The Immediate and Lasting Impact of the Inquiry into the Construction of a Pipeline in the Mackenzie Valley, 1974-77

Frances Abele[1]

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Introduction

Indigenous people have achieved a peaceful revolution in northern Canada, changing the political map of the country and permanently adjusting the political balance of power in the north. In a generation, northern Indigenous people moved from marginalization to the centre of political life.[2] The 1974-77 Inquiry into the Construction of a Pipeline in the Mackenzie Valley led by Thomas Berger marked an important moment in this broad political transformation, which was both institutional and attitudinal.

The Berger Inquiry drew very wide and deep participation in northern Canada, probably the first (but by no means the last) time that most of the residents of the north were part of a common public policy debate. While it was in session, the Inquiry also held the attention of the southern Canadian public. It attracted the participation of southern Canadian political groups, including economic nationalists, environmentalists, church groups, and social justice coalitions, in addition to a number of unaffiliated Canadian citizens. It was a powerful focus of citizen engagement for an academic and political generation. In the North, many of the Indigenous and non-Indigenous activists who were drawn into the process in the 1970s remain active, often in positions of power and influence.

The Inquiry's report, *Northern Frontier, Northern Homeland* established an enduring paradigm for public understanding of the meaning of northern development, captured in the title of the report. Before the Inquiry, northern development policy was understood, rather straightforwardly, to mean the orderly extension of the natural resource frontier; afterwards it was necessary to take into account that what was seen as a frontier from the southern perspective was also the homeland of Indigenous people who did not at all share this vision. Over thirty years since the Inquiry's report was released, the binary paradigm captured in its title still

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[1] Warm thanks to Katherine Graham and Peter Usher, and to the editors of this volume, for helping me to improve this chapter.

[2] The dramatic story of how this was achieved is too complex to be adequately recounted here. See Dacks 1981, and for a recently produced historical overview, Abele, Courchene, St.-Hilaire and Seidle 2009. Although the Berger Inquiry likely made a difference to the Indigenous people of Yukon and to a lesser extent, Indigenous people in the rest of the North, for simplicity my focus here is upon the Northwest Territories, where the inquiry was based.

resonates, almost taken for granted in official approaches and academic thinking about the North.

Many of the institutional innovations of the Berger Inquiry were adopted in other processes of public consultation, particularly the environmental assessment processes that were introduced in the Inquiry's aftermath. Innovations included the practices of taking the hearings to northern communities, funding intervenors, providing interpretation so that individuals could testify in their own language, open availability of information tabled by the proponent, and encouraging press coverage. The Inquiry's expansive interpretation of its mandate, to encompass understanding the connections among social, economic, cultural and political development, also had an impact. And though the mandates of future regulatory processes were to be more constrained, all were developed with respect to the practices of the Berger Inquiry.[3]

The Inquiry made two major recommendations: (1) for environmental reasons, there should never be a pipeline on the northern coast of Yukon, and (2) there should be no pipeline constructed in the Mackenzie Valley for ten years, to permit time for Indigenous land rights to be settled and appropriate benefits programs to be put in place.[4] In the event, no pipeline has been built on the northern coast of Yukon. Just three years after Berger reported, however, the federal Cabinet approved construction of an oil pipeline from Norman Wells to Zama, in northern Alberta, passing through some of the same Dene territory that the gas line would have.[5] Although there is a widespread view to the contrary, especially in the North, it is unlikely that the Inquiry's reasoning or recommendations halted the Mackenzie Gas pipeline. By the end of the 1970s, the world energy picture had changed sufficiently that immediate construction of a large diameter gas pipeline to bring offshore arctic gas to southern markets was no longer attractive. The Inquiry itself, perhaps, delayed a decision long enough for the economic case for construction to dissipate.

