the interests of "local affected communities, including [I]ndigenous peoples"¹⁹⁹ as a reason for rejecting the Northern Gateway Project, but made no mention of them a few paragraphs earlier when he approved the Trans Mountain Expansion. In his speech on TMX in April, he mentioned Indigenous peoples once, claiming that "working with... Indigenous partners has been paramount"²⁰⁰ to the project and highlighting that 43 First Nations have negotiated benefit agreements (33 in B.C.). The benefit agreements are economic in nature, capital-based, and far from the grounded normativity ethic. In this context, Indigenous partners were used to show Indigenous support for the project for economic reasons and to counteract the stereotype that Indigenous peoples categorically oppose

¹⁹⁶ Justin Trudeau, "Canada's National Statement at COP21" (Speech, November 30, 2015), <https://pm.gc.ca/eng/news/2015/11/30/canadas-national-statement-cop21>.

¹⁹⁷ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014), 61.

¹⁹⁸ Coulthard, 61.

¹⁹⁹ Trudeau, "Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada."

²⁰⁰ Trudeau, "Prime Minister Trudeau Delivers Remarks on the Trans Mountain Expansion Pipeline Project."

development due to environmental reasons—a stark contrast from how Trudeau invoked Indigeneity in his address at COP21.

In his remarks on the Recognition and Implementation of Indigenous Rights Framework in the House of Commons in February 2018, as well as his address to the Assembly of First Nations in December 2018, Trudeau heavily promoted the recognition of rights approach to Crown-Indigenous relations. After starting his House of Commons speech with an Algonquin land acknowledgment, Trudeau stated that the government has more “work to push back against the systemic racism that is the lived reality for so many Indigenous Peoples” and promised to “work together to do away with legislation and policies built to serve colonial interests.”²⁰¹ Trudeau’s acknowledgment of *existing* colonialism and racism against Indigenous peoples is a step forward from his predecessor’s treatment of colonialism as an institution of the past. Stephen Harper, the previous prime minister of Canada, framed reconciliation as overcoming history. As Coulthard describes: “‘forgiveness’ and ‘reconciliation’ [were] posited as a fundamental step in transcending the painful ‘legacy’ that has hampered our collective efforts to ‘move on.’”²⁰² Instead of addressing the problematic colonial relationship of the present, presenting colonialism as a bygone era allowed Harper to avoid addressing current social and institutional relationships, something that Trudeau appears to be working towards. However, Trudeau also reverted back to framing colonialism as a relic from the past when he stated that the government and Indigenous peoples would “work as partners to address the *legacies* of colonialism, racism, and paternalism [emphasis added].”²⁰³

Throughout his two speeches, Trudeau emphasized that, moving forward, Canada would seek a renewed relationship with Indigenous peoples based on “recognition of rights, respect, co-operation, and partnership.”²⁰⁴ Recognition of rights will “guide all government relations with

²⁰¹ Justin Trudeau, “Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework” (Speech, February 14, 2018), <https://pm.gc.ca/eng/news/2018/02/14/remarks-prime-minister-house-commons-recognition-and-implementation-rights-framework>.

²⁰² Coulthard, *Red Skin, White Masks*, 125.

²⁰³ Justin Trudeau, “PM Speaking Notes for the Assembly of First Nations” (Speech, December 4, 2018), <https://pm.gc.ca/eng/news/2018/12/04/pm-speaking-notes-assembly-first-nations>.

²⁰⁴ Trudeau, “Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework.”

Indigenous peoples”²⁰⁵ and the government, acting as a supporting partner, will decolonize its laws.²⁰⁶ The recognition of rights approach assumes that these rights exist, and the government merely has to recognize and affirm them. But, as Coulthard argues, this recognition process occurs within the colonial framework, where the state and its institutions—including the courts, the police, and governing authorities—dictate the terms. For example, the government’s land claims process could actually restrict instead of expand rights by ‘modifying’ them to include *only* the rights and benefits in the claim package for posterity.²⁰⁷ In any relationship based on recognition, we must ask: who is doing the recognizing, and how are subjects recognized?

Trudeau also stressed the government’s intent to advance self-determination, including the “inherent right of self-government,” where “Indigenous Peoples in Canada are in control of their own destiny, making their own decisions about their future.”²⁰⁸ Note the term “inherent,” which implies that the right of self-government is inalienable and unquestionable. The Government of Canada “recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*.”²⁰⁹ Coulthard argues that the “use of the term ‘inherent’ here is nonsense when considered in light of the scope of the policy, as there is really nothing ‘inherent’ about the limited range of rights that Canada claims to recognize... [Ultimately], Canada’s policy framework is grounded in the assumption that Aboriginal rights are subordinately positioned within the ultimate sovereign authority of the Crown.”²¹⁰ Recognition and reconciliation become a question of how to “*render consistent* Indigenous nationhood with state sovereignty.”²¹¹ Aboriginal rights can still be infringed upon for ‘justifiable’ reasons as determined by the legislature and the courts.

In his House of Commons speech on the Recognition and Implementation of Rights Framework, Trudeau endorsed the *United Nations Declaration on the Rights of Indigenous*

²⁰⁵ Trudeau.

²⁰⁶ Trudeau, “PM Speaking Notes for the Assembly of First Nations.”

²⁰⁷ Coulthard, *Red Skin, White Masks*, 122.

²⁰⁸ Trudeau, “Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework.”

²⁰⁹ Government of Canada, “The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government,” September 15, 2010, <https://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844>.

²¹⁰ Coulthard, *Red Skin, White Masks*, 123.

²¹¹ Coulthard, 124.

Peoples “without qualification.”²¹² Article 3 of UNDRIP recognizes Indigenous peoples’ right to self-determination, which includes the right “to freely determine their political status and freely pursue their economic, social and cultural development.”²¹³ Trudeau’s unqualified endorsement of Indigenous peoples’ right to self-determination seems to counter the legal literature that has determined that Indigenous peoples do not have a veto over pipeline projects.²¹⁴ Furthermore, in January 2019, the United Nations Human Rights Commission’s Committee on the Elimination of Racial Discrimination sent a trio of letters to Canada regarding its concerns with the Site C dam (a hydroelectric project in central B.C.), the Trans Mountain Expansion, and the Liberal government’s “Recognition and Implementation of Rights Framework” proposal.²¹⁵ That Trudeau’s endorsement of UNDRIP is truly unqualified remains to be proven.

Jeremy Webber discusses the tensions between Indigenous and Crown ideas of sovereignty. He notes that the notion of Indigenous sovereignty has been invoked sparingly, as political and legal authorities prefer to use other terms like ‘self-government.’²¹⁶ The Canadian Constitution does not expressly contain the Indigenous right of self-government, although the Supreme Court has affirmed that the purpose of section 35 is to “reconcile ‘the pre-existence of aboriginal societies’—or, alternatively, ‘prior Aboriginal occupation’—with the sovereignty of the Crown.”²¹⁷ The process of reconciliation continues to this day, with the federal government seeking to entrench control over development on Indigenous land on one hand and seeking to respect the autonomy and claim to self-determination of Indigenous peoples on the other.

Webber discusses five ways of looking at sovereignty, two of which are commonly invoked in the debate over the concept in Canada. The first he calls Sovereignty 1: the “ultimate, ostensibly unconstrained right to determine what is law,”²¹⁸ that is, the final power of decision.

²¹² Trudeau, “Remarks by the Prime Minister in the House of Commons on the Recognition and Implementation of Rights Framework.”

²¹³ United Nations General Assembly, “United Nations Declaration on the Rights of Indigenous Peoples,” December 13, 2007, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

²¹⁴ See *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256.

²¹⁵ Travis Lupick, “UN Human Rights Commission Cautions B.C. Megaprojects Risk Infringing Rights of Indigenous Peoples,” *Georgia Straight*, January 15, 2019, <https://www.straight.com/news/1188336/un-human-rights-commission-cautions-bc-megaprojects-risk-infringing-rights-indigenous>.

²¹⁶ Jeremy Webber, “Contending Sovereignties,” in *The Oxford Handbook of the Canadian Constitution*, ed. Peter C. Oliver, Patrick Macklem, and Nathalie Des Rosiers (New York: Oxford University Press, 2017), 283.

²¹⁷ Webber, 289.

²¹⁸ Webber, 292.

The second he calls Sovereignty 3: the “grounding of the ultimate authority for law and governance within one’s own society.”²¹⁹ Webber argues that the latter, Sovereignty 3, best captures the meaning of self-government as an ‘inherent right’ in section 35 of the Canadian Constitution. He also argues that it aligns with the Supreme Court’s concept of reconciliation, which emphasizes the “need to found the legitimacy of Canadian institutions on principles that can plausibly appeal to all Canadians, Indigenous and non-Indigenous.”²²⁰

Webber insists that it is possible to assert Sovereignty 3 without requiring Sovereignty 1—the former focuses on the origin of political authority, he explains, whereas the latter focuses on the effects of political authority. But Coulthard’s critical insights into Aboriginal law and the Canadian legal system may lead us to challenge Webber’s claim. How meaningful is it to ‘ground’ the ultimate authority for law and governance within Indigenous society if the Crown still holds both the right and the means to determine and apply the governing laws?

Webber uses the Haida Gwaii Reconciliation Act as an example of ‘agonistic constitutionalism,’ in which “constitutional government acknowledges the pervasiveness of fundamental political disagreement, accepts that it will persist, and proceeds to establish principles and processes that can sustain collaboration even in the face of disagreement.”²²¹ The Haida Gwaii Reconciliation Act emphasizes that B.C. and the Haida Nation will operate ‘under their respective authorities and jurisdictions’—that is, the two parties have agreed to disagree with regard to sovereignty, title, ownership, and jurisdiction over Haida Gwaii. On the surface, it may appear that the federal government’s endorsement of UNDRIP and the Indigenous right to self-determination is reconcilable with the federal government’s assertion of jurisdiction over projects like the Trans Mountain Expansion. Upon closer examination, however, Sovereignty 3 means little without the power behind Sovereignty 1. The government can say that Indigenous peoples may govern themselves based on their own laws and principles, but when these Indigenous laws and principles come into direct conflict with Canadian laws, the Canadian legal system takes priority. In endorsing UNDRIP, Trudeau invokes support for Sovereignty 3 without addressing the fact that the Crown unequivocally holds Sovereignty 1. Reconciliation might

²¹⁹ Webber, 293.

²²⁰ Webber, 294.

²²¹ Webber, 291.

“embody the aspiration to found political community on principles acceptable to all,”²²² but the Canadian state still writes and enforces its laws. Ultimately, power and authority still lies with the Crown, and when the contending sovereignties of the Crown and Indigenous nations come head to head, the former holds more power.

References to other governments and personal ties

To appear relatable to constituents in B.C. who oppose the Trans Mountain Expansion, Trudeau used personal anecdotes and spoke of his familial ties to the province. When announcing the federal government’s approval of TMX in November 2016, Trudeau stated: “We understand and share the deep and abiding sense of responsibility British Columbians feel for our spectacular West Coast. Indeed, it is a personal issue for me.”²²³ Calling himself a “grandson of B.C.,” he proceeded to argue that the decision to approve TMX was the right one to make. In his interview with Sandy Garossino in February 2018, Trudeau once again mentioned his familial ties and recalled how he “spent [his] summers and time on the B.C. coast with [his] grandfather.”²²⁴ Making an impersonal infrastructural project like a crude oil pipeline personal by invoking childhood and family added a human dimension to the federal government’s decisions. It allowed the audience to more easily view the prime minister as ‘one of them,’ establishing an important connection to B.C., which opposes TMX.

Seeking to differentiate himself and his Liberal government from his predecessor, Stephen Harper and the Conservative Party of Canada, Trudeau often brought up Harper’s actions as prime minister in a negative light. In his speech at the World Economic Forum in 2016, he stated: “My predecessor wanted you to know Canada for its resources. Well I want you to know Canadians for our resourcefulness.”²²⁵ Besides being a dig at Harper, the statement also associated Harper with “Canada” and Trudeau with “Canadians,” invoking a more personal, human image. Trudeau painted Harper as someone who tried to choose the economy over the environment, yet got neither in the end: “[O]ne of the things we had coming out of 10 years of Stephen Harper, is we saw that someone who makes that choice, he tried to choose the economy.

²²² Webber, 295.

²²³ Trudeau, “Prime Minister Trudeau Announces Decisions on Major Energy Projects in Canada.”

²²⁴ Trudeau, Trudeau Spills on Kinder Morgan Pipeline.

