

### 3 The Oil Sands Policy Regime: Ideas, Institutions, and Environmental Policies

The strategic actors making up the oil sands and anti-pipeline coalition work within an environment of ideas and institutions. Ideas shape both the normative and causal beliefs of actors, and institutions influence the strategies and power of actors. But strategic actors certainly don't take ideas and institutions as given. They employ framing and other forms of discourse to mold ideas to better suit their interests. If the rules of a particular institutional venue aren't working in their favor, strategic actors will try to change those rules or shift decision-making to a venue more to their liking.

The first two sections of this chapter examine ideas, first by looking at framing strategies and then by looking at the emergence of a powerful scientific idea that provides a rationale for the "keep it in the ground" movement. The third section examines institutions—first the basic rules for policy-making in Canada and the United States and then the rules governing the role Indigenous groups play in natural resource policy decisions. The rules specific to pipeline and other energy project decision-making will be examined in the case study chapters. The final section of this chapter examines how these actors, ideas, and institutions have combined to produce environmental policies relevant to the oil sands by the governments of Alberta and Canada. While that section addresses policy beyond climate change, the book's focus is on climate policy. This chapter deals with climate policy up through the elections of Rachel Notley and Justin Trudeau. Chapter 8 will address how those policies changed from 2015 to 2020.

#### Ideas—Strategic Actor Framing

The conflict over oil sands expansion is not just about a conflict of interests among strategic actors. It is also a struggle over ideas, a framing contest

over who can construct images that most influence the minds of policy-makers and the public. There are few issues in which framing disputes are more apparent: in this case, the very label one uses to describe the energy resource, oil sands versus tar sands, reveals which side you are on. The framing conflict goes well beyond labels to clashing worldviews about how best to advance human progress. The oil sands coalition constructs the resource as essential to Canadian prosperity; the anti-pipeline coalition constructs the resource as destructive to the environment and a threat to the cultures and governance of Indigenous people.<sup>1</sup>

These competing images are reflected both in the values to which the two coalitions appeal and in the factual arguments they make. Oil sands advocates advocate what Shane Gunster calls “petro-nationalism,” emphasizing the resource’s contributions to material values through employment, economic growth, energy security, and prosperity, not just in Alberta but in all of Canada (Gunster 2019; Gunster et al. forthcoming). Values of patriotism and nationalism have also been reflected in the oil sands coalition’s promotion of pipeline projects as nation building and Stephen Harper’s aspiration to make Canada an energy superpower (Hoberg 2016). Critics tend to appeal to environmental values and fairness and castigate the sector as dirty oil destroying wildlife habitat, poisoning downstream communities, threatening the global climate, and violating Indigenous rights (Environmental Defence 2008; Nikiforuk 2010). Some have gone as far as likening the oil sand mines to Hiroshima and (J. R. R. Tolkien’s fictitious) Mordor (Berman 2011, chapter 14).

While much of the time the two coalitions seem to be talking past each other, they’ve also developed arguments and images to counter their opponents’ core frames. The oil sands coalition counters the rights-violating dirty oil frame by emphasizing responsible resource development of ethical oil (Lavant 2010; McGowan and Antadze 2019). The anti-pipeline coalition challenges the oil sands coalition’s rhetoric of prosperity and ethical oil by portraying Canada as a petro-state, in which big oil corrupts democracy (Nikiforuk 2013; Taft 2017), afflicted with “Dutch disease,” where one region’s oil wealth undermines the economies of the country’s manufacturing regions (Lemphers and Woynilowicz 2012). The oil sands coalition counters environmentalists’ depiction of the oil sands as a “carbon bomb” undermining Canada’s inability to meet its UN emission reduction obligations by finding other forms of oil that are even more carbon intensive by

pointing to the modest contribution of the oil sands to global emissions and by shifting the focus to end users' continued demand for and use of fossil fuels (Lavant 2010).

Both coalitions also appeal to the logic of necessity and inevitability but use it to draw dramatically different conclusions. For the oil sands coalition, oil is an essential fuel for economic development and will remain so for some time, and if global demand is not met by the oil sands, other sources of oil will simply fill the void, usually from less well-governed countries with lower environmental standards. The oil sands will find their way to markets, the oil sands coalition claims, one way or another. If pipelines are blocked, oil by rail will increase, with its attendant elevated risk of accidents.

For the anti-pipeline coalition, the global shift away from fossil fuels is necessary and inevitable so humanity can have a safe climate. More recently, the accelerated market penetration of electric vehicles has brought the idea of peak oil demand into the discourse. For the anti-pipeline coalition, since the shift away from fossil fuels is inevitable, it's best to stop fighting and plan for an orderly and just transition. The logic of inevitability also appears in the anti-pipeline coalition's discourse on pipeline and tanker spills. In response to industry and government's emphasis that there is a very low risk of major spills, pipeline opponents frequently simply state: "It's not a matter of if, it's a matter of when."