It is virtually impossible to assess the relative weight of the various sources of social and political change underway in the north during the 1970s. There is no doubt that the Inquiry was an important part of a broader political process. This included the rising of a new generation of well-educated and bilingual Indigenous people who could represent community interests and their objections to external pressures on their way of life. While northern Indigenous people would certainly have organized and mobilized in the absence of the Berger inquiry, Inquiry provided an

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[3] Robert Page, *Northern Development: The Canadian Dilemma.* Toronto: McClelland and Stewart, 1992;Kim Stanton, "Truth Commissions and Public Inquiries: Addressing Historical Injustices in Established Democracies" Doctoral dissertation. University of Toronto, Faculty of Law, 2010, pp 178-9.

[4] The major recommendations, with rationale, appear in Volume One of the Inquiry report. An entire volume of specific recommendations (recommended terms and conditions should a pipeline be built) was released several months after the May 1977 publication of Volume One.

[5] Norman Wells is about mid-way between the headwaters of the Mackenzie River and its terminus in the Arctic Ocean; thus the Norman Wells oil pipeline is very roughly half the length of the proposed gas line.

institutional focus and, for a time, the funding required for internal communication and research. The Inquiry did not invent but strengthened and elaborated processes for community-based, public deliberation that were reflected in subsequent formal environmental assessment processes but also in the politics of the Northwest Territories. It is this broader impact for which the Berger Inquiry is rightly renowned and regarded as a milestone in northern political and economic development. In the pages that follow, I attempt to justify the claims I have just made for the Inquiry's impact by means of a structured narrative that treats the context, ideas, institutions, actors and relationships implicated in the story.

Context: Gathering Forces of Change in Northern Canada

The Indigenous peoples of the Mackenzie River Valley and Delta are the Inuvialuit, Dene, and Métis. Each have a distinctive history and a somewhat different experience of contact with outsiders. Inuvialuit are an Inuit people who live on the coastal mainland and neighbouring islands where the Mackenzie River flows into the Arctic Ocean. Very early they found means to continue their subsistence harvest while they became successful traders, whalers and trappers. Despite the ravages of influenza and other diseases, they managed to live both in collaboration with and, when they chose, apart from the whalers and traders who entered their lands and waters starting in the 18th century. In common with Inuit across the North, they were never subject to the Indian Act and until modern times did not seek treaties with newcomers.[6]

The Dene homelands lie in the northwestern half (approximately) of the Northwest Territories, as well as portions of northern British Columbia, Alberta, Saskatchewan and Manitoba. While all identifying as Dene, they speak five different languages and have strong regional affiliations.[7] They began to seek treaties with in-comers soon after it became clear that increasing numbers of visitors were likely to strain local resources to an unsustainable level. The Dene saw treaties as a means of protecting their access to the lands and resources upon which their livelihood depended.[8] Preoccupied with east-west nation-building, the federal government was for many years disinterested in negotiating treaties for northern, non-agricultural lands. When treaties were finally negotiated in the northlands, they were prompted by external interest in mineral resource development. The Dene signatories hoped by means of the treaties to regulate the impact of migration and development; the Crown representatives sought to clear the way for the same. Crown objectives were met, in the short term.

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[6] Usher 1970; Stern 2005 provides a brief summary of Inuvialuit history and a snapshot of current conditions.

[7] Dene Nation 1984.

[8] Abel 2005, Coates and Morrison, 1986, Fumoleau 1973, Helm 2000 together provide a full discussion of Dominion government and Indigenous motivations and understandings during treaty negotiations, and an account of recent Dene history. Coates and Morrison show the interconnections among Treaties 8, 9, 10, 11 and a major adhesion to Treaty 5 –all the result of Dominion government concerns to open the way for northern mineral development.