²²⁵ Trudeau, “Prime Minister Trudeau Delivers Remarks at the World Economic Forum.”

Not only did he not do much on the environment, but he wasn't able to get much done on the economy either. He wasn't able to get pipelines built."²²⁶ Trudeau wanted to use this negative portrayal of Harper to bolster his own image as someone who could cater to both the environment and the economy. Trudeau also criticized the Harper government's pipeline review process as "flawed" and not "good enough," then complimented his own government's new and improved system.²²⁷ Harper served as a negative contrast so that Trudeau could paint his own endeavours in a more positive light.

Trudeau blamed the B.C. government for Kinder Morgan's decision to withdraw from the project, arguing that it "obviously... happened because the provincial government in B.C. decided to inject uncertainty in this project."²²⁸ He then followed: "From the Canadian standpoint, from the federal standpoint, we can handle that uncertainty." These statements implied that the B.C. government was to blame for Kinder Morgan's withdrawal and that Kinder Morgan's withdrawal was bad for Canada. Trudeau portrayed uncertainty as a negative attribute because certainty and stability in investments is something that his government has tried to sell on the international stage, as seen in his speeches at COP21 and the World Economic Forum. Trudeau's statements also implied that the B.C. government is somehow less, or perhaps even not, 'Canadian' than the federal government by pitting the "provincial government in B.C." against "the Canadian standpoint... the federal standpoint." In doing so, the B.C. government becomes 'them,' and the federal government remains on the side of 'us' Canadians.

In his discussions on TMX, Trudeau specifically targeted John Horgan, the current B.C. premier. He likened Horgan to Brad Wall, the former premier of Saskatchewan, and accused both of trying to block the national climate change plan. Trudeau claimed that Horgan was "trying to scuttle [the] national plan on fighting climate change" and that by "blocking the [Trans Mountain] pipeline, he's putting at risk the entire national climate change plan."²²⁹ It was dramatic and analogically weak to claim that Premier Horgan's opposition to TMX are "exactly lined up with Brad Wall's attempts to stop the carbon tax." Furthermore, it was a false dichotomy to accuse Horgan of being either a supporter of TMX or an opponent against fighting

²²⁶ Trudeau, Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview.

²²⁷ Trudeau, Trudeau Spills on Kinder Morgan Pipeline.

²²⁸ Trudeau, Trudeau Defends Trans Mountain, Criticizes Trump Tariffs in Exclusive Interview.

²²⁹ Trudeau, Trudeau Spills on Kinder Morgan Pipeline.

climate change. But it was rhetorically effective for Trudeau to position Horgan as not just an opponent of the pipeline, but an opponent to addressing climate change. While public opinion over the pipeline may be divided, climate change is a less controversial topic, and many more people agree that something should be done to alleviate its effects. Thus, by positioning Horgan and Wall in the same camp, Trudeau established them as obstacles for the federal government to overcome so that he can ‘do the right things’ for the country.

Concluding comments

Many of Trudeau’s arguments focused on establishing environmental protection as compatible with economic growth and the Trans Mountain Expansion as compatible with both. Trudeau portrayed the federal government as a mediator and caretaker who wanted to ‘do the right thing’ for ‘all’ Canadians. He framed the Trans Mountain Expansion as a project necessary for advancing the national interest and in line with the Canadian identity. He used select notions of Indigeneity to advance the federal government’s reconciliation agenda and image of tolerance, but chose to omit the existence of Indigenous resistance to TMX when discussing the project and focused on middle-class families and oil industry workers instead. He highlighted the power of the judiciary and federal jurisdiction over interprovincial pipeline projects to assert that the project would go through, regardless of obstacles posed by inconvenient opponents like B.C. Premier John Horgan, who allegedly put the entire national climate change plan at risk by opposing TMX.

Rachel Notley

Alberta Premier Rachel Notley (NDP) supports TMX. In a written submission to the NEB in January 2016, she stated that the proposal was in Canada’s best interests, writing: “Projects like pipelines shouldn't pit one province against another—they should stimulate conversations that recognize the economic needs and positions of all provinces.”²³⁰ Since then,

²³⁰ “Rachel Notley Urges NEB’s Timely Approval of Trans Mountain Pipeline,” *The Globe and Mail*, January 12, 2016, <https://www.theglobeandmail.com/news/alberta/rachel-notley-urges-energy-board-to-approve-trans-mountain-pipeline/article28132571/>.

she has remained firm in her province's support for the pipeline, calling the federal government's purchase of TMX a "major step forward for all Canadians."²³¹ After the *Tsleil-Waututh Nation* decision was released on August 30, 2018, Notley withdrew from Prime Minister Justin Trudeau's national climate change plan, which includes carbon pricing, stating that, without Alberta, the plan "isn't worth the paper it's written on."²³²

I selected three speeches, two press releases, an op-ed, and two interviews by Premier Rachel Notley of Alberta, dating from November 2016 (when the Trudeau government approved TMX) through early 2019. These selections focus heavily on the Trans Mountain Expansion. The following is a short summary of the context in which these selections were given.

1. *Press Release, "Our Climate Leadership Plan Is Getting Results" (November 29, 2016)*: Shortly after Prime Minister Trudeau approved the Trans Mountain Expansion and the Line 3 Replacement Project, Notley wrote a note thanking him for his government's work, tying in the pipeline to environmental policy.
2. *Vancouver Board of Trade (Vancouver, B.C. - November 30, 2017)*: Notley's speech at the Greater Vancouver Board of Trade's 2017 Energy Forum marked her first official address in B.C. since her becoming premier. She argued that it is in the B.C. people's interests to support TMX.
3. *Speech from the Throne Media Comments (Edmonton, A.B. - March 8, 2018)*: The throne speech, given by the Lieutenant Governor of Alberta, opened a new session of the legislature and outlined the government's goals and direction. Notley answered questions from media regarding the pipeline and relevant legislation proposals.
4. *Press Release, "Standing up for the Trans Mountain Expansion" (April 18, 2018)*: After Kinder Morgan's ultimatum, Notley released a strong statement that called on Ottawa to assist in ensuring the pipeline's success and reiterated Alberta's commitment to TMX.
5. *"Rachel Notley on Trans Mountain: 'It's Time to Pick Those Tools Back Up, Folks,'" (MacLean's - May 30, 2018)*: After the federal government announced its intent to buy TMX from Kinder Morgan, Notley released an op-ed that made a case for the importance of the pipeline for all of Canada.
6. *Address About the Federal Court of Appeal's Ruling on the Trans Mountain Pipeline Expansion Project (Edmonton, A.B. - August 30, 2018)*: In an emotionally charged

²³¹ Slav Kornik, "Trans Mountain Pipeline Project Purchase 'Major Step Forward': Rachel Notley," *Global News*, May 29, 2018, <https://globalnews.ca/news/4238790/alberta-premier-rachel-notley-trans-mountain-pipeline/>.

²³² John Paul Tasker and Kathleen Harris, "Alberta Pulling Out of Federal Climate Change Plan Until Pipeline Construction Resumes," *CBC*, August 30, 2018, <https://www.cbc.ca/news/politics/trans-mountain-federal-court-appeals-1.4804495>.

speech, Notley expressed her government's anger at the FCA's ruling on TMX, calling the situation a "crisis."

7. *Alberta Teachers' Association Conference Address (Enoch, A.B. - October 13, 2018)*: In a rebuttal to the conference's keynote speaker, anti-pipeline activist Tzeporah Berman, Notley argued against anti-pipeline activists and British Columbia.
8. *Interview with Tara Nelson (CTV - January 1, 2019)*: Notley's interview with *CTV News* is part of the network's series of year-end review discussions with political leaders. The interview centred around the battle over TMX.

Environmental protection with economic growth

Like Trudeau, Notley stressed that the pipeline is part of the country's larger plan to combat climate change and that the environment and the economy go hand-in-hand. In her press release after Trudeau's approval of TMX, she stated: "We are building the economy within a strong new national environmental policy" and "we don't have to choose between the environment and building the economy."²³³ These claims directly echo the federal government's frequent claims that Canada can meet its international climate commitments not in spite of, but *because of*, the Trans Mountain Expansion. As discussed previously, however, these claims become dubious once examined, especially given the increase in greenhouse gas emissions that continued investment in the tar sands will generate.

In her Vancouver Board of Trade speech, Notley asserted that "[g]reater economic security and a real plan to address climate change... must go hand-in-hand."²³⁴ In describing the federal plan as "real," she implied that other, previous plans were not effective and that the pipeline "must" be built in order to preserve the environment. She emphasized Alberta's role and contended that the province "contributes mightily to the economic well-being of our country and leads Canada on climate action." In her op-ed for *Maclean's*, Notley argued that "climate leadership and good jobs can go hand in hand."²³⁵

²³³ Rachel Notley, "Our Climate Leadership Plan Is Getting Results" (November 29, 2016), <https://www.facebook.com/notes/rachel-notley/our-climate-leadership-plan-is-getting-results/10154617254461427/>.

²³⁴ Rachel Notley, "Vancouver Board of Trade Speech 2017" (Speech, November 30, 2017), <https://www.alberta.ca/release.cfm?xID=500809122476C-082E-5B95-31A5BF45E80464F2>.

²³⁵ Rachel Notley, "Rachel Notley on Trans Mountain: 'It's Time to Pick Those Tools Back Up, Folks,'" *Maclean's*, May 30, 2018, <https://www.macleans.ca/opinion/rachel-notley-trans-mountain-op-ed/>.

Notley agreed that “climate change is caused by humans [and that the] science is settled.”²³⁶ She also acknowledged that, as Canada’s largest carbon emitter, Alberta has a “unique responsibility in this regard.”²³⁷ In their party lines, both the NDP and the Liberal Party address climate change as an issue that Canada should lead on. But with great responsibility comes great power, and Notley used Alberta’s outsized greenhouse gas emissions output as leverage over the pipeline and the climate plan, stating that “any climate action plan that doesn’t include Alberta is not a plan”²³⁸ and that “without Alberta at the table, there is absolutely no way Canada meets its international climate commitments.”²³⁹

Her statements are likely true; Alberta does have monumental impact on Canada’s emissions targets. In 2016, the oil and gas sector, as the largest source, accounted for 26 percent of total national greenhouse gas emissions. Alberta, as the largest provincial emitter, accounted for 37 percent of the national total. Mostly due to the expansion of the tar sands and increased crude oil production, greenhouse gas emissions from the oil and gas sector increased 70 percent (from 107 megatonnes of CO₂ equivalent to 183 mt CO₂ eq) from 1990 to 2016.²⁴⁰ Yet, in her Alberta Teachers’ Association rebuttal to anti-pipeline activist Tzeborah Berman, Notley argued that “building a new pipeline to the west coast will not... increase emissions from our oil sands.”²⁴¹ In her Vancouver Board of Trade speech, she claimed that, “by capping emissions, the Trans-Mountain pipeline does not contribute to climate change.”²⁴²

These claims bolstered the Alberta premier’s intent to paint the pipeline in an environmentally-friendly light. It is debatable whether the twinning of TMX would, by itself, increase emissions. Some claim that the pipeline won’t contribute to a net increase in emissions, as it will merely alleviate the existing bottleneck. Regardless, emissions will increase from further investment in the tar sands, and the construction of the Trans Mountain Expansion will

²³⁶ Rachel Notley, “Alberta Teachers’ Association Conference Address” (Speech, October 13, 2018), <https://www.facebook.com/rachelnotley/videos/152752105679805/>.

²³⁷ Rachel Notley.

²³⁸ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²³⁹ Rachel Notley, “Alberta Teachers’ Association Conference Address.”

²⁴⁰ Government of Canada, “Greenhouse Gas Emissions,” June 6, 2018, <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html>.

²⁴¹ Rachel Notley, “Alberta Teachers’ Association Conference Address.”

²⁴² Rachel Notley, “Vancouver Board of Trade Speech 2017.”

incentivize companies to do so. Even if Alberta caps emissions, its 100 mt cap allows for growth; current tar sands operations emit 70 mt per year.²⁴³ Furthermore, Notley's phrasing above implied that TMX is the project that is capping emissions; she tried to link two very different initiatives together to emphasize that there will be no climate action plan without the pipeline.

Even the title of Notley's press release following the Trudeau government's approval of TMX and the Line 3 Replacement shows her framing: "Our Climate Leadership Plan Is Getting Results." The title gives no hint that the text focuses on pipelines. Rather, the reader is drawn in by the climate leadership plan, and a pro-environmental framing guides the reader to associate TMX with combating climate change.