Another framing strategy is to use dismissive or disparaging labels about the people in the opposing coalition, in an effort to undermine their credibility or legitimacy. Many environmentalists cast aspersions on the motives of leaders of the fossil fuel industry, suggesting that their behavior, even when it's in compliance with laws, is criminal. One strategy of the climate movement has been to cast the industry as an enemy in order to inspire and mobilize a resistance movement. According to Bill McKibben, the fossil fuel industry "has become a rogue industry, reckless like no other force on Earth. It is Public Enemy Number One to the survival of our planetary civilization." He justified this construction by drawing an analogy to Bull Connor, the notorious city official in Alabama who ordered that civil rights protesters be attacked with fire hoses and police dogs: "A rapid, transformative change would require building a movement, and movements require enemies. As John F. Kennedy put it, 'The civil rights movement should thank God for Bull Connor. He's helped it as much as Abraham Lincoln.' And enemies are what climate change has lacked" (McKibben 2012).

The oil sands coalition has also at times chosen to demonize elements of the anti-pipeline coalition. One of the most infamous instances was Natural Resources Minister Joe Oliver's open letter (discussed in more detail in chapter 5). Oliver claimed that pipeline opponents "threaten to hijack our regulatory system to achieve their radical ideological agenda" with the help of "funding from foreign special interest groups" (Oliver 2012). This framing of Canadian environmentalists originated with Vancouver-area blogger Vivian Krause and was then amplified by the oil sands advocacy group Ethical Oil. Krause has been a thorn in the side of the Canadian environmental community since 2010 by persistently reporting the extent of environmental group funding in Canada that comes from US foundations, a number of whose money originally came from oil wealth. She has argued that the US foundations' influence is either to protect American oil interests by preventing Canadian access to foreign markets or simply inappropriate foreign influence on Canadian domestic policy issues (Hislop 2019).

The actual level of support from US foundations to Canadian environmental groups active in pipeline resistance campaigns is not nearly as substantial as the framing suggested by defenders of the oil sands coalition. An analysis of the budgets of 10 environmental groups active in anti-pipeline campaigns, combined with data from tax filings of US foundations, reveals that the average fraction of US foundation funding of Canadian environmental groups was 18.4%.<sup>2</sup> That is enough support to strengthen the capacity of these groups, but it does not seem like enough to justify the reaction from the oil sands coalition, especially given the very substantial involvement of foreign oil companies in the oil sands. Nonetheless, the frame of "foreign funded environmentalists" has remained prevalent in Canadian discourse. This rhetorical strategy was taken to new heights by Alberta politician Jason Kenney, as will be discussed in chapter 8.

### **Ideas—Scientific Rationale for "Keeping It in the Ground"**

Much of the contest over ideas has involved the dynamic interaction of competing frames of oil sands development and its consequences. One fundamentally important related development has been the emergence of the concept of a "carbon budget" (Carbon Tracker Initiative 2011)—the idea that we need to keep a substantial majority of fossil fuels in the ground in order to stay within safe limits of global warming—to provide some

scientific credibility for blocking new fossil fuel projects. The concept was first conceived by environmental activists but was then given scientific and establishment credibility. The scientific concept seems to have first appeared in environmental discourse as far back as 1997. Bill Hare, Greenpeace International's climate policy director, wrote a report that year, *Fossil Fuels and Climate Protection: The Carbon Logic*, that explicitly used the carbon budget concept. The focus of this report was to calculate the cumulative carbon dioxide (CO<sub>2</sub>) emissions to the year 2100 that would be consistent with limiting the magnitude of global warming to within defined ecological limits. This calculation can be seen as a global "carbon budget," which if exceeded would most likely mean that ecological limits would be breached (Hare 1997, 1). Hare's analysis concluded that the carbon in fossil fuel reserves is "far greater than the total allowable carbon budget" (Hare 1997, i).

It took another decade for this idea to gain momentum and get tied to the mobilizing rhetoric of blocking new fossil fuel infrastructure. *Guardian* columnist George Monbiot introduced a new discourse with a column published shortly after the close of the 2007 United Nations Framework Convention on Climate Change (UNFCCC) meeting in Bali. Monbiot wrote: "Ladies and gentlemen, I have the answer! Incredible as it might seem, I have stumbled across the single technology which will save us from runaway climate change! From the goodness of my heart I offer it to you for free. No patents, no small print, no hidden clauses. Already this technology, a radical new kind of carbon capture and storage, is causing a stir among scientists. It is cheap, it is efficient and it can be deployed straight away. It is called . . . leaving fossil fuels in the ground" (Monbiot 2007). In making his case, Monbiot explicitly focused on the need to move beyond strategies to reduce demand to those that restrict supply, saying, "Most of the governments of the rich world now exhort their citizens to use less carbon. They encourage us to change our lightbulbs, insulate our lofts, turn our televisions off at the wall. In other words, they have a demand-side policy for tackling climate change. But as far as I can determine, not one of them has a supply-side policy" (Monbiot 2007).