Contrary to the case in southern Canada, in most of the NWT, Métis and Dene lived closely together and they were not always distinguished at treaty-making. The close connections among Dene and Métis in the northern Mackenzie Valley is reflected in the fact that Métis are parties to two of the comprehensive claims agreements (Gwitch'in and Sahtu). There are also Metis living in the Northwest Territories who are descendents of Red River Métis, and who so identify.[9]

For the Dene, Treaties 8 (1898) and 11 (1921) meant more contact with external authorities (including annual Treaty parties at which the treaties were symbolically affirmed), and enforcement of game laws, often in a fashion that disrupted traditional harvesting practices of both Dene and Métis. The game preserves they requested were indeed created, but these were separate and relatively small parcels; they did not provide all hunters with adequate or equitable access.

The Second World War brought many more disruptions. The threat of a war in the north Pacific led the United States to build the Alaska Highway and the Canol pipeline, the latter to bring strategic oil reserves from Norman Wells on the Mackenzie River west through depots in the Yukon to Alaska. These major construction projects brought large numbers of service personnel north, and each were built through Dene and other Indigenous peoples' territory.[10] After the war, the expansion of the welfare state and of the federal presence in the north meant that there were still more sustained interventions in Dene and Métis societies, including the introduction of compulsory schooling, more health care, social housing and measures to encourage Indigenous peoples across the north to settle in communities.[11] These long-term pressures and outstanding treaty issues, and the growing Indigenous peoples' movement in southern Canada in the 1950s and 1960s, created the necessary conditions for mobilization in the communities of the Mackenzie Valley.

Pressures of another sort had been mounting in Ottawa.[12] In Canada as in many countries, the end of the Second World War marked a new and more active phase in the role for the state in social provision and in economic development. At the same time, the War had increased integration of the American and Canadian economies, and after the war sustained United States demand for energy and natural resources meant the rapid development of the Canadian mid-north. There were also military connections between Canada and the US, born out of the common war effort and then the Cold War fears of the Soviet Union. These kept US forces in the Canadian north well after the peace in 1945.

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[9] For more detail, see http://www.nwtmetisnation.ca/
[10] Coates and Morrison 1992.
[11] This is a very quick summary of a broad process of social change that affected the entire Canadian north. For more explanation, see Rea 1968 and Snowshoe 1977, as well as Abele 2009 and the references therein.
[12] A longer account of these changes appears in Abele 2009. For deeper analysis of the events described in this and the next paragraph, see Rea 1968, Rowley 1978, Grant 1988, Piper 2009, RCAP 1994.

For federal northern policy, there were a number of consequences. First, United States military personnel in the Canadian north were 'welcomed' with a certain unease. With sovereignty considerations in mind, it was deemed wise to develop a stronger Canadian state presence in northern Canada. Secondly, a stronger state presence meant increased southern visibility of the conditions of northern Indigenous people, which in some cases were very difficult.[13] Where before the war provision of health care and other services to northern Indigenous peoples was hardly countenanced, after the war , with expanding welfare state provisions in the country as a whole, active interventions were made. A third consequence of the new postwar condition was perhaps best expressed in Prime Minister John Diefenbaker's slogan, "Roads to Resources." The vast northland would at last be opened to development, with the state providing infrastructure and incentives to private development of northern resources.[14]

The apogee of this approach to northern development was reached in the mid-1960s, by which time most Indigenous people across the territorial north had been induced to settle in new social housing in communities where the children were attending school, and the Department of Indian Affairs and Northern Development was playing a dominant role in northern development planning. Economic development policy turned upon state promotion and subsidy of private development of resource development, while northern social policy was interventionist to the point of social engineering. An array of programs and measures were designed to prepare northern Indigenous people for life in towns and the wage employment that would be provided by corporations engaged in resource development.