In using the federal government's argument that TMX can lead to environmental protection and economic growth, Notley gave it further prominence and strengthened this way of viewing the project. In his speeches, Trudeau explicitly highlighted Alberta's crucial role in environmental protection and called the pipeline a part of the greater goal to fight climate change. His statements strengthened Notley's and vice versa, and both reinforced the notion that the environment and the economy are complementary, not mutually exclusive.

Protecting middle-class families and oil industry workers

Keeping in line with Trudeau's rhetoric, Notley frequently made the economic argument that TMX will lead to jobs for middle class families, economic growth, and further recovery from Alberta's recession, which lasted from 2015 through 2017. Following the Trudeau government's project approvals, she said that the TMX and Line 3 Replacement are "critically important to the economic future of the people of Alberta."²⁴⁴

Beyond using the pipeline as leverage for the climate plan, Notley's main argument for its construction was economic. She argued that TMX will "increase the return [Albertans] all get for the resources [they] as Albertans all own."²⁴⁵ This statement tried to establish a personal stake for all Albertans by claiming that Albertans own the tar sands, but the reality is that the Canadian federal and provincial ownership of Alberta's fossil fuels accounts for a miniscule 2 percent. A

²⁴³ Alberta, "Capping Oil Sands Emissions," 2019, <https://www.alberta.ca/climate-oilsands-emissions.aspx>.

²⁴⁴ Rachel Notley, "Our Climate Leadership Plan Is Getting Results."

²⁴⁵ Rachel Notley, "Alberta Teachers' Association Conference Address."

2018 report by the Parkland Institute, a public policy research institute at the University of Alberta, reveals that production and ownership of Alberta’s fossil fuels (oil, gas, and coal) is concentrated amongst a handful of large corporations, both Canadian and foreign. Between 2010 to 2015, majority ownership by foreign corporations accounted for the largest share (16 percent) of revenues. By contrast, the Canadian federal and provincial governments together owned a mere 2 percent—less than foreign governments, which, through various investment funds and entities, accounted for 3 percent of revenues.²⁴⁶

Evidently, Notley overstated the control that Alberta has over the tar sands, and especially that of its citizens, who might be indirect beneficiaries of government royalties related to fossil fuel revenues but do not truly ‘own’ the resource in any meaningful sense. Furthermore, the government subsidizes the tar sands industry heavily; the International Institute for Sustainable Development estimates that Alberta spends \$1.16 billion annually, and the federal government \$1.6 billion.²⁴⁷ While these subsidies may have been necessary when the tar sands sector was young in order to boost firms up to economies of scale, they may now be contributing to overproduction of a socially inefficient sector. Not only do Albertans not own the tar sands, but they also fund the industry through tax dollars.

Notley referred to Alberta as the “economic engine” of Canada—one that runs on oil.²⁴⁸ She argued that the pipeline will “create tens of thousands of jobs and secure billions of additional dollars for... priorities not just... in Alberta, but across [Canada].”²⁴⁹ She said that the “whole country pays a price” when Alberta is “forced to sell [its] resources for less than they are

²⁴⁶ William K. Carroll and M. Jouke Huijzer, “Who Owns Canada’s Fossil-Fuel Sector?: Mapping the Network of Ownership & Control,” Corporate Mapping Project (Alberta, B.C.: Parkland Institute, October 2018), 6, https://www.parklandinstitute.ca/who_owns_canadas_fossil_fuel_sector.

²⁴⁷ International Institute for Sustainable Development, “Unpacking Canada’s Fossil Fuel Subsidies: Their Size, Impacts, and What Should Happen Next,” accessed February 26, 2019, <https://www.iisd.org/faq/unpacking-canadas-fossil-fuel-subsidies/>.

²⁴⁸ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project,” (Speech, August 30, 2018), <https://www.facebook.com/notes/rachel-notley/remarks-from-my-live-address-about-the-federal-court-of-appeals-ruling-on-the-tr/10156462384961427/>.

²⁴⁹ Rachel Notley, Speech from the Throne Media Comments, March 8, 2018, <https://soundcloud.com/your-alberta/throne-speech-focused-on-albertans-priorities-mar-8-2018>.

worth.”²⁵⁰ That price, according to Alberta, is \$80 million a day, which, Notley claimed, is a loss that Canadians are “doing... entirely to [themselves].”²⁵¹

The \$80 million per day figure comes from the Keep Canada Working initiative, a pro-TMX national advertising campaign with a budget of \$31 million that is funded by the Alberta government.²⁵² The main feature of the campaign is the opportunity cost counter, an ever-increasing string of numbers on the website (keepcanadaworking.ca) that purportedly represents the lost revenue since construction stopped on August 30, 2018 following the FCA decision. The number is now into the tens of billions of dollars. The “Why Expand” section of the website is divided into two subheadings: “Jobs & Economy” and “Climate Action.” The rhetoric and reasoning on these pages echoes the arguments in Notley’s speeches and press releases, highlighting the same facts, figures, and assertions that the pipeline is good for both the Canadian economy and the environment.

Testimonies from ‘everyday’ Canadians, identified only by first name, last initial, and the label “Supports Trans Mountain,” feature on various pages of the website. Many of these testimonies come from B.C. residents, demonstrating solidarity and support from a province that officially opposes the project. There are also testimonies from public figures like Justin Trudeau (Prime Minister of Canada), Audrey Poitras (President of the Métis Nation of Alberta), and Greg D’Avignon (President & CEO of the Business Council of British Columbia). The focus on Indigenous peoples and B.C. residents is a strategic choice to make it seem as though Canadians across the country support TMX—a point that, as I discuss later, Notley tried to establish in her discourse. On its “About” page, the campaign website claims that “individuals, businesses and communities from coast to coast are joining in solidarity to make sure [TMX] gets built.”²⁵³

Ironically, despite the selective inclusion of Indigenous peoples and British Columbians on the website, Notley pointedly excluded Indigenous issues from discussions about the pipeline

²⁵⁰ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

²⁵¹ Rachel Notley, “Barrier After Barrier”: Premier Rachel Notley Looks Back on 2018, interview by Tara Nelson, January 1, 2019, <https://www.youtube.com/watch?v=6z-E9YmkGLI>.

²⁵² Adam MacVicar, “‘This Is B.C. vs. Canada’: Alberta Has Spent \$23M on Keep Canada Working Campaign,” *Global News*, January 24, 2019, <https://globalnews.ca/news/4884829/keep-canada-working-campaign-trans-mountain/>.

²⁵³ Alberta, “Keep Canada Working,” accessed February 26, 2019, <https://keepcanadaworking.ca/about>.

in all of her speeches, press releases, and interviews. Furthermore, the Keep Canada Working campaign wants to blame B.C. for the purported economic losses from TMX delays; an internal memo obtained through a freedom of information request reads: “This is not B.C. vs. Alberta, this is B.C. vs. Canada.”²⁵⁴

Notley catered to Alberta’s (and, frequently by extension, Canada’s) working class in her messaging, using metaphors like calling on “folks” to “pick those tools back up” and help build Trans Mountain.²⁵⁵ She asserted that the “government stands with working people during the recession and through [Alberta’s] recovery,”²⁵⁶ and that a “fundamental part of being a New Democrat is standing up for regular working families and making sure there are enough good mortgage-paying jobs out there for everyday people.”²⁵⁷ Notley targeted her populist appeals towards Alberta’s working and middle class partially because of the NDP party line, but also because it is easy to reconcile support for TMX with jobs and the economy. Constructing what the Prime Minister has called a ‘nation-building’ project surely leads to jobs and economic growth. What is much harder to do, and what Notley conspicuously avoided doing, is addressing the concerns of Indigenous peoples—over sovereignty, land rights, and the federal project of reconciliation. But perhaps it was much easier for Alberta to avoid these questions because the federal government has been tasked with reconciliation instead of the provincial governments.

In her Vancouver Board of Trade speech, Notley claimed that the “*only* thing the Trans Mountain pipeline will increase is prosperity for all Canadians and jobs for many.”²⁵⁸ The use of “only” erased the aforementioned Indigenous issues, as well as the fact that whether TMX will lead to a net economic benefit is still up for debate. Notley stated that she wants to “make sure that every voice is heard, especially those of working people.”²⁵⁹ She called the FCA ruling against the pipeline “bad for working families” and “bad for the economic security” of Canada.²⁶⁰ Her platform not only favours the stereotypical image of the working class—blue-collar oil

²⁵⁴ Adam MacVicar, “‘This Is B.C. vs. Canada.’”

²⁵⁵ Rachel Notley, “Rachel Notley on Trans Mountain.”

²⁵⁶ Rachel Notley, “Alberta Teachers’ Association Conference Address.”

²⁵⁷ Rachel Notley, “Barrier After Barrier.”

²⁵⁸ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁵⁹ Rachel Notley, “Alberta Teachers’ Association Conference Address.”

²⁶⁰ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

industry labourers who have been ‘left behind’ by the rest of the country, especially B.C.—but it is built upon it. The striking imagery of the quintessential Albertan worker working hard to support their family strengthens Notley’s appeal to the alleged job benefits of TMX.

The national interest and the ‘progressive majority’

Using Trudeau’s language, Notley argued that the pipeline is in the national interest, appealing to all of Canada for support. In her Vancouver Board of Trade speech, she called the pipeline a “national endeavour” and stated that the national government “made a decision in the national interest, as it should.”²⁶¹ The word “national” elevated the pipeline to one of the highest statuses an infrastructure project can have, in line with iconic projects like the Canadian Pacific Railway and the Trans-Canada Highway. Notley also made TMX an imperative, asserting: “[W]e *need* to build a Canadian pipeline to the ocean [emphasis added].”²⁶²

Notley relied heavily on the national interest and nation-building in her *Maclean’s* op-ed, using technological nationalism, as Trudeau did, to make her case. A defining paragraph claims:

Every few decades an extraordinary project of national importance comes along. This is one of those projects... In a project of this magnitude, so clearly linked to nation building, it is sometimes the case that the public sector has a role to play... In this case, government is investing in—not subsidizing—a project that we know is profitable and will bring strong returns for all of us.²⁶³

A few decades ago, in the 1950s, the Liberal government tried to force the TransCanada Pipeline through parliament. Despite heavy opposition, it chose to fund the pipeline, losing its twenty-two year rule to the Progressive Conservatives who had challenged the project. That same project was framed as an ‘extraordinary project of national importance’—the country’s first long-distance interprovincial natural gas pipeline. Similarly, Notley promoted TMX with a nationalistic rhetoric, bolstering its magnitude and importance. She noted that the federal government’s nationalization of what used to be a foreign-owned private sector investment is not a subsidy, which may draw negative connotations given the controversial subsidies granted to the tar sands, but rather an investment, a term that aligned much better with her line of reasoning

²⁶¹ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁶² Rachel Notley.

²⁶³ Rachel Notley, “Rachel Notley on Trans Mountain.”

regarding jobs and the economy. Notley injected confidence into her statements, using phrases like “we know” and “will” to convey a sense of truth and certainty.

Like Trudeau, she used words like “we” and “all” to close geographical differences and present Canada as one united country, stating: “We are one country. And we need to listen to each other... Albertans, British Columbians, and Canadians are all in this together.”²⁶⁴ She also said: “I believe in Canada, not just as a concept, but as a country.”²⁶⁵ Yet her call to “listen to each other” actually implied listening to the Albertan and federal governments, whom Notley presented as having the majority view. She claimed that “Canadians in every part of the country support [Alberta’s] efforts to build the Trans Mountain Pipeline.”²⁶⁶ The barriers to TMX became “not just Alberta’s problem, [but] every Canadian’s problem.”²⁶⁷ Notley painted an evocative image of “B.C. workers using steel made in Saskatchewan from ore mined in Quebec” working “together” to build the pipeline.²⁶⁸ This image invoked unity, erasing resistance and opposition. Those who refuse the project were cast aside as the other and not truly Canadian.

Notley elevated the pipeline debate to crisis mode by claiming that the FCA’s ruling against TMX is a “threat to Canadian sovereignty and Canadian economic security” and is a “crisis.”²⁶⁹ She called on Ottawa to “immediately recall an emergency session of Parliament to assert its authority and fix the NEB process.” She also called on Ottawa to “step up” and “act with concrete action” for the energy industry, just as it had done during the auto crisis and aerospace bailout.²⁷⁰ Her rhetoric aligned with Trudeau’s when Trudeau called the TMX debate a ‘time of need.’ The elevation of a debate over what had begun as a private infrastructure investment into a national crisis imposed the economic interests of the few—namely, those invested in the tar sands—onto the entire country.