The carbon budget concept came into use in peer-reviewed science in 2009. The first appearance of the concept in science journals appears to be a special issue of *Nature* on "The Coming Carbon Crunch" on April 30, 2009 (see Allen et al. 2009; and especially Meinshausen 2009). An article by Meinshausen (2009) appears to be the first peer-reviewed journal article

to explicitly adopt the term “carbon budget.” The analysis estimated how much more carbon humanity could afford to burn and still remain within the 2°C limit (the target set by the EU and soon to be adopted by the UN later that year) and concluded that more than three-quarters of the remaining proven fossil fuel reserves would need to stay in the ground in order to stay within the temperature target. Zickfeld et al. (2009) added momentum to the concept with a similar analysis of carbon budgets later that year in the *Proceedings of the National Academy of Sciences*.

By 2009, the carbon budget concept, initiated by activists, had been certified with scientific credibility. Within several years, the concept was picked up by think tanks such as Carbon Tracker Initiative, which began warning of a “carbon bubble” in 2011 by issuing reports about the financial implications of “unburnable carbon,” fossil fuel reserves that become stranded assets as a result of the need to adhere to a carbon budget (Carbon Tracker Initiative 2011). The concept garnered additional establishment credibility when it was adopted by the International Energy Agency in its 2011 World Energy Outlook (International Energy Agency 2011, 236), by the World Bank in 2013 (World Bank 2013), and by the IPCC in its fifth assessment report, in 2014 (IPCC 2014).

The significance of the carbon budget concept is that it provided a scientific justification of sorts for blocking new fossil fuel infrastructure. Environmental writers, and soon environmentalists, began picking up the mantra, initiated by Monbiot, of “leave it in the ground” or “keep it in the ground.” The LINGO (Leave it in the Ground) coalition was formed to advance the concept of supply-side mitigation at COP 17 (Durban) in 2011 (LINGO, n.d.). Greenpeace began using the hashtag #keepitintheground in their anti-coal campaign in early 2012. *The Guardian* made “keep it in the ground” a major focus of its climate reporting beginning in 2015 (Rusbridger 2015), and in January 2015, 350.org launched its own “keep it in the ground” campaign, building on its 2012 “do the math” campaign.

Born at Greenpeace as far back as 1997, justified scientifically in the world’s leading science journals by 2009, and adopted by establishment institutions in the early 2010s, the carbon budget frame has bolstered the legitimacy of the supply-side strategy of blocking new fossil fuel infrastructure. “Keep it in the ground” became one of the signature slogans of the anti-pipeline resistance.

## Institutions

This struggle among interests, between the oil sands and anti-pipeline coalitions, occurs within a particular set of institutional structures that establish the rules of the game that shape the resources and strategies of different actors. These strategic actors also try to alter the rules to enhance their position and power. Despite their similarities in culture, Canada and the United States have remarkably different political structures. The core institutional features of greatest significance are those that affect the fragmentation and diffusion of authority, both vertically and horizontally (Harrison and Sundstrom 2010, 16–18).

Canada has adopted the Westminster style of parliamentary democracy, whereas the United States developed its distinctive system of separation of powers and checks and balances. As a result, the American system is highly fragmented horizontally: Congress, the president, and the courts all play critical roles in public policy, including energy, environmental, and climate policy. In Canada, power is far more concentrated at the horizontal level, meaning at each level of government. Over time, the evolution of institutions in the two countries accentuated these differences. The exceptionally polarized nature of contemporary American national politics and the post-1968 tendency for Congress and the presidency to be controlled by different parties have combined to take the fragmentation of authority to extremes (Fiorina 1996). The emergence of a leader-centered form of the Westminster system has concentrated enormous powers in the prime minister at the federal level and in the premiers at the provincial level, leaving little role for legislatures except in the case of a minority government (Savoie 1999).

These broader institutional differences have fostered quite different styles of legislation, which in turn have had significant implications for the role of courts in policy-making. In the Canadian system, legislation tends to be broad and enabling, with few limits on the discretion of implementing agencies. In the United States, the separation of powers fosters a different style of lawmaking, where legislation tends to contain far more specific directions and timelines and thus constrains the exercise of executive authority (Moe and Caldwell 1994; Hoberg 2000). These differences in statutory design have direct implications for the role of the courts. The Canadian system provides fewer legal hooks for interest groups to challenge decisions, especially in the domain of administrative (nonconstitutional)

law. In contrast, the American system creates seemingly endless opportunities to challenge administrative decisions, fostering a culture of what's become known as "adversarial legalism" (Kagan 2001).