By 1968, the brightest beam in official Ottawa eyes was the proposal to build a pipeline in the Mackenzie Valley.[15] The Mackenzie Valley pipeline proposal was enmeshed in a number of considerations of foreign policy and Canada-US relations. Oil discoveries off the north coast of Alaska raised the issue of transportation, and Canadian officials were anxious to promote a pipeline through Canadian territory to bring the oil to southern markets. In close collaboration with industry, officials encouraged the formation of a coalition of large corporations to put forward the Canadian proposal and prepared guidelines for this project premised on ultimate National Energy Board approval. Also in 1968, anxieties about Canadian Arctic sovereignty were raised by the transit of a United States submarine, the Manhattan, through the Northwest Passage without prior Canadian permission. This challenge was managed, but it underlined the importance of an assertive federal presence in

[13] Exogenous diseases had been devastating northern societies for decades, international fur markets had been collapsing, and some groups of people had been displaced or induced to relocate by the military enterprises of the Second World War.
[14] Rea 1968, Grant 1988, Abel 2005, Piper 2009. Although Diefenbaker's election slogan is well-known, the formation of modern northern development policy dates from the time of Louis St. Laurent. Robertson 2000.
[15] Dosman 1975 describes the internal processes and collaboration with industry that led to the Mackenzie Valley pipeline proposal and subsequent public reaction.

the North --not to prohibit the American presence but to enforce a level of cooperation and to deter unilateral U.S. actions.[16]

The Mackenzie Valley pipeline, oil or gas, was a response to this imperative. It was seen also as a major economic opportunity and a logical aspect of northern infrastructure development. The Mackenzie Valley pipeline would be the centrepiece of a new transportation corridor which would open the far north to the industrial economy. Besides benefitting the national economy, the Mackenzie Valley pipeline was expected to generate employment and business opportunities in the north and to form the keystone for future development. The project was announced in this optimistic spirit, and construction was begun on the road system to support pipeline construction.

The pipeline project, however, proved to be a step too far. Dene, Métis and Inuvialuit had begun to organize politically in the 1950s and 1960s in response to the increased level of postwar state intervention. Some of their concerns were longstanding (inappropriate game law enforcement) while others were a response to the social engineering measures implemented after the Second World War. An overarching concern was the failure of the federal government to respect what the Indigenous people understood to be the most important terms of the treaties.[17] When they learned of the proposal to build a pipeline the length of the Mackenzie Valley on Dene, Metis and Inuvialuit land, they decided to resist. In 1971, sixteen Dene chiefs applied to file a caveat on the lands through which the pipeline was to be built, arguing that the written version of the treaty that the Crown claimed opened their lands to development did not reflect the understanding of the signatories. Presented with testimony from individuals who had been present at the signing of Treaty 11 in the early 1920s, Justice Morrow of the Supreme Court of the Northwest Territories found that "there was sufficient doubt on the facts that aboriginal title was existing" to justify the caveat.[18] The federal appeal of this decision to the Supreme Court of Canada was successful, but by then, the Morrow decision had halted development momentum and added to the pressure to recognize Indigenous land rights that was already mounting as a result of other court actions.

As all this was occurring in the early 1970s, the circumstances faced by the federal Cabinet were unusual and favourable to innovation. First, relations with Indigenous

[16] Dosman 1976. On the considerations facing the Pearson and Trudeau Cabinets during this period, see English 2009, Robertson 2000.

[17] Abele 2000 discusses the global repercussions of the end of the Second World War, and attendant revulsion against ethnic warfare and genocide, as well as returning veterans, on the Indigenous movements in several countries. In Canada, many Indigenous veterans became activists, and Parliament revised the Indian Act to remove some of the more oppressive and undemocratic provisions.

[18] Paulette et al. and Registrar of Land Titles. (1973), 39 D.L.R.(3d) 45. The federal appeal to the Supreme Court of Canada (SCC) was partially successful, as the SCC ruled that a caveat could not be filed, but the SCC did not rule on the matter of the treaty, or "aboriginal" rights.