²⁶⁴ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁶⁵ Rachel Notley, “Rachel Notley on Trans Mountain.”

²⁶⁶ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

²⁶⁷ Rachel Notley, “Barrier After Barrier.”

²⁶⁸ Rachel Notley, “Rachel Notley on Trans Mountain.”

²⁶⁹ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

²⁷⁰ Rachel Notley, “Standing up for the Trans Mountain Expansion” (April 18, 2018), <https://www.facebook.com/notes/rachel-notley/standing-up-for-the-trans-mountain-expansion/10156115345351427/>

Notley represented TMX as the embodiment of higher, loftier ideals about country and government. After equating the two, she then used this rhetoric to chastise and alienate those who oppose the project. In her Alberta Teachers' Association address, Notley argued that "government helps propel progress towards a more humane and more prosperous and more equal society... But today, that idea is under assault."²⁷¹ After asserting that these assaulters are from both the political right and left—especially those who disagree with her, such as anti-pipeline activist Tzeporah Berman, whom she was rebutting in her speech—Notley stated: "The consent of the governed... is the basis of our democracy."

Notley then applied the idea of the consent of the governed to the "'democratic' in the New Democratic Party" and why Alberta "consulted widely... listened carefully, and... developed a plan that works for people."²⁷² But the consenting 'people' she referred to appeared to be a narrow group of oil industry workers and those who profit from the tar sands. Unlike Trudeau, who tied in democratic ideals, consent, and consultation with Indigenous peoples, Notley barely mentioned Indigenous peoples across the eight discourses I analyzed. Aside from two land acknowledgments, one in Vancouver and another in Enoch, Notley used the words 'Indigenous' and 'First Nations' sparingly. In her remarks on the FCA ruling, she called on Ottawa to "roll up its sleeves and continue its work to... improve consultation and accommodation relating to Indigenous peoples in the way they deserve."²⁷³ In her *CTV News* interview, she wanted to ensure that the "federal government is putting all the resources necessary to appropriately engage with, consult, and accommodate the interests of Indigenous people."²⁷⁴ In both of these contexts, Notley portrayed Indigenous engagement as a federal, instead of provincial, responsibility, deferring the task to Ottawa and choosing not to linger on the controversial topic. Her aversion to discussing Indigenous peoples likely stemmed from the fact that many Indigenous nations vocally oppose the pipeline and, therefore, any discussion about consultation and consent would raise tricky questions for a pro-pipeline government.

²⁷¹ Rachel Notley, "Alberta Teachers' Association Conference Address."

²⁷² Rachel Notley.

²⁷³ Rachel Notley, "Remarks from My Live Address About the Federal Court of Appeal's Ruling on the Trans Mountain Pipeline Expansion Project."

²⁷⁴ Rachel Notley, "Barrier After Barrier."

Notley pushed the pipeline using alleged economic benefits, so mentions of Indigeneity would have only created clashes between capitalist development and Indigenous sovereignty.

Notley mentioned Indigenous peoples most frequently in her Alberta Teachers' Association address, but only to generate notions of diversity and wide-ranging impact. She believed in "bringing together people from all walks of life—academia, Indigenous communities, industry, and more" to find solutions to "common problems."²⁷⁵ She credited the province's carbon levy for "helping Indigenous communities invest in renewable energy." She took pride in Alberta for "put[ting] people first," including "First Nations in Alberta who are finally getting clean, reliable drinking water." This list of people also included gas station attendants, working mothers, oil workers, students, and patients—all to paint a picture of a province that looks out for its citizens through funding from its investments and projects like the Trans Mountain Expansion. Overall, Notley used Indigeneity in land acknowledgments, which have become a formality at gatherings with or about Indigenous issues, and to create a diverse image of Alberta, but chose not to engage with deeper questions regarding reconciliation (as Trudeau did), sovereignty, and consent over infrastructure projects like TMX.

Notley attempted to make her constructed community of 'Canadians,' which evidently excluded Indigenous peoples except where convenient, appear as the moderate, progressive majority. In her Vancouver Board of Trade speech, she claimed that "[m]ost Canadians, in each and every province of this country support [her] moderate, progressive approach."²⁷⁶ She called herself and her supporters the "moderate, progressive majority in Canada" and lamented the risk of "being out-shouted," presumably by anti-pipeline activists, who became the radical, unprogressive minority. The strong divide Notley produced lent itself to vivid dichotomies as she argued: "We can either shape that future together as one nation with shared aspirations or we can devolve into competing economic fiefdoms, fighting for diminishing returns... Canadians only in name." These striking descriptions used the false dichotomy and slippery slope fallacies to play to people's fear of conflict and economic downturn. Notley also drew on evocative imagery when criticizing the previous Alberta government, the Progressive Conservatives: "For too long in Alberta, governments ignored climate change. They crossed their arms, turned their backs, and

²⁷⁵ Rachel Notley, "Alberta Teachers' Association Conference Address."

²⁷⁶ The following citations in this paragraph are all from Rachel Notley, "Vancouver Board of Trade Speech 2017."

yelled at anyone who challenged them.” These representations allowed Notley to create a sense of solidarity with her audience, whom she referred to as “members of Canada’s balanced, moderate, progressive majority.”

Focus on Alberta

As premier of Alberta, Rachel Notley unsurprisingly focused her discourse on ‘standing up’ for Albertans and raising the province’s profile across the nation. She stated that Alberta has been “brutally slammed by the collapse in commodity prices” and that it has therefore been a “long dark night for the people of Alberta.”²⁷⁷ She wanted to portray Albertans as having received the short end of the stick despite contributing disproportionately to the economic well-being of Canada. She claimed that “everyone seems to know but not care” that Albertans are hurting economically, but also that decisions on TMX “don’t just impact that poor anonymous worker in Alberta that nobody in, or that some folks in B.C. don’t think about every day,” but rather the country as a whole.²⁷⁸

Along with pity, Notley used strength, resilience, and even force in her statements regarding Alberta and the pipeline. She reminded her audience at the Vancouver Board of Trade that Alberta’s fiscal contribution vastly outweighs that of every other province; at \$5148 per person per year, it is many times higher than those of Saskatchewan (\$554), Ontario (\$650), and B.C. (\$886). Thus, Notley argued that Alberta’s energy industry is a “dominant part of what makes Canada tick” and that the tar sands have helped people from across Canada build better lives, pay taxes, and build stronger communities in their home provinces.”²⁷⁹ Tying in the tar sands with more universally appealing public benefits, Notley stated: “There is not a school, hospital, bus, road, bike-lane or port that doesn’t owe something to a strong energy industry.”²⁸⁰ She wanted to establish the tar sands as a cornerstone of Canada’s economy and public infrastructure so as to raise the stakes for everyone across Canada and not just Albertans.

In her interview with Nelson from *CTV News*, Notley stated that she was “incredibly impressed with the resilience of so many Albertans” and that, despite “barrier after barrier,” her

²⁷⁷ Rachel Notley, “Our Climate Leadership Plan Is Getting Results.”

²⁷⁸ Rachel Notley, Speech from the Throne Media Comments.

²⁷⁹ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁸⁰ Rachel Notley.

government was “standing up for Alberta... fighting for Alberta... fighting for Alberta energy workers and fighting for folks who rely on the industry for their prosperity.”²⁸¹ Taken in conjunction with Notley’s aforementioned criticism of previous Albertan governments and the pipeline opposition, these statements evoked a battle scene with Albertans on the defensive against an onslaught of unjustified attacks. Following the FCA ruling, Notley even addressed Albertans by saying: “I’m here before you to tell you how we are defending you, your resources, your jobs, and the future of our province and country.”²⁸² She wanted the rest of the country to know that the Albertan government and, according to Notley, by extension the Albertan people, had been fighting for TMX for a long time, and that they would not give up.

Unlike Trudeau, who maintained a mostly cordial, conciliatory tone in his discourse, save for a few jabs at other politicians, Notley was less afraid to express anger and threaten action. In her Speech from the Throne press conference, she asserted that her government would “not hesitate to invoke similar legislation as Premier Lougheed did if such a thing becomes necessary.”²⁸³ In 1980, then-premier Peter Lougheed responded to the National Energy Program, which he called a “declaration of war” against Alberta, by passing legislation that allowed him to reduce oil exports to Ontario by 15 percent. Ottawa later agreed to renegotiate the program.²⁸⁴ Harkening back to Lougheed’s actions, Notley threatened to tighten the taps on oil exports from Alberta, which would have economic consequences, especially for the federal government. She stood unflinching in her warnings, stating: “[M]aybe the Government of B.C. feels they can mess with Texas... But, let me be absolutely clear, they cannot mess with Alberta.”²⁸⁵ Her anger became apparent following the FCA ruling, when she outright declared: “Albertans are angry. I’m angry. Alberta has done everything right and we have been let down.”²⁸⁶ She then proceeded to pull out of the national climate change plan, contending that, “without Alberta, [the plan] isn’t worth the paper it’s written on.” Notley channelled powerful emotions like indignation and anger

²⁸¹ Rachel Notley, “Barrier After Barrier.”

²⁸² Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

²⁸³ Rachel Notley, Speech from the Throne Media Comments.

²⁸⁴ Emma Graney, “Alberta Throne Speech: NDP Threatens to Reduce Flow of Oil to B.C.,” *Edmonton Journal*, March 8, 2018, <https://edmontonjournal.com/news/politics/throne-speech-kicks-off-spring-session-thursday>.

²⁸⁵ Rachel Notley, “Standing up for the Trans Mountain Expansion.”

²⁸⁶ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

to appeal to the populace for pipeline support. Her arguments became rallying cries against a common enemy: the ‘unprogressive’ pipeline opponents.

Placing blame and framing the enemy

Notley used Canada’s purported overdependence on the United States as an argument for the Trans Mountain Expansion, which will increase access for Canadian oil to the overseas Asian market. She claimed that radicalization of the right and left in the United States has been playing out “most dramatically and worryingly.”²⁸⁷ She portrayed the United States as a place of capitalistic pursuits and gaudy excess, stating: “Money that should be going to Canadian schools and hospitals is going to American yachts and private jets.”²⁸⁸ Such nationalistic, anti-American, and pro-Canadian rhetoric is not new; during the 1956 Pipeline Debate, the federal government insisted on having the TransCanada Pipeline cross through the Canadian Shield instead of the United States. The Liberal government eventually lost the debate and the subsequent elections in 1957, but perhaps Notley employed nationalistic sentiment in a more timely context as many Canadians now seek to differentiate their country from Trump’s America.

In her response to the FCA ruling, Notley blamed the pipeline’s obstacles on the combined actions of the “Harper government, the current federal government, the National Energy Board, and the Federal Court of Appeal,” all of which had allegedly contributed to a “current state of affairs... in such that building a pipeline to tidewater is practically impossible.”²⁸⁹ Likely referring to the NEB approval process, Notley argued that successive federal governments had broken the process and that the current federal government therefore needs to fix it. Curiously, B.C. did not make the list, nor did Notley mention it during this speech at all.

Prior to the FCA ruling, however, Notley had specifically targeted the province. She justified her proposed legislation that would grant Alberta permission to limit oil exports to B.C. by arguing: “[I]f it becomes clear that any province—in particular B.C.—if their efforts are to in fact harass investors, launch frivolous lawsuits, or wage a war of attrition against the pipeline,

²⁸⁷ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁸⁸ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project.”

²⁸⁹ Rachel Notley.

Alberta must have the ability to respond.”²⁹⁰ She framed the debate over TMX as one of B.C. versus Alberta and the rest of Canada, arguing that her government would “not let one province overturn a decision that is so important to [her] province and [her] country by playing games.”²⁹¹ She portrayed B.C. as childish in its mindset and its methods, then used its economy in a barely concealed threat during her press release on TMX in April 2018, where she stated: “If I was a resident of B.C., I would be very worried about what this says about the investment climate in British Columbia.”²⁹² Perhaps Notley stopped targeting B.C. in her remarks on the FCA ruling because the federal government held the next move at that moment—whether to appeal to the Supreme Court or redo Indigenous consultations and environmental assessment. Thus, there wouldn’t have been much advantage to drawing attention back to British Columbia. But B.C. remained on the backburner, always as a pesky pipeline opponent.

As discussed previously, Notley framed pipeline opponents as the opposite of the ‘moderate, progressive majority.’ She shut down those who questioned her assertions and claimed that those who opposed TMX on the grounds of climate change were “just playing politics with the jobs and livelihoods of working people.”²⁹³ Her accusation antagonized all those who questioned her arguments, even those who might still support the project in general. Once again, she used populist appeal by seemingly looking out for the “working people.”