The one major exception to this characterization of Canadian courts as playing a limited role in policy disputes is Aboriginal law. Because Aboriginal rights are enshrined in the Canadian constitution (section 35), First Nations have formidable legal tools to challenge government decisions in the courts. The evolution and significance of Aboriginal law for energy decision-making will be discussed later.

The two countries' differences in fragmentation are the reverse when looking at the vertical dimension, how they divide authority between the federal government and the states or provinces. Canada has evolved into a far more decentralized federation than the United States. That difference is particularly apparent in energy and environmental policy, where the US government has traditionally played a much stronger role. In Canada, provinces play the lead role on energy and the environment through their jurisdiction over lands and resources. Notwithstanding clear provincial jurisdiction, the Canadian government does have broad powers to act on energy and the environment, including in the areas of interprovincial and international trade, criminal power, fisheries, navigable waters, and issues involving First Nations, among others, but with few exceptions it has, for political reasons, deferred to provincial authority even in areas where it has jurisdictional authority (Harrison 1996; Harrison 2013).

The year 1980 was a watershed year for the Canadian government in the energy area. In the face of the second oil price spike, the Liberal government of Prime Minister Pierre Trudeau introduced the National Energy Program (NEP), designed to strengthen Canadian ownership and control of the oil sector and also channel to other provinces some of the windfall profits the western oil and gas sector was making as a result of the sudden rise in oil prices. The most divisive provision was the 8% petroleum and gas revenue tax, which provided the vehicle for the redistribution of oil wealth among the provinces. The National Energy Program ignited fierce backlash from the prairie provinces, led by Alberta and its formidable premier, Peter Lougheed. Trudeau was forced to back down on the most interventionist provisions of the policy, including the revenue tax, and within several years the entire program had been effectively dismantled (Doern and Toner 1985; James and Michelin 1989).



This perceived overreach of federal authority has cast a long shadow on the Canadian government and politics more generally. Electorally, the western alienation provoked by the NEP contributed to the demise of Pierre Trudeau's dominance of national politics.<sup>3</sup> It strengthened Alberta's sense of independent ownership of its oil resource and stoked hostility to federal intervention in the province. Alberta politicians have proven to have a long memory of the incident, which nearly four decades later is frequently revived as a boogeyman to discredit major federal energy-related initiatives, including climate action. According to Monica Gattinger, energy policy in Canada since the mid-1980s is best characterized as "third-rail federalism," in which any overassertion of federal authority could be politically deadly (Gattinger 2012).

### **The Role of Indigenous Groups in Natural Resource Decision-Making**

As described in chapter 2, Indigenous groups in both Canada and the United States have played a pivotal role in the anti-pipeline movement. Much of this conflict has been about the appropriate role of Indigenous groups in making decisions about energy projects, such as pipelines, on their traditional territories. Indigenous land rights give them more power to veto unwanted energy projects than, for example, local governments. For most of North America, these rights were established in historical treaties, which have then been interpreted by courts in both countries, creating an evolving body of Aboriginal law. In British Columbia, however, the site of two of our pipeline cases, most of the province was settled without establishing treaties, which created a legal vacuum in provincial and federal law that courts have stepped in to fill.

American treaties tend to provide Native American tribes with the right to consent on decisions about projects directly involving their reservation's land and then a right to be consulted about Native American interests or values (such as heritage sites) off their reservations (Diotalevi and Burhoe 2016). In Canada, reserves tend to be much smaller geographically, and much of the legal conflict has been about the decision-making rights of Indigenous groups on resource projects outside their reserves but within their traditional territories. Over the past several decades, a legal doctrine of consultation and accommodation has emerged, with the obligation of the settler governments varying depending on the significance of their infringement of Aboriginal

rights and the strength of the Aboriginal claim to rights in the area in question. The ambiguity of what constitutes sufficient consultation and accommodation, especially in cases where the Indigenous group is strongly opposed to the project, has led to continued conflict between settler and Indigenous governments. In the strongest case, where Indigenous groups have proven title, the duty amounts to a requirement for consent. But even in that context, settler governments can override Indigenous dissent in certain circumstances (Coates and Newman 2014; Wright 2018).

Many Indigenous groups have asserted the right to consent to projects in their traditional territories, and they point to the language of the United Nations Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007). That declaration says: “States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources” (Article 32.1). This “free, prior, and informed consent” provision has become a rallying cry behind demands that projects not proceed without the approval of Indigenous groups.

While Canada has endorsed the UN declaration, it is not legally binding on signatories, so its consent provision only becomes Canadian law if it is adopted by either Canadian legislatures or courts. Thus far, the Supreme Court of Canada has made perfectly clear that its interpretation of consultation and accommodation *does not* constitute a veto power for Indigenous groups regarding resource projects (Newman 2017). While Canadian law has yet to adopt this standard of a right to consent, the idea has become enormously powerful within the anti-pipeline coalition. It articulates a standard that reinforces Indigenous sovereignty, and it has drawn in allies from the environmental community looking for more leverage over government and corporate decision-making (Hoberg 2018).