peoples across Canada were in crisis.[19] The 1969 White Paper on Indian Policy, intended to bring the liberal and reforming values of the new Trudeau government to Indian affairs, had the perverse effect of galvanizing a Canada-wide Aboriginal movement against the White Paper's main proposals. By 1973, the ideas that animated the White Paper had been abrogated, with the federal government backing away from plans to consign the historic treaties to the dustbin of history, and announcing willingness to negotiate any outstanding "native claims." This was a moment in modern Canadian history at which all matters of Crown-Indigenous relations were highly visible, sensitive and fluid. The federal claim on Indigenous territories where no treaties had been negotiated was in doubt, while many treaties were in question due to federal non-compliance and some other irregularities.[20]

The second important consideration arose out of electoral politics. After the triumphant Liberal victory of 1968, the 1972 general election, returned a minority Liberal government, sustained in power by the support of the New Democratic Party –a party that then had very strong doubts about the growing integration of the Canadian resource economy with the US industrial machine, and as well as a commitment to Aboriginal rights.

A third complicating factor was the sudden global shudder created by the 1973 OPEC oil embargo. In the growing global energy crisis, Canadian leaders and many citizens saw an imperative for Canada to reconsider its energy strategy, and particularly to attend to matters of domestic energy security. Through the mid-1970s federal government concerns shifted between anxiety over preserving Canadian producers' access to US markets to interest in securing an adequate domestic supply.[21]

Fourth, the American response to the energy crisis, and in particular, growing interest in northern energy resources and transportation options, coupled with Canadian sovereignty concerns arising from the voyage of the *Manhattan*, raised nationalist concerns in Ottawa and also in the Canadian public. Citizens' groups were formed to advocate for a distinct Canadian interest in the energy and other industrial sectors.[22]

Finally, the new environmentalist movement was drawing attention to the dangers of pollution from the production and transportation of Arctic energy resources,

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[19] The best discussion of the 1969-75 period is still Weaver 1975. The political protests of the national Indigenous movement had an important effect in changing federal policy, but to the Prime Minister, it is likely that their victories in court, particularly *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R. 1 were even more influential. It is interesting, and probably not accidental, that the Native rights lawyer who argued the Calder case for the Nisga'a was Thomas Berger. See also Dosman 1975 p 194.

[20] On this point, see Fumoleau 1973, and details below.

[21] Doern and Toner 1985. English 2009 provides an interesting account of the impact of the oil shock on the Trudeau Cabinet. See also Dacks 1981, especially pp 125-167 on the effects of the world energy crisis on Canadian policy, and Dosman 1975 p. 185.

[22] Page 1986.

expressed in the formation of the Canadian Arctic Resources Committee (CARC) in May 1972, a coalition of experts from a number of disciplines. CARC's purpose was to encourage debate and analysis about northern energy development and in doing so, it joined other, more venerable environmental organizations such as the Canadian Nature Federation.[23]

On Dosman's account, the major preoccupations in official Ottawa were with managing American challenges to Canadian sovereignty while promoting American markets for Canadian energy, and the resulting tension when Canadian security of supply became an issue. In these circumstances, the Dene, Metis and Inuvialuit opposition to the Mackenzie Valley pipeline resonated --as much as they surprised officials who did not expect a serious domestic obstacle to their plans. Rather than pressing ahead with the project, or postponing it, Cabinet decided to hold a public inquiry:[24]

> to inquire into and report upon the terms and conditions that should be imposed in respect of any right-of-way that might be granted across Crown lands for the purposes of the proposed Mackenzie Valley pipeline having regard to
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> > (a) the social, environmental and economic impact regionally, of the construction, operation and subsequent abandonment of the proposed pipeline in the Yukon and the Northwest Territories, and
> > (b) any proposals to meet the specific environmental and social concerns set out in the Expanded Guidelines for Northern Pipelines as tabled in the House of Commons on June 28, 1972 by the Minister.