In her Alberta Teachers’ Association address, Notley had strong words for opponents and called them “extremely foolish.”²⁹⁴ Her statements were partially directed at anti-pipeline activist Tzeborah Berman, whose speech she was rebutting. She created a straw man by arguing that pipeline opponents believed the “jobs and well-being of hundreds of thousands of working families” had to be sacrificed in order to reduce emissions. She then extended the alleged damage of pipeline opponents to the environment on top of the economy by contending that the “approach of anti-pipeline activists is a disaster not only for working people but... for effective climate action as well.” This declaration tied in with her assertions that the economy and the

²⁹⁰ Rachel Notley, Speech from the Throne Media Comments.

²⁹¹ Rachel Notley.

²⁹² Rachel Notley, “Standing up for the Trans Mountain Expansion.”

²⁹³ Rachel Notley, “Vancouver Board of Trade Speech 2017.”

²⁹⁴ The following citations in this paragraph and the following two are all from Rachel Notley, “Alberta Teachers’ Association Conference Address.”

environment go hand-in-hand, as well as her subsequent choice to pull out of the national climate plan following the FCA decision.

Notley's attack on pipeline opponents escalated throughout her Alberta Teachers' Association address. She followed her straw man by chastising anti-pipeline activists for "flying in and out of Alberta, spreading the verbal equivalent of pink slips after pink slips for working people," then claimed that "nothing gets done without the people who produce the energy to power those flights." This assertion painted anti-pipeline activists as a group of privileged, out-of-touch commentators with no ties to Alberta—hence the need to 'fly in and out'—who disregard the working class. The workers, on the other hand, were portrayed as those left behind by the anti-pipeline agenda and left to pick up the pieces of a shattered economy.

In what is probably now one of her most iconic lines, Notley culminated her speech with:

The bottom line is this: maybe on Salt Spring Island²⁹⁵ you can build an economy on condos and coffee shops, but not in Edmonton, and not anywhere in Alberta. Here in Alberta, we ride horses, not unicorns, and I invite pipeline opponents to saddle up on something that is real.

Notley's pent-up anger against pipeline opponents exploded in this forceful statement, which pitted a stereotyped B.C.—as an idyllic, untouched, 'natural' environment—against the 'real' concerns of Alberta and the rest of the country. Her attack built on her previous rhetoric depicting anti-pipeline activists as unrealistic, anti-economy, and anti-environment, i.e. anti-progress. Her constituents likely shared her frustration, so by framing B.C. as an unrealistic Salt Spring Island, where the economy is decidedly not based on natural resource extraction, she gave her audience somewhere to direct their anger.

Concluding comments

Much of Notley's rhetoric overlapped with Trudeau's, given that they both support TMX. Like Trudeau, she argued that the pipeline would help combat climate change and create economic growth. Both Notley and Trudeau emphasized helping middle-class families and oil

²⁹⁵ Salt Spring Island is one of the Gulf Islands in the Strait of Georgia between mainland B.C. and Vancouver Island. It is Coast Salish territory, but has been settled by diverse waves of settlers, from African Americans to Hawaiians to Japanese labourers. Now, the island's economy runs on tourism and a vibrant art scene ("History," Salt Spring Island, 2014, <https://www.saltspringtourism.com/history/>.)

industry workers, though the former more so than the latter because of Alberta's reliance on the tar sands. Like Trudeau, Notley appealed to more abstract ideas about the national interest and placed herself squarely on the side of the 'progressive majority.' Unlike Trudeau, however, she conspicuously omitted discussions regarding Indigenous opposition and sovereignty. As premier of Alberta, Notley focused on 'defending' Albertan interests, placing blame on governments like B.C. and Ottawa and institutions like the NEB and the FCA. She told a narrative of Alberta versus an onslaught of unjustified attacks, of an Alberta that has been wronged multiple times, yet will not give up in its noble pursuit to build an interprovincial crude oil pipeline to tidewater.

John Horgan

B.C. Premier John Horgan (like Premier Notley, also NDP) opposes TMX. Prior to becoming premier, he criticized then-B.C. Premier Christy Clark for failing to stop the project and putting "[the B.C.] coast, and thousands of good B.C. jobs that depend on it, at risk."²⁹⁶ After its election, the B.C. NDP government reiterated its opposition to TMX, stating that the project is not in the province's best interest and hiring former Supreme Court Justice Thomas Berger as external counsel for related legal challenges. The appointment of Berger signalled the new government's commitment to environmental review and Indigenous consultation; Berger had chaired the Mackenzie Valley Pipeline Commission, which established modern Canadian norms for environmental assessment and Aboriginal rights, and argued the Calder case that helped establish the concept of Aboriginal title.²⁹⁷

I selected three speeches, six interviews and/or press conferences, and two op-eds by Premier John Horgan of B.C., dating from the federal government's approval of TMX in November 2016 through early 2019. I selected more discourses from Horgan than from Notley and Trudeau because some selections were much shorter. The following is a short summary of the context in which these selections were given.

²⁹⁶ Hume, "Critics Speak Out Against Approval of Trans Mountain Pipeline in B.C."

²⁹⁷ Derrick Penner, "B.C. Joins Legal Battles Against Trans Mountain Pipeline Expansion," *Vancouver Sun*, August 10, 2017, <https://vancouver.sun.com/news/local-news/live-b-c-government-to-announce-steps-against-trans-mountain-pipeline>.

1. *Speech, “Reaction to Kinder Morgan Approval” (Vancouver, B.C. - November 29, 2016):* Following Trudeau’s approval of TMX, Horgan posted a short video of his reaction to his Facebook page.
2. *Speech, “Thoughts on Kinder Morgan” (January 13, 2017):* In this Facebook video, Horgan used a jar of diluted bitumen to emphasize his stance against the pipeline.
3. *Speech, “Next Steps in B.C.-Alberta Trade War” (Victoria, B.C. - March 9, 2018):* Horgan denounced both Notley’s intent to introduce legislation that would allow Alberta to restrict the export of oil from Alberta and the Government of Alberta’s wine ban.
4. *“You Can’t Put a Price on Who You Are” (Medium - April 14, 2018):* Horgan published an op-ed recounting his visit to the Heiltsuk First Nation and his concern over the increase in tanker traffic from the Trans Mountain Expansion.
5. *Press Conference, On Federal Government’s Decision to Buy Trans Mountain Pipeline (Victoria, B.C. - May 29, 2018):* Following the Trudeau government’s announcement to nationalize TMX, Horgan highlighted the need to protect B.C.’s coast and argued that the federal government was now wholly accountable for TMX.
6. *Interview with Lien Yeung (CBC - July 19, 2018):* Horgan briefly mentioned his relationship with the prime minister and his worries about increases in tanker traffic.
7. *“It Starts with Listening” (Medium - August 9, 2018):* In this op-ed, Horgan focused solely on reconciliation and his government’s relationship with Indigenous peoples.
8. *Press Conference, Federal Court of Appeal’s Judgment on the Trans Mountain Pipeline (August 30, 2018):* Horgan characterized the FCA ruling as a win for the Tsleil-Waututh and for the B.C. coast. He called for Canada to stand united in the face of dissent.
9. *Interview with Richard Zussman (Global News - December 12, 2018):* Horgan discussed the FCA ruling, Indigenous consultation, and B.C.’s climate action plan.
10. *Press Conference, On Indigenous Pipeline Protestors (Victoria, B.C. - January 9, 2019):* Following demonstrations on Wet’suwet’en territory blocking the construction of Coastal GasLink’s natural gas pipeline that resulted in altercations with the RCMP, Horgan stated he wanted to see a ‘peaceful resolution’ to the conflict. He spoke about reconciliation and cited Indigenous support for the project.
11. *Press Conference, Throne Speech Media Scrum (Victoria, B.C. - February 12, 2019):* Horgan didn’t mention TMX, as the FCA ruling had halted construction at this point, but linked Indigenous reconciliation with economic benefits for all British Columbians.

The environment and the coast

Because Horgan stood against TMX, he did not mention any economic benefits from the project, nor did he address the national climate change plan. Horgan’s main argument against

TMX was that it would increase the risk of a diluted bitumen spill along the B.C. coastline. He asserted that the “consequences of a catastrophic spill on [the] marine environment, on [the] marine economy, are significant.”²⁹⁸ He repeatedly stressed the statistic that TMX would lead to a “seven-fold” or “seven times” increase in marine tanker traffic, making it the centrepiece to his opposition.²⁹⁹ In a video titled “Thoughts on Kinder Morgan” published to his Facebook page, Horgan held up a jar of brown and oily bitumen and explained that the jar had sat on his desk for two years and none of the bitumen had moved. He then asked viewers to “imagine this substance released into [their] marine environment.”³⁰⁰ This vivid description put an image to the seven-fold increase statistic and, by extension, the pipeline. Countering Notley and Trudeau’s narrative that the project would lead to (intangible) economic benefits, Horgan instead tied the pipeline to sticky, hard-to-clean diluted bitumen, knowing that people would not want the substance to pollute their waters.

In his first *Medium* op-ed, Horgan described his visit to the Heiltsuk First Nation in Bella Bella and the aftermath of the Nathan E Stewart tugboat diesel fuel spill.³⁰¹ He saw diesel slick “everywhere,” inhaled the “overwhelming” fumes, and watched as waves pushed “diesel over clam beds that had been harvested by the Heiltsuk for centuries.” In the title of the op-ed, “You Can’t Put a Price on Who You Are,” Horgan employed anti-utilitarian rhetoric to argue that no amount of economic gain is worth the coastal and environmental degradation a potential spill could cause. He also suggested that the environment is part of the people’s identity, and that being a British Columbian means defending the coast.

On top of employing evocative spill imagery, Horgan argued that he would “defend [the] coast from increased tanker traffic,”³⁰² adding to the portrayal of a pristine B.C. environment under attack by dirty oil. In his reaction to the the Trans Mountain approval, Horgan stated: “I

²⁹⁸ John Horgan, Interview by CBC’s Lien Yeung, interview by Lien Yeung, July 19, 2018, <https://www.youtube.com/watch?v=5AcDDAzhfIM>.

²⁹⁹ John Horgan, “Reaction to Kinder Morgan Approval,” (November 29, 2016), <https://www.facebook.com/johnhorganbc/videos/10154724590381069/>; John Horgan, “Thoughts on Kinder Morgan,” (January 13, 2017), <https://www.facebook.com/johnhorganbc/videos/10154877546521069/>; John Horgan, “You Can’t Put a Price on Who You Are,” *Medium* (blog), April 14, 2018, <https://medium.com/@johnhorgan4bc/https-medium-com-defending-bcs-interests-3b9e64e9a7a2>; John Horgan, Interview by CBC’s Lien Yeung.

³⁰⁰ John Horgan, “Thoughts on Kinder Morgan.”

³⁰¹ The following citations in this paragraph are from John Horgan, “You Can’t Put a Price on Who You Are.”

³⁰² John Horgan, “Thoughts on Kinder Morgan.”

need to defend the coast, you need to defend the coast,”³⁰³ calling on all British Columbians to defend their home from attack by outside interests. His argument that his government would be “fighting for [the] coast”³⁰⁴ and “doing everything in [its] power to protect [the] air, water, and land”³⁰⁵ echoed the rhetoric used by Notley when she portrayed Alberta as on the defensive against an onslaught of unjustified attacks. Notley stated to her constituents: “I’m here before you to tell you how we are defending you, your resources, your jobs, and the future of our province and country.”³⁰⁶ This parallel in rhetoric is unsurprising, for both Horgan and Notley are premiers and therefore responsible for the well-being of their respective provinces. By portraying their own provinces as under unjustified attack, they could mobilize support against the enemy—in Horgan’s case, the pipeline, and in Notley’s case, pipeline opponents.

On the other hand, Horgan used the environment to deflect a difficult question about why his government was continuing to fund the LNG industry through subsidies and tax breaks in the face of the climate crisis. Instead of addressing the question in his interview with Richard Zussman, Horgan highlighted Clean B.C., his government’s “very ambitious climate action plan” that stemmed from “working hand-in-hand with Dr. Andrew Weaver [leader of the B.C. Green Party], the environmental community, Indigenous people, [and] the business community.”³⁰⁷ He claimed that his government would “meet [its] objectives going forward when it comes to climate action.” The rhetoric used here matched that of Notley’s when she chose to focus on Alberta’s climate action plan over the environmental impacts of the oil industry.