### **Oil Sands Policy and Governance through 2015: Alberta’s Environmental Policies for the Oil Sands**

The province of Alberta, with an economy so dependent on the oil and gas sector and a political system dominated by conservatives, has been extremely reluctant to impose any policies on the oil sands that might

threaten the sector's growth and profitability (Carter 2016a; Adkin 2016). The government's strategy has been to resist regulation as long as that was politically palatable to the province, and when political pressure to act intensified, the tendency has been to adopt modest policies that did not significantly impact the bottom line. This pattern can be seen in what are arguably the three most important aspects of environmental policy in the oil sands: tailings regulations, land-use policy, and climate policy.

### **Regulatory Failure on Tailings**

Tailings policy is a case of regulatory failure (Urquhart 2019, chapter 7). Prior to 2009, there was no regulation of tailings ponds. Regulations were finally enacted in 2009 and set to be enforced in 2013. By 2013, operators were required to capture and dry 50% of their tailings. Industry, however, failed to comply, and the Alberta government has failed to enforce the regulation. The government approved tailings management plans that did not meet the regulation's standards, and monitoring reports revealed that operators failed to comply even with those weaker plans (McNeill and Lothian 2017, 4).

In July 2016, the government changed the regulation, abandoning the 50% capture and dry requirement, and replaced binding standards with a planning-based approach requiring operators to submit plans showing how they would manage their tailings based on their reclamation plan within cumulative limits set in the broader land-use framework. The framework was designed to have tailings volumes peak in 2020 and then decline steeply thereafter, but analysis of the plans submitted shows that tailings volumes would not peak until 2037 (Pembina Institute 2017). Environmentalists have responded to the lack of action by Alberta by appealing to the NAFTA Commission on Environmental Cooperation in an effort to get the federal government to use the Fisheries Act to regulate tailings (Commission on Environmental Cooperation 2018).

### **Strategic Land-Use Planning in the Lower Athabasca Region**

Strategic land-use planning for the oil sands was slow to emerge but can be considered somewhat more effective than the regulatory failure apparent in tailings management. Relatively early in the oil sands development process, there was a growing awareness of the need to move beyond a facility-by-facility assessment and regulation to consider the regionwide cumulative effects of oil sands development. In 2000, the Cumulative Environmental

Management Association (CEMA) was created as a voluntary stakeholder partnership among government, industry, environmentalists, and others (Urquhart 2018, 114–118). CEMA was slow to deliver, even as oil sands development was accelerating. Concerned by the pace of development in the absence of regional habitat protection plans, in 2008 the CEMA group working on habitat protection recommended a moratorium on new oil sands leases, but the government refused. Then the group recommended the protection of up to 40% of the region (Hoberg and Phillips 2011).

Rather than adopting that recommendation, the government of Alberta introduced a new Land Use Framework in 2008, creating a new planning process. Priority was given to the region where oil sands development had been the most intense, the Lower Athabasca Region, in the province's northeast. The Lower Athabasca Regional Plan (LARP) was finally completed in 2012. It provided regional standards for surface water quality and air quality, and most importantly created new conservation areas that increased protected areas from 6% to 22% of the region. It also committed to establishing specific targets for other regional ecosystem values (Government of Alberta 2012). The plan's commitment to addressing cumulative effects and its establishment of more protected areas are welcome improvements, but the plan only covers part of the area of oil sands development, and highly valued species, such as boreal caribou, remain in serious trouble. As a panel formed to review the plan's implementation concluded, "Despite the LARP's new conservation areas, the cumulative impacts on wildlife have exceeded or are reaching thresholds in significant adverse effects on biodiversity, some of which are likely permanent" (Lower Athabasca Regional Plan Review Panel 2015).

### **Alberta's Climate Policy Evasion**

Given its desire to facilitate the rapid development of a carbon-intensive resource, prior to 2015 Alberta had adopted only modest climate policies that explicitly planned increases in greenhouse gas emissions and limited impacts on the costs of production to mere pennies per barrel (Urquhart 2018, chapter 8). While tailings and caribou have been significant issues regionally, it was the climate footprint of oil sands that put it on the map for the international environmental movement. The growing national, continental, and international interest in reducing emissions has long been considered a threat to the province of Alberta and its prosperity, particularly

since environmental activists turned the spotlight on oil sands as a carbon threat in the early 2010s. Alberta was a strong opponent of the ratification of the Kyoto Protocol, and its recalcitrance contributed to the Liberal federal government's unwillingness to develop policy mechanisms to implement the treaty it had ratified (Harrison 2007; Carter, Fraser, and Zalik 2017).