It seems likely that the government's minority position, and the pivotal position of the NDP, influenced this decision, and perhaps influenced also the selection of Thomas Berger, a well-known Indigenous rights lawyer and British Columbia justice, to lead the inquiry. Then Minister of Indian Affairs Jean Chretien has stated that Mr. Berger was his personal choice, and one that was supported by Prime Minister Trudeau (who had been impressed by Berger's arguments in the Calder case) and by Energy minister Donald MacDonald. While the influence of the NDP cannot be discounted, it is clear that even in 1972 when Mr. Berger was appointed, there were sufficient contextual uncertainties to suggest that a credible public inquiry would be in the country's long term interest --as well as in the pragmatic short term interest of the minority government. At this stage, of course, none of the decision-makers could have anticipated the long-term impact of the inquiry.[25]

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[23] The other organizations were the Federation of Ontario Naturalists, Pollution Probe and the Candian Environmental Law Association. All of these organizations were represented at the Inquiry through counsel for CARC.
[24] PC 1974-641. The mandate is reprinted in Berger 1977, Volume One.
[25] Stanton 2009 pp 149-50 has an excellent discussion of the political context that led to Berger's selection, noting also that once a decision to hold an inquiry had been taken, in the aftermath of the White Paper controversy it would have been essential to appoint a credible Commissioner.

Ideas: The Inquiry as a Prism

One of the most important effects of the Mackenzie Valley pipeline Inquiry *as a social process* was that it brought into public view the wide divide between the ideas about northern development held by the north's permanent, Indigenous residents, and the ideas then current in Ottawa (and probably much of southern Canada). This confrontation of views is well-captured in the title of the final report, *Northern Frontier, Northern Homeland.*

Indigenous people who spoke to the Inquiry were virtually unanimous in their opposition to the pipeline being constructed through their territory in advance of any arrangements that would secure sufficient control over the project to protect their lands, and would ensure that they would realize some benefits. Community members who testified before the Inquiry often recounted their experiences with prior government initiatives, and their objections to these being introduced without consultation or consent. Young and old, women and men, from all regions, they asserted their rights to govern themselves and to protect the resources upon which they depended, in the land that had been their homeland, and their responsibility, since a time out of mind.[26]

The starkest contrast to this view is found in federal policy of the day, reiterated in ministerial speeches and other pronouncements, and in the perspective shared by industry representatives. This view assumed that publicly promoted and subsidized development of non-renewable resources would not only benefit the national economy, but also create in the North a wage-based economy that would provide jobs and business opportunities for residents while it generated tax revenues to support public infrastructure. The North was seen as Canada's last developmental frontier, available to be incorporated in the national economy as the West had been following the National Policy of 1879. As had been the case then, it was assumed that the Indigenous land-based economy was due to be replaced by industrial means of generating wealth; Indigenous people themselves were to be pushed aside, or incorporated. [27]

While the federal view was well-understood by northerners, it is probably safe to assume that the depth and extent of most northern Indigenous residents' opposition to the pipeline, and their reasons for this, were not fully appreciated in the corridors of power in Ottawa before they were broadcast through the Inquiry process. That this should be the effect of the Inquiry was a conscious objective of Berger and his staff. They had a commitment to the ideal of full citizen participation, the practical execution of which is discussed in more detail in the next section.

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[26] The best source for these claims are the transcripts of the testimony to the Inquiry. Some of these are excerpted in Watkins 1977 and O'Malley 1976; others are discussed in Rushforth 1994 and see Stanton 2009 p 133.
[27]Abele 2009 provides an explanation of this point. See also Rea 1968 and Piper 2009.

Besides the northern frontier, northern homeland dichotomy, a number of other important ideas surfaced in the Inquiry's hearings –too many, in fact, to be adequately discussed here. The Berger Inquiry was like a public policy prism, catching all of the beams of light emanating from the socially activist period of the early 1970s in Canada. One example is the analysis provided by the Indian Brotherhood of the Northwest Territories (later the Dene Nation). The Brotherhood presented an analysis of the pipeline and its consequences that drew connections between the history of colonization as it was emerging in the community testimony and their history as a fourth world people, confronting the same external forces as oppressed