Environmental protection with economic growth

Unlike Trudeau and Notley, Horgan did not stress the environmental protection and economic growth pairing nearly as much, instead using the two separately. Horgan claimed that

³⁰³ John Horgan, “Reaction to Kinder Morgan Approval.”

³⁰⁴ John Horgan, “You Can’t Put a Price on Who You Are.”

³⁰⁵ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline, May 29, 2018, <https://www.youtube.com/watch?v=JU1vKfk1WWU>.

³⁰⁶ Rachel Notley, “Remarks from My Live Address About the Federal Court of Appeal’s Ruling on the Trans Mountain Pipeline Expansion Project,” (Speech, August 30, 2018), <https://www.facebook.com/notes/rachel-notley/remarks-from-my-live-address-about-the-federal-court-of-appeals-ruling-on-the-tr/10156462384961427/>.

³⁰⁷ John Horgan, One-on-one with B.C. Premier John Horgan, interview by Richard Zussman, December 12, 2018, <https://globalnews.ca/news/4756280/one-on-one-bc-premier-john-horgan/>.

people in British Columbia “look to their government to make sure that a diluted bitumen spill will not adversely affect [their] economy, [their] environment, or [their] future.”³⁰⁸ He spoke of the impact that a diluted bitumen spill would have on “B.C.’s economy and its environment” and promised to do his “best to protect B.C.’s interests by ensuring that [its] coast, [its] water, and [its] land is kept pristine so that [the] economy can continue to grow.”³⁰⁹

Horgan also highlighted the importance of the coast to his province’s economy, which encompasses “the tens of thousands of B.C. jobs that depend on oil-free coastal and inland waters, and the millions in economic activity generated by industries like tourism, film and fisheries.”³¹⁰ He asserted that an oil spill would “hurt all British Columbians, cost... tens of thousands of good-paying jobs, and make it harder for people to get ahead,” turning Notley’s similar job-based argument around. Whereas Alberta depends heavily on oil extraction and export, B.C. brands itself as more of a coastal tourist attraction with clear waters and lush forests. Thus, like Notley, Horgan claimed to defend his province’s economy, though for him this meant rejecting TMX.

The national interest and standing united

In contrast with Trudeau, who spoke of his government’s mission to make progress, and Notley, who portrayed herself as speaking for the moderate, progressive majority, Horgan only used the word “progress” once during all of his discourses, and it was in relation to Indigenous reconciliation. He stated: “We’re working with the leadership council, we’re working nation by nation, to make progress and I think it’s in the public interest to do that.”³¹¹

Also unlike Trudeau and Notley, Horgan did not focus on trying to equate British Columbian interests with Canadian (national) interests. Rather, the national interest felt like an afterthought on occasion, given his main priority to defend the B.C. coast for British Columbians. Horgan argued that the “interests of British Columbians — and all

³⁰⁸ John Horgan, “Next Steps in B.C.-Alberta Trade War,” (March 9, 2018), <https://www.youtube.com/watch?v=hmciVZ7HcQE>.

³⁰⁹ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline, May 29, 2018, <https://www.youtube.com/watch?v=JU1vKfk1WWU>.

³¹⁰ John Horgan, “You Can’t Put a Price on Who You Are.”

³¹¹ John Horgan, Throne Speech Media Scrum, February 12, 2019, <https://www.facebook.com/johnhorganbc/videos/393136498183742/>.

Canadians — should come before those in Texas boardrooms.”³¹² He also stressed that B.C.’s coast is “significant to not just British Columbians, but to *all* Canadians [emphasis added].”³¹³

While Notley and especially Trudeau tried to appeal to notions of the national interest to support the pipeline, Horgan only mentioned it once as a point of opposition and in the context of reconciliation and protecting the coast: “The national interest is not being served if we force the risk of catastrophe on unwilling communities.”³¹⁴ He did, however, critique Trudeau’s use of the national interest, asserting that though the federal government “has been abundantly clear that they believe that this project is in the national interest. . . They haven’t defined that beyond saying it’s in the national interest.”³¹⁵ This critique is interesting in light of Horgan’s previous statement that uses ‘the national interest,’ but it did highlight that much of the federal government’s argument was based on an abstract idea of what Canada is and what the country stands for.

Horgan then used a similarly abstract appeal in his response to the FCA ruling, when he called on his constituents to stand united: “I believe that, as we go forward, we need to focus on the things that unite us as Canadians, the things that bring us together in this great country, so that we can build the economy—not just one component of the economy, but every sector.”³¹⁶ Here, he transitioned from a precise point about protecting the B.C. coast from increased diluted bitumen spill risk to a vague statement about focusing on “things” that help build “every sector” of the economy. Horgan never made clear what these “things” entail, instead echoing the same rhetoric to call on people to help make Canada great: “Again, standing united on the things that we have to stand united on is what makes Canada great, and having disagreements and not having us come apart is also what makes Canada great.” These statements diverted focus away from the Trans Mountain Expansion, which Horgan believed was “something that [would] no longer be top of mind for British Columbians” following the FCA ruling. Meanwhile, Notley amped up her focus on TMX by pulling out of the climate action plan and ceaselessly reminding

³¹² John Horgan, “You Can’t Put a Price on Who You Are.”

³¹³ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

³¹⁴ John Horgan, “You Can’t Put a Price on Who You Are.”

³¹⁵ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

³¹⁶ The following citations in this paragraph are from John Horgan, Federal Court of Appeal’s Judgment on the Trans Mountain Pipeline, August 30, 2018, <https://www.facebook.com/watch/?v=2176633015946324>.

B.C. and the federal government about the alleged injustice of the FCA ruling. Whereas Horgan's tone was conciliatory, neutral, and generally vague, Notley was less afraid to place blame and express anger. In many ways, Horgan's rhetoric calling on Canadians to stand united paralleled Trudeau's usage of "we" and "our" and the prime minister's attempts to downplay geographical difference across the country.

Focus on British Columbia

Like Notley, Horgan focused his discourse on 'standing up' for B.C. and asserting his government's right to do so. The Trudeau government approved TMX in November 2016 prior to Horgan's election as premier in May 2017, and Horgan campaigned using an anti-TMX platform. He reacted to the Trans Mountain approval by stating: "If I was premier today, I would be sending a loud message to Ottawa that this is not in the interest of British Columbia."³¹⁷ This statement was definitely a dig at his predecessor and opponent at the time, Christy Clark of the B.C. Liberal Party, who had granted conditional support for the project. In March 2018, during the escalation of the B.C.-Alberta trade war, Horgan asserted that it was his province's "right to take appropriate measures to protect the interests of British Columbia from the drastic consequences of a diluted bitumen spill."³¹⁸ Later, he "travelled to Ottawa... to stand up for British Columbia."³¹⁹

As prime minister, Trudeau claimed the authority to speak for all Canadians. As premier of Alberta, Notley spoke on behalf of all Albertans. And, as premier of British Columbia, Horgan believed that it is his responsibility "to speak for all British Columbians."³²⁰ Though he acknowledged that "there will be people in the community, not just in British Columbia but across Canada, who believe that the [Trans Mountain] project should proceed," he also argued that "if you do what's right for the majority of people, you're going to get the outcome that they want"—that is, the rejection of TMX. Unlike Notley, however, who chastised pipeline opponents

³¹⁷ John Horgan, "Reaction to Kinder Morgan Approval."

³¹⁸ John Horgan, "Next Steps in B.C.-Alberta Trade War," (March 9, 2018), <https://www.youtube.com/watch?v=hmcivZ7HcQE>.

³¹⁹ John Horgan, "You Can't Put a Price on Who You Are."

³²⁰ The following citations in this paragraph are from John Horgan, Federal Court of Appeal's Judgment on the Trans Mountain Pipeline.

in B.C. for ‘riding unicorns’ and being out of touch with reality, Horgan did not threaten Alberta, nor did he attempt to frame the province as an enemy. Rather, he admitted that the FCA ruling would be “a devastating decision for many in Alberta, and... respect[ed] that.” However, he reiterated that his “responsibility is to the people of British Columbia.”

In confining his constituents to B.C. and not trying to speak on behalf of the Canadian majority or the ‘moderate, progressive’ majority, Horgan’s opposition to TMX took on a ‘not in my backyard’ quality. He portrayed B.C.’s ‘backyard’ (the coast) as threatened by increased spill risk. He stood up for British Columbia, as he proclaimed he would do, and did not try to overreach into the rest of the country, nor did he paint Alberta as working against B.C. interests.

Provincial jurisdiction, the judiciary, and the rule of law

Like Trudeau, Horgan used the rule of law to justify his government’s actions and placed heavy emphasis on using the court system to resolve conflict. He stated that he would “stand up for British Columbia to the extent that [he could] within the law,” and that it has “never been [his] intention to do anything other than protect B.C.’s coast and B.C.’s interests through the courts.”³²¹ He believed that the courts would resolve B.C. and Alberta’s issues “clearly, fairly, and decisively.”³²² When asked about B.C.’s trade war with Alberta, he commented: “I don’t think it’s about winning or losing; it’s about the rule of law.”³²³

Horgan’s confidence in the judicial system and the rule of law became crucial when he was asked how he planned to address civil obedience following the federal government’s announcement to buy the Trans Mountain Expansion. Horgan argued that though everyone had the “right to exercise freedom of speech... we live in a country that is governed by the rule of law,” and he hoped that “peaceful protest [would] be the order of the day.”³²⁴ People could express their points of view so long as it was “peaceful and civil and... within the rule of law.”³²⁵

Following the arrests of protestors against the Coastal GasLink natural gas pipeline (as summarized in my analysis of Trudeau’s discourse on page 57), Horgan gave a press conference

³²¹ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

³²² John Horgan, “You Can’t Put a Price on Who You Are.”

³²³ John Horgan, Federal Court of Appeal’s Judgment on the Trans Mountain Pipeline.

³²⁴ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

³²⁵ John Horgan.

on the matter. The term “peaceful resolution” appeared four times and “peaceful” seven times in various iterations of the sentiment that the government wanted to see “all individuals... proceed to a peaceful resolution as early as possible.”³²⁶ He warned that though dissidents had “every right to exercise [their] dissent... [they would] have to pay the consequences for that.” These “consequences” referred to arrests by the RCMP, with whom the Wet’suwet’en and other First Nations have a long and difficult relationship. Much like Trudeau, and given his support for the natural gas project, Horgan relied on the authority of the RCMP and the judicial system (which had authorized Coastal GasLink’s injunction for the pipeline blockade) to deter protest.

Selective engagement with Indigenous peoples

Like Trudeau, Horgan used Indigeneity selectively and strategically, mostly engaging with the topic of reconciliation outside of the Trans Mountain context. In his first *Medium* op-ed, Horgan wrote about his trip to the Heiltsuk First Nation in Bella Bella to demonstrate the devastating effects of an oil spill. There, he argued that “risk[ing] catastrophe on unwilling communities... [does not] advance true and meaningful reconciliation with Indigenous peoples.”³²⁷ He did not elaborate on what “true and meaningful reconciliation” means. Perhaps part of Horgan’s reluctance to discuss Indigenous rights and reconciliation issues regarding TMX stemmed from the fact that his government supports the Coastal GasLink pipeline. Opposing TMX using these arguments would likely lead to charges of hypocrisy, so the premier instead chose to focus on protecting the coast from a diluted bitumen spill—an initiative that even those who support the pipeline had to get behind.

For his second op-ed on *Medium*, Horgan focused exclusively on reconciliation, asserting that “it starts with listening.”³²⁸ As with his first op-ed, Horgan relied on imagery and story-telling, recounting his visits to First Nations communities where he met ‘everyday’ people like teachers and youth. He “committed to embracing the United Nations Declaration on the Rights of Indigenous Peoples, the Calls to Action of the Truth and Reconciliation Commission

³²⁶ The following citations in this paragraph are from John Horgan, On Indigenous Pipeline Protestors, January 9, 2019, <https://www.youtube.com/watch?v=bOfqRNTZGqc>.

³²⁷ John Horgan, “You Can’t Put a Price on Who You Are.”

³²⁸ The following citations in this paragraph are from John Horgan, “It Starts with Listening,” *Medium* (blog), August 9, 2018, <https://medium.com/@johnhorgan4bc/it-starts-with-listening-d51cfc8a9ac>.

and the Tsilhqot'in Supreme Court decision — because it's the right thing to do.” He argued that reconciliation “takes time and hard work and must last for generations... [and] needs to be a partnership between equals,” echoing Trudeau's similar framing of the federal government and Indigenous government relationship as nation-to-nation.