Alberta preferred a "made in Alberta" climate plan, and its 2002 plan committed to "reducing greenhouse gas emissions." But, to Alberta, "reducing" has been defined as reductions in the rate of emissions per unit of GDP or barrel of oil produced, not in terms of actual reductions, so that as production grows, emissions would also continue to grow. The 2003 legislation implementing the plan committed to reducing emissions by 2020 "relative to Gross Domestic Product to an amount that is equal to or less than 50 percent of 1990 levels." It also authorized the government to enact sector-specific regulations (Banks and Lucas 2004).

The province of Alberta introduced the innovative Specified Gas Emitters Regulation (SGER) in 2007 (Leach 2012; Urquhart 2018, 247–250). The regulation set *emission-intensity limits* for facilities producing more than 100,000 tonnes of GHGs per year. It required that the facilities reduce emissions per barrel produced to 12% below their baseline level within nine years. Facilities that didn't make those reductions were given the option to buy offsets for the equivalent amount or pay C\$15 per tonne into a technology fund. Alberta has celebrated the introduction of SGER as the first carbon-pricing scheme in North America. That fact, in addition to its policy design, definitely makes it innovative, but its impact on emissions was quite limited by design. Because only the emissions above the 12% emission reduction target were charged, the cost to producers of the regulation's carbon price was small: equivalent to C\$1.80 per tonne for a facility's emissions, or an inconsequential eight cents per barrel (Read 2014). As a consequence, the impact on emissions has been modest. After a brief dip in emissions as a result of the 2008 Great Recession, Alberta's emissions began growing again and in 2015 were 18% higher than in 2005 and 58% higher than in 1990 (Environment and Climate Change Canada 2017a).

Alberta undertook significant changes to its climate policy framework in 2015 after the NDP came into power. Those changes are described in chapter 8.

## Canadian Energy and Climate Policy in the Harper Era

Whereas Alberta felt besieged by the climate change rhetoric (if not actual policy) of the Chretien and Martin Liberals, the province welcomed the ascension of Albertan Stephen Harper to dominance in national politics beginning in 2006. The Harper government was guided by four interrelated strategies in the energy-environment field: (1) relaxing environmental laws to facilitate project approval, (2) undermining capacity, (3) vacating inter-governmental relationships, and (4) evading meaningful action on climate change. Harper's core goal seemed to be to advance the interests of the resource sector as much as possible by minimizing regulatory costs and marginalizing opponents, but he pursued the strategy well past the time when it appeared to be fruitful. In the words of Monica Gattinger, Harper's strategy was tantamount to his government "shooting itself in the foot" (Gattinger 2016).

### "Responsible" Resource Development

The Harper government responded to infrastructure approval delays it blamed on a process that was too participatory and open-ended by reforming review procedures to facilitate approvals. In spring 2012, it introduced Bill C-38, the Jobs, Growth and Long-term Prosperity Act, and its companion, Bill C-45. These mammoth omnibus budget bills rewrote much of Canadian environmental law in order to implement the government's Responsible Resource Development Plan. The stated purpose of the plan was to "create jobs, growth, and long-term prosperity" by "streamlin[ing] the review process for major resource projects" (Natural Resources Canada 2012). Bill C-38 amended the Canadian Environmental Assessment Act and amended the National Energy Board Act to streamline regulatory approvals, provide strict timelines for review, and limit participation in the process to those who are "directly affected" or have, in the regulators' judgment, "relevant information and expertise." These bills also moved the final decision on pipeline approvals from the National Energy Board to the cabinet, weakened the Fisheries Act to remove much of the protection afforded to fish habitats, and insulated pipelines from the provisions of the Navigable Waters Protection Act (Toner and McKee 2014; Olszynski 2015). These sweeping budget bills, unprecedented for the scope of their impact on authorizing legislation, provoked a massive outpouring of criticism and protest from the environmental

community. They also outraged First Nations, some of which responded by mobilizing behind the indigenous-rights-oriented Idle No More movement (Wotherspoon and Hansen 2013).

### **Undermining Capacity**

Harper's government actively worked to delegitimize environmentalists, the most extreme instance being the previously discussed open letter from his natural resources minister directly attacking pipeline opponents who "threaten to hijack our regulatory system to achieve their radical ideological agenda" with the help of "funding from foreign special interest groups" (Oliver 2012). Environmentalists were also alarmed when the Harper government's 2012 anti-terrorism strategy listed "eco-extremists" as threats. In 2014, a Royal Canadian Mounted Police Critical Infrastructure Intelligence Assessment listed the "anti-Canadian petroleum movement" in its document on "Criminal Threats to the Canadian Petroleum Industry" (Carter 2016b; McCarthy 2012; McCarthy 2015). Harper also used the tax code to discourage environmentalists and other critics of his administration from politically challenging the government by ordering audits of the charitable status of environmental groups under the tax law to ensure they were not exceeding the permissible amount of political advocacy.