Unlike Trudeau, Horgan did not stress the recognition of rights approach and instead prioritized listening, consultation, and discussion. He mentioned Indigenous rights during the press conference following the FCA ruling, noting that the *Tsleil-Waututh* case had “always been about First Nations' rights” and that, through the case, the “Tsleil-Waututh have helped all British Columbians and all Canadians understand the importance of Indigenous rights and how much [they had] to do... in British Columbia to rectify the impacts on Indigenous people.”³²⁹

Then, in his later discourse, he highlighted the importance of consultation. With the force and validity of the FCA ruling behind him, Horgan asserted that “decisions around the Trans Mountain pipeline were made in haste without full consultation with people along the corridor, Indigenous and non-Indigenous.”³³⁰ On one hand, his choice to add “non-Indigenous” to the end of the statement diluted the meaning of consultation, which is usually taken to refer to Indigenous nations, while on the other, it made the statement inclusive of all directly affected British Columbians along the route.

On the topic of the Coastal GasLink pipeline, Horgan contended that “LNG Canada has shown they understand the importance of consultation and meaningful reconciliation with First Nations, and that's why they have signed agreements with every First Nation along the pipeline corridor.”³³¹ He never elaborated on what “true and meaningful reconciliation” entails, but still put forth an outcome of unanimity. However, he could not ignore the tensions within Indigenous nations as they grapple with the authority and legitimacy of hereditary chiefs versus elected councils authorized by the Canadian government. Instead, he left the conversation open, noting that the “process has concluded, but that's not the end of discussion and dialogue.” He urged B.C. to “find a way, through reconciliation, to bring together the various orders of government in Canada.” In his discourse, Horgan demonstrated that reconciliation for him was more about

³²⁹ John Horgan, Federal Court of Appeal's Judgment on the Trans Mountain Pipeline.

³³⁰ John Horgan, One-on-one with B.C. Premier John Horgan.

³³¹ The following citations in this paragraph and the next two are from John Horgan, On Indigenous Pipeline Protestors.

discussion and consensus-building than about recognition of rights, likely because B.C. is unique in its high proportion of unceded territory, which invites complicated legal issues.

Horgan emphasized this fact when a reporter asked him what ‘Free, Prior, and Informed Consent’ (a phrase from UNDRIP) refers to. He argued that “British Columbia has extremely diverse circumstances from community to community,” so “every circumstance is different.” This rhetoric aligns with the emerging pattern of legislation regarding consultation, where the adequacy of consultation appears to be decided on a case-by-case basis by the court, with few structured guidelines. Regarding UNDRIP, Horgan also cited Chief Bob Chamberlin, Vice President of the Union of B.C. Indian Chiefs, who allegedly said “categorically and unreservedly that the UN Declaration on the Rights of Indigenous Peoples does not mean a veto.” In doing so, Horgan used the authority of an Indigenous leader to generate more legitimacy in his argument for the Coastal GasLink project.

Towards the end of the press conference regarding Coastal GasLink, Horgan tried to lessen the apparent cohesion and power of protesters by noting that “they were not uniformly focused on Wet’suwet’en territory.” Protestors spoke about orcas, diluted bitumen, and capitalism. However, what Horgan did not address is that these issues are very much interrelated and that protecting Wet’suwet’en territory may also involve addressing these other topics. Furthermore, Horgan drew attention to “nations that are wildly enthusiastic about the prospects that [the natural gas pipeline] opens up for their future” and argued for more “balanced... coverage of the protest.” Forced to contend with the repercussions of the protest against the B.C.-approved Coastal GasLink project, Horgan used First Nations support to dissipate the impact. Thus, it comes as no surprise that Horgan chose not to focus on Indigenous nations when discussing TMX; there are nations both for and against, and preventing a spill on the B.C. coast is much less controversial.

In the throne speech press conference in early 2019, Horgan was asked about the province’s plans to implement UNDRIP legislation and whether it will involve rewriting laws. The premier stated that he was unsure, but knew “it will be more than symbolic.”³³² He argued that the government needs to “address reconciliation in British Columbia, not just for social

³³² The following citations in this paragraph are from John Horgan, Throne Speech Media Scrum.

justice... but for economic equality for all citizens—Indigenous and non-Indigenous.” He then elaborated that “uncertainty on the land base has led to investment decisions being forgone, and... that hurts Indigenous people and it hurts other British Columbians.” This focus on the economy paralleled the assumptions underlying both Trudeau and Notley’s rhetoric: that land is to be exploited for capital, that resources are to be extracted, and that reconciliation, beneath the abstraction, is about investment. Horgan chose to include non-Indigenous British Columbians in the argument instead of merely asserting that reconciliation would lead to more economic equality for Indigenous peoples. Perhaps doing so created a more neutral tone, one that might not alienate non-Indigenous British Columbians who may not feel as strongly about reconciliation initiatives. Horgan also decided to emphasize the economic losses of “uncertainty on the land base,” which translates into unceded territory, framing Indigenous land as a material advantage for the settler state, if only the state could tap into it.

Federal and provincial accountability

Unlike Trudeau, who targeted Horgan and accused him of putting the national climate change plan at risk, and Notley, who framed B.C. pipeline opponents as unicorn-riding fools out to destroy the Albertan economy, Horgan mostly limited his discussions of the federal and Alberta governments to accountability and cooperation on other subjects. His strongest statement was a reaction to Alberta’s wine ban and legislation to restrict oil exports in the B.C.-Alberta trade war, which Horgan deemed “disproportionate and unlawful reactions.”³³³ Horgan argued that the issues between B.C. and the federal government and Alberta were not “personal” and that B.C. “[had] not been provocative.”³³⁴ He even highlighted that he has “had a positive working relationship with the prime minister on a range of issues.”³³⁵

In the press conference following the Trudeau government’s announcement that it planned to buy TMX, Horgan stressed that the federal government and, “by inference, the Government of Alberta” would be accountable for the decision.³³⁶ The federal government was

³³³ John Horgan, “Next Steps in B.C.-Alberta Trade War.”

³³⁴ John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

³³⁵ John Horgan, Interview by CBC’s Lien Yeung.

³³⁶ The following citations in this paragraph and the next are from John Horgan, On Federal Government’s Decision to Buy Trans Mountain Pipeline.

especially “totally accountable, not just for regulation and approval of the pipeline, but... from wellhead to tidewater and beyond.” Horgan called this a “good thing,” likely because he believed that it would be easier to reach the federal government and hold it accountable than it would be Kinder Morgan. Horgan also called attention to how he had suggested a joint reference case regarding the legality of B.C. restricting oil imports, but that the suggestion had been declined by both Ottawa and Alberta. “Rather than going to court to determine jurisdiction,” their decisions instead “affect[ed] taxpayers,” and Horgan argued that “they all have to be accountable for that.” Horgan framed the federal government’s nationalization of TMX as a move that both circumvented the courts and placed undue burden on taxpayers.

Horgan also accused the federal and Alberta governments of hypocrisy, claiming that while both have professed to embrace UNDRIP and “genuine reconciliation,” both were also “disregarding the rights of Indigenous groups.” He contended that the issue of Indigenous rights and title had been “skated by both Alberta and the federal government.” These statements happened in May 2018, before B.C. formally committed to implementing UNDRIP legislation in early 2019. Looking back now, following Horgan’s relatively vague, non-committal answers regarding what UNDRIP will look like in practice and the provincial government’s tumultuous run-ins with Indigenous protesters, it is easy to imagine the same statements being said for Horgan himself.

Concluding comments

Though Horgan’s stance on TMX opposed Notley’s and Trudeau’s, his reasoning centred on protecting the B.C. coast, which neither Notley nor Trudeau were against. Like Notley and Trudeau, Horgan also urged Canada to stand united, though to a lesser extent—most of his discourse focused on his role, as premier, to represent the interests of British Columbia. Like Notley, Horgan argued for the well-being of his own province, though, unlike Notley, he did not frame Alberta or the federal government as the enemy. Rather, he did not blame one singular entity and maintained a neutral, oftentimes friendly tone throughout when discussing his relationship with the federal government. He urged people to stand united on issues that could be agreed upon, but also highlighted the increased accountability that the federal and Alberta

governments now have following the nationalization of TMX. He backed his arguments with the power of the judiciary, arguing for a court-based approach to resolving disputes. Like Trudeau and unlike Notley, Horgan engaged with questions regarding Indigenous rights and reconciliation, though Horgan focused much more on discussions and reconciliation than issues regarding Aboriginal rights and title.

Ultimately, Trudeau took the recognition approach to Indigeneity, Notley used omission, and Horgan emphasized the need for dialogue. All three engaged selectively with Indigenous issues and nobody managed to break out of the colonial framework that views Indigenous land as material for economic development. As I will argue in the conclusion, the political discourse I analyzed perpetuated limited views of Indigeneity and did not demonstrate work towards a true nation-to-nation relationship between the Crown and Indigenous nations, nor did it address the conflicts and assumptions behind contending sovereignties.

CONCLUSION

My thesis has attempted to show how legal and political state narratives, under the guise of recognition and reconciliation, actually further entrench colonial domination. My specific ‘telling cases’ and case study of the Trans Mountain Expansion demonstrate how the state, through its courts and elected officials, furthers its goal of nation-building and the inclusive, multicultural narrative of Canada.

The ‘progress’ made in recent decades on Indigenous rights has been largely symbolic. Land acknowledgments serve as virtue signalling for white settlers. People in positions of power only engage with Indigeneity when it fits their narrative. Much of British Columbia remains unceded First Nations territory, but though the Crown has acknowledged this fact through a succession of court cases, it has yet to find a definitive, mutually agreed upon method to address the core of the matter: governance over land. The majority of Aboriginal peoples continue to live in poverty.³³⁷ Suicide is the leading cause of death for Indigenous peoples under the age of 44.³³⁸ A 2014 study found Indigenous peoples were almost as disadvantaged in 2006 as they were in 1981 in the employment and income domain and more disadvantaged in the education domain.³³⁹ The lived reality of Indigenous peoples in Canada today does not reflect the government’s rhetoric of progress, and reconciliation will remain an empty promise so long as the state continues to refuse to acknowledge Indigenous self-determination.

In Chapter 3, I analyzed legal discourse in two court cases, *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 and *Gitxaala Nation v. Canada*, 2016 FCA 187. Though these cases raised the standard for and further defined the duty to consult, the duty to consult still remains a nebulous concept rooted in the non-justiciable honour and sovereignty of the Crown. As such, the duty to consult will likely remain a point of contention in cases

³³⁷ Jordan Press, “Over 80% of Reserves Have Median Income Below Poverty Line, Census Data Shows,” *Global News*, October 10, 2017, <https://globalnews.ca/news/3795083/reserves-poverty-line-census/>.

³³⁸ Selena Randhawa, “‘Our Society Is Broken’: What Can Stop Canada’s First Nations Suicide Epidemic?,” *The Guardian*, August 30, 2017, sec. Inequality, <https://www.theguardian.com/inequality/2017/aug/30/our-society-is-broken-what-can-stop-canadas-first-nations-suicide-epidemic>.

³³⁹ Francis Mitrou et al., “Gaps in Indigenous Disadvantage Not Closing: A Census Cohort Study of Social Determinants of Health in Australia, Canada, and New Zealand from 1981–2006,” *BMC Public Health* 14 (2014): 201, <https://doi.org/10.1186/1471-2458-14-201>.

involving contested territory. More importantly, the judiciary's current conception of Crown sovereignty limits Indigenous self-determination and clashes with the state's purported goal of establishing a nation-to-nation relationship between Indigenous nations and the Crown.

In Chapter 4, I analyzed political discourse in the form of speeches, interviews, and op-eds by Justin Trudeau, Rachel Notley, and John Horgan. I highlighted salient themes, such as environmental protection and economic growth, and the ways in which Indigeneity was used to further each person's agenda. All three individuals appealed to higher ideals of nation and government and used the power of Canadian authorities, i.e. the judiciary or the legislature, to back their claims. For Trudeau and Notley, the Trans Mountain Expansion was, as Darin Barney explains, "idealized not only as instrumental to the Canadian economy but, moreover, as materializing the Canadian nation."³⁴⁰ Despite their unceasing efforts to assert self-determination and a sovereignty that precedes the Crown, Indigenous peoples became subsumed into the narrative of progress in the name of the 'national interest.' The rule of law reigned over all, which, as I explained in Chapter 3, leads to the dangerous assumption that the judiciary's current interpretation of Canadian sovereignty is immutable. Furthermore, though Notley and Horgan both attempted to use inclusive language and bring people together in their rhetoric, their speeches often reflected division as much as unity; Horgan explicitly stated his job was to focus on British Columbian interests—implying *at the expense of* Albertan interests—and Notley outright insulted and stereotyped British Columbia. Indigenous nations, too, became divided as a result, with supporters used in favour of the pipeline and protesters framed by Trudeau and Notley as irrational and unruly. The framing of rationality as economic benefit, i.e. the increase in private profit as a result of getting oil to tidewater, erases the deeper questions regarding Indigeneity, reconciliation, and sovereignty.