One of the most striking features of Harper's record was his eagerness to undermine the capacity not just of his political opponents but of his own government as well (Carter 2016b). He eliminated the National Roundtable on the Environment and the Economy, a prestigious government forum for nonpartisan advice. Harper reduced funding for the environment compared to other programs; as a percentage of overall federal program funding, spending on environmental programs was halved between 2008 and 2014 (Hoberg 2016). The Harper government also restricted its own scientists from commenting publicly and became notorious for "muzzling" them. In the past, it was common practice for federal research scientists to be able to talk directly to the media or to attend conferences and openly discuss science-policy issues. The Harper government changed that by centralizing communications and prohibiting scientists from engaging with the media and others outside the government without getting approval from agency communication officials (Winfield 2013). Criticism from the international science community emerged, and the new practices became the target of political mobilization, giving birth to a new nongovernmental

organization (NGO) called Evidence for Democracy and spawning headlines such as “Scientists March on Canadian Parliament” (Semeniuk 2012). Evidence-based decision-making became an issue in the 2015 election.<sup>4</sup>

### **Vacating Intergovernmental Relations**

The fourth and final essential feature of Harper’s energy and environmental record was his government’s refusal to engage directly in intergovernmental discussions. Canada’s constitution establishes a complex division of power between the federal government and the provinces. Since the 1980 National Energy Program debacle, the Canadian government has been reluctant to play a strong role in energy policy. But federal caution is unlikely to be effective at fostering the country’s emergence as an “energy superpower,” nor is it likely to be productive in resolving complex issues requiring difficult choices with strong regional distributional consequences. Harper’s unwillingness to provide national leadership on these critical issues, driven in large part by his decentralist ideology, stymied effective policy and national conflict resolution.

The leadership vacuum resulting from Harper’s unwillingness to engage with the provinces was evident in both climate and energy policy. On climate, Harper’s goal was to evade meaningful policy, so the lack of engagement was at least consistent with his policy goals in the short term. His unwillingness to engage on energy issues is more puzzling. As early as 2007, initiatives began to emerge, both among the provinces and within civil society, to advance a national energy strategy of some kind. The initiatives began to take on momentum in 2012 when Alberta, anxious to create conditions for pipeline expansion, took on a leadership role. But Alberta’s interest in oil sands expansion was not consistent with the interests of Ontario, Quebec, and British Columbia, which were keen to show leadership on fighting climate change. The premiers of British Columbia and Alberta ended up in a bitter conflict in 2012 over the Northern Gateway pipeline, yet Harper simply stood on the sidelines (Gattinger 2012). In July 2015, the provinces did succeed in producing a document called the *Canadian Energy Strategy* (Council of the Federation 2015), but it was too vague to resolve any of the enduring conflicts that characterized the Harper era and seems to have been quickly forgotten.



### Harper's Climate Policy Evasion

Harper's record is one of evading meaningful policy actions to tackle climate change.<sup>5</sup> He came into office in 2006 criticizing the previous Liberal government for agreeing to targets without a plan to attain them, and he promised to develop a "made in Canada" policy. In May 2006, Environment Minister Rona Ambrose announced that it would be "impossible for Canada to reach its Kyoto targets" (CBC 2006), setting the stage for Canada's formal withdrawal from the Kyoto Protocol five years later.

The Harper administration replaced the nation's Kyoto Protocol commitment to reduce emissions by 6% below 1990 levels by 2012 with a new goal of a 20% reduction below 2006 levels by 2020 (equivalent to 2% below 1990 levels) (Harrison 2012). In April 2007, it proposed its "Turning the Corner" plan, which was a regulatory approach requiring that large emitters reduce their carbon pollution per unit of production by a specified percentage each year. That proposed plan was perhaps the most ambitious action on climate change ever proposed by the Harper government, under then environment minister John Baird. The plan was never implemented, however, and instead Harper abandoned any ambition to undertake meaningful climate action.

During the Copenhagen rounds of climate talks in 2009, Harper abandoned his "made in Canada" rhetoric for deference to the position of the United States. In January 2010, then environment minister Jim Prentice announced Canada's new national target—a 17% reduction below 2005 levels by 2020. Not only was that target weaker than the previously announced 6% reduction below 1990 levels (2020 emissions would be 6% higher), but the new position was striking for how it tied itself to US actions: the target was "to be aligned with the final economy-wide emissions target of the United States in enacted legislation." In his Calgary speech announcing the new targets, Prentice stated, "Our determination to harmonize our climate change policy with that of the United States also extends beyond greenhouse gas emission targets: we need to proceed even further in aligning our regulations. . . . [W]e will only adopt a cap-and-trade regime if the United States signals that it wants to do the same. Our position on harmonization applies equally to regulation. . . . Canada can go down either road—cap-and-trade or regulation—but we will go down neither road alone" (Fekete 2010).