I have shown that the legal and political rhetoric behind the Trans Mountain Expansion and the broader landscape of infrastructure projects in general uses the language of recognition and reconciliation. Yet such language, though a step forward from what we had before, has not decolonized the institutions and processes that shape the lived realities of Indigenous nations in Canada. So where are we now?

³⁴⁰ Barney, "Who We Are and What We Do," 79.

The duty to consult and, ‘where necessary,’ accommodate is a form of tolerance used to build the Canadian myth of “progress from a wild and virginal land to a developed, forward-looking, tolerant nation that cares for its environment” and its people.³⁴¹ Indigenous peoples may be gaining prominence in courts via the duty to consult, but to what end? Each decision can still be read as a management of Indigeneity and setting limits while Canada promotes its purported tolerance and respect. The government can say ‘we consulted you’ without addressing the elephant in the room: that many Indigenous nations want consent as a prerequisite and claim sovereignty over unceded territory.

In Canada, recognition has become a spectacle, as opposed to the erasure of Indigenous issues in the mainstream U.S. consciousness. However, as Michelle Daigle argues, current recognition and reconciliation talk is often little more than “confessional spaces of white guilt,”³⁴² a “public, large-scale and visually striking performance of Indigenous suffering and trauma alongside white settler mourning and recognition—which secures, legitimates, and effectively reproduces white supremacy and settler futurity in Canada.”³⁴³ Recognition-based approaches like self-government packages and land claims have served to propagate the capitalist ventures of the colonial state and industry as they convert reserves into private property. Daigle asserts that “recognition is aimed at molding a class of law-abiding Aboriginal citizens with identities that are formed vis-à-vis the colonial state and capitalist industry as opposed to their place-based Indigenous ontologies and laws.”³⁴⁴

Reconciliation has been used as a means to make Indigenous existence compatible with the Canadian state. Instead of establishing a true nation-to-nation relationship in which two forms of sovereignty coexist without a power imbalance, recognition has been wielded to compel Indigenous people to reconcile themselves with colonialism. McCreary and Milligan note that “instead of recognising Indigenous law, responsibility to address Indigenous claims is

³⁴¹ Mackey, *The House of Difference*, 79.

³⁴² Michelle Daigle, “The Spectacle of Reconciliation: On (the) Unsettling Responsibilities to Indigenous Peoples in the Academy,” *Environment and Planning D: Society and Space*, January 2019, 3, <https://doi.org/10.1177/0263775818824342>.

³⁴³ Daigle, 4.

³⁴⁴ Michelle Daigle, “Awawanenitakik: The Spatial Politics of Recognition and Relational Geographies of Indigenous Self-Determination,” *The Canadian Geographer / Le Géographe Canadien* 60, no. 2 (2016): 264, <https://doi.org/10.1111/cag.12260>.

continually devolved to local authorities and regulatory agencies, who merely recognise a set of Indigenous traditions.”³⁴⁵ I interviewed Michelle Marcus, an anti-pipeline activist in Vancouver, B.C. who was heavily involved in opposing the Trans Mountain Expansion. When asked what protesters (Indigenous and non-Indigenous) thought about reconciliation, she stated:

A lot of us anti-pipeline activists see the government’s supposed progress on reconciliation as a total farce. There’s a lot of anger towards Trudeau. People feel betrayed by him. He promised reconciliation, but this is not reconciliation. This is continuing to expand the colonial project with new words for it.³⁴⁶

My criticism of reconciliation does not imply that the initiative has failed, but rather that it is not as successful as it may appear and especially not as successful as Canada purports it to be. So where do we go from here?

According to Glen Coulthard, the Indigenous political theorist whose work my thesis rests upon, the escape from the state’s all-encompassing colonial power will come from a “quasi-Nietzschean form of personal and collective *self*-affirmation,”³⁴⁷ wherein Indigenous activism focuses less on attaining recognition from the settler state and more on “critically reevaluating, reconstructing and redeploying culture and tradition in ways that seek to prefigure... a radical alternative.”³⁴⁸ For Eva Mackey, because settler colonialism features settler certainty and entitlement (over land), decolonization requires embracing uncertainty.³⁴⁹ Decolonization requires a persistent challenge to Canadian sovereignty and the structures we take for granted, as well as the assertion and reassertion of Indigenous ontologies and epistemologies as valid in their own right instead of something given validity by the state.

We can reform institutions such as the NEB that hold power over infrastructure projects that run through contested territory. For example, hearings for the Trans Mountain Expansion featured a double standard where Aboriginal oral testimony was subject to cross-examination,

³⁴⁵ Tyler McCreary and Richard Milligan, “The Limits of Liberal Recognition: Racial Capitalism, Settler Colonialism, and Environmental Governance in Vancouver and Atlanta,” *Antipode*, 2018, 14, <https://doi.org/10.1111/anti.12465>.

³⁴⁶ Michelle Marcus, Trans Mountain Expansion, interview by Angela Chan, February 24, 2019.

³⁴⁷ Coulthard, “Subjects of Empire,” 453.

³⁴⁸ Coulthard, 456.

³⁴⁹ Eva Mackey, “Unsettling Expectations: (Un)Certainty, Settler States of Feeling, Law, and Decolonization,” *Canadian Journal of Law and Society* 29, no. 2 (2014): 235.

but proponents were not.³⁵⁰ Universities like UBC, which prioritizes reconciliation on paper, cannot continue to receive funding from oil interests while claiming to care about Indigenous rights.³⁵¹ The government should rethink its engagement with and treatment of Indigenous knowledge; McCreary and Milligan argue that “governmental initiatives that incorporate impacted Indigenous communities as localised and racialised knowledge holders—while simultaneously reproducing forms of governmental knowledge as scientific, universal, and neutral—continue to reproduce a foundational structure of colonial inequality.”³⁵²

Daigle promotes the process of ceremonial regeneration, where Indigenous communities reawaken and strengthen their connections to local knowledge and practices that have been disrupted by colonial intervention.³⁵³ She notes that “the actual transmission of Indigenous ontological and legal orders is learned through the intimate relationships one builds with the land, in this case through ceremony, as opposed to solely through human-to-human relationships.”³⁵⁴ Thus, land and place are critical to Indigenous identity and sovereignty. An inward focus on asserting place through lived experiences like ceremonies in local communities can bolster self-determination.

Indigenous resistance can also take the shape of protest and the physical occupation of space and land. In doing so, Indigenous peoples can “fundamentally challenge the authority of the settler state and maintain countervailing forms of authority that disrupt the scales of state-led resource governance.”³⁵⁵ From March until September 2018, Indigenous peoples led sustained anti-TMX protests on Burnaby Mountain. Next to the marine tanker terminal where oil coming from the Trans Mountain Expansion would be shipped off across the ocean, the Tsleil-Waututh built a watchhouse for activists to stay. Indigenous and non-Indigenous protesters occupied the road to the marine terminal to prevent trucks from entering, and high profile officials like

³⁵⁰ Sarah Marie Wiebe, “Hearing or Listening? Pipeline Politics and the Art of Engagement in British Columbia,” in *The Palgrave Handbook of Intersectionality in Public Policy*, ed. Olena Hankivsky and Julia S. Jordan-Zachery, The Politics of Intersectionality (Springer International Publishing, 2019), 583, https://doi.org/10.1007/978-3-319-98473-5_27.

³⁵¹ Daigle, “The Spectacle of Reconciliation,” 12.

³⁵² Tyler McCreary and Jerome Turner, “The Contested Scales of Indigenous and Settler Jurisdiction: Unist’ot’en Struggles with Canadian Pipeline Governance,” *Studies in Political Economy*, 2019, 6, <https://doi.org/10.1080/07078552.2018.1536367>.

³⁵³ Daigle, “Awawanenitakik,” 265.

³⁵⁴ Daigle, 267.

³⁵⁵ McCreary and Turner, “The Contested Scales of Indigenous and Settler Jurisdiction,” 4.

Kennedy Stewart (current mayor of Vancouver) and Elizabeth May (leader of the Green Party of Canada) chose to be arrested for participating.³⁵⁶ Through her experience in the protests, Michelle Marcus learned how fundamentally different Indigenous paradigms are from Western paradigms. She was “blown away” by how welcoming the Indigenous leaders were, despite the struggles they had undergone, and how they wanted to include settlers in the movement.³⁵⁷ Physical occupation, then, not only serves to challenge the state’s authority and legitimacy, but also to provide an avenue through which settlers can become more conscious about the assumptions and beliefs behind Canada’s claims over unceded territory.

Settlers and Indigenous allies can also support Indigenous struggles for sovereignty and self-determination by providing capital for legal battles. Proponents’ efforts in the *Tsleil-Waututh* case, a lengthy and arduous ordeal, could not have been sustained without adequate funding for legal fees, transportation to hearings, and the time it took to provide testimony and feedback. RAVEN, an organization dedicated to supporting Indigenous legal battles, partnered with environmental organizations like Sierra Club BC and the Force of Nature Alliance to launch the Pull Together campaign, which raised over \$600,000 to support Indigenous proponents in *Tsleil-Waututh*.³⁵⁸ This wealth transfer model allows settlers to stand in solidarity with Indigenous activists without speaking on their behalf. It is also a good way to reconcile environmentalists and Indigenous peoples, who have a complicated relationship with each other—for example, the creation of national parks displaced many Indigenous nations.

The next step in the federal government’s agenda towards reconciliation is to implement UNDRIP. Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, was passed by the House of Commons last May and is currently in second reading at the Senate.³⁵⁹ In February 2019, B.C. committed to being the first province in Canada to put UNDRIP into legislation, although, as stated in my discourse analysis on John Horgan, how exactly that will be accomplished remains to be

³⁵⁶ Estefania Duran and Jeremy Lye, “B.C. MPs Elizabeth May, Kennedy Stewart Arrested at Kinder Morgan Facility,” *Global News*, March 23, 2018, <https://globalnews.ca/news/4102374/elizabeth-may-kennedy-stewart-arrest-kinder-morgan/>.

³⁵⁷ Marcus, *Trans Mountain Expansion*.

³⁵⁸ Marcus.

³⁵⁹ Jorge Barrera, “Canada May Be 1st Country to Harmonize Laws with UNDRIP If Bill C-262 Passes,” *CBC*, April 1, 2019, <https://www.cbc.ca/news/indigenous/undrip-canada-bill-c-262-1.5080102>.

determined.³⁶⁰ If UNDRIP does become part of Canada's legislative fabric, the government will have taken a concrete step towards reconciliation, especially in the legal system, where clarification on Indigenous self-determination is very much needed.

In analyzing the Canadian Centennial celebrations, Mackey found a sense of “national self-congratulation: ‘we’ Canadians had a kinder, better, more international, more inclusive nation than the United States.”³⁶¹ Similar sentiments ring true today, and the Trudeau government has prided itself on being more progressive than its Harper predecessor, especially regarding Indigenous reconciliation. Yet, as I have argued, building on an extensive array of literature focused on decolonization, the liberal tool of recognition has only acknowledged a limited, surface level conception of Indigeneity. It has not fundamentally changed the colonial structures of domination that shape Canada's laws and institutions, and therefore it has not achieved reconciliation in the sense of a true nation-to-nation relationship.

The legal and political discourses on the Trans Mountain Expansion provide invaluable insight into the assumptions and worldviews of those in power. These discourses shape policy and the lived reality of Indigenous nations in Canada. By challenging beliefs that are taken for granted, I have attempted to disrupt the mainstream Canadian narrative of progress on reconciliation. We have yet to reach a regime of reciprocal recognition amongst equals, and we must continue to support Indigenous struggles for self-government and sovereignty until the day Indigenous existence is no longer afforded definitions by the Crown, but instead truly rooted in Indigenous ontologies and ways of knowing.

³⁶⁰ Chantelle Bellrichard, “B.C. Commits to Being 1st Province in Canada to Put UNDRIP into Legislation,” *CBC*, February 13, 2019, <https://www.cbc.ca/news/indigenous/b-c-commits-to-being-1st-province-in-canada-to-put-undrip-into-legislation-1.5018447>.

³⁶¹ Mackey, *The House of Difference*, 63.

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