In 2010, the legislative effort in the United States to develop a cap-and-trade program died in the US Senate (Lizza 2010). As Republican control of

Congress increased and environmental politics (like everything else American) became more polarized, President Barack Obama's only choice was to use his regulatory authority under the existing Clean Air Act. As president, his two most important areas of authority over greenhouse gases were regulation of coal-fired power plants and automobiles, where updating regulations was already authorized by the Clean Air Act. Recognizing that cap and trade was dead in the United States, the Harper government committed to pursuing regulations focusing on the three most substantial components of Canada's emissions: coal-fired power plants, the oil and gas industry, and automobiles.

Harper actually got out ahead of the US government in adopting regulations for coal-fired electricity. In 2012, Ottawa enacted regulations (to be brought into force in 2015) for new coal-fired power plants. The regulations effectively banned new coal-fired power plants that did not capture and sequester their carbon. The problem, however, was that the regulations would not affect existing power plants until they came to the end of their life, in 2030. Nothing in the regulations required or encouraged existing coal-fired plants to be shut down (Dion, Sawyer, and Gass 2014). When it came to automobiles, the Harper government—following a long tradition of Canadian governments—chose to adopt the new US vehicle standards adopted by the Obama administration in 2012. Given the integrated nature of the North American vehicle market, it would have been both costly and disruptive for Canada *not* to adopt the new standards. This action—following the US lead on auto regulations—was the single most consequential action by the Harper government in reducing greenhouse gas emissions.

In contrast to the coal and vehicle sectors, where Harper did at least enact some regulations, he never enacted regulations on Canada's fastest-growing GHG sector, the oil and gas industry. Harper's commitment to develop GHG standards for the oil and gas sector dates back to 2007. It was the third pillar in the government's regulatory approach and became salient as the Keystone XL controversy with the United States increasingly focused on the climate implications of oil sands expansion and Canada's lax climate policies.

While a regulatory proposal was never published, it was widely circulated that the Canadian government was considering a proposal to go beyond Alberta's oil sands GHG regulation. The Alberta regulation required emitters to reduce pollution per barrel 12% below certain emission targets, and if they couldn't meet that, pay C\$15 a tonne for the amount in excess of that target.

The Harper government's proposal was to increase the emission reduction to 30% and increase the penalty for not meeting that to C\$30 per tonne (Hoberg 2016), but it never enacted that proposal or any other GHG rule for the oil sands. Initially, Harper justified his reluctance by stating that the United States had yet to enact similar recommendations. Shortly after that justification had been shown to be false (Wingrove 2014), the price of oil began its spectacular decline. In December 2014, Harper essentially closed the book on the possibility of issuing a regulation, stating, "Under the current circumstances of the oil and gas sector, it would be crazy, it would be crazy economic policy to do unilateral penalties on that sector. We are clearly not going to do it" (McCarthy 2014b).

When the sector was booming and the price of oil soaring, Harper didn't regulate GHG emissions from the oil sands. When the price of oil collapsed, he didn't either. Harper never acted to address Canada's fastest-growing source of emissions and the single biggest symbol, domestically and internationally, of his government's climate evasions. He did enact regulations on future coal plants that would have no impact until 2030, and he did adopt US regulations for the auto sector. As a result, Canadian climate policy has lagged behind those of other countries and became a potent symbol of the Harper government's poor environmental record. In an international comparison of climate policy at the end of the Harper era, Canada ranked a very poor 56th of the 61 countries measured. Of OECD countries, only Korea, Japan, and Australia ranked lower (Burck, Marten, and Bals 2016).

## Conclusion

Policy conflict is in part the conflict of ideas. The story of the battle over the oil sands reflects clashing worldviews between those who see the oil sands as an engine of prosperity and those who see them as destructive to the environment and Aboriginal cultures. Discourse on the pipeline conflicts reflects these same dynamics, as chapters 4–7 will demonstrate. Policy conflicts occur within a set of institutions that set the rules for decision-making, but strategic actors also struggle to redefine those rules to gain relative advantage over their adversaries. The following pipeline cases are filled with examples of this "politics of structure."

Through 2015, environmental policies in the oil sands were clearly inadequate. Tailings policies have been a failure, promising land-use policies

have only been partly implemented, and the viability of boreal caribou populations in the region is at grave risk. Climate policies during the Harper era made Canada a laggard internationally, and Canada's poor climate record contributed to the opposition to pipelines at home and across the border in the United States. Alberta's heavy dependence on the oil sands for jobs, income, wealth, and government revenues contributed directly to its government's reluctance to pursue more-effective environmental policies. Canada's institutional culture of federal deference to provinces, especially on Albertan energy in the wake of the National Energy Program debacle, discouraged the federal government from compensating for Alberta's regulatory reluctance even when, prior to 2006, it was controlled by a party that might have had an inclination to do so. The elections of 2015—the Notley NDP in Alberta and the Trudeau Liberals nationally—created the promise of significant policy change. This shifting post-2015 policy landscape will be described in the chapters to come and assessed in chapter 8.

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# **The Resistance Dilemma**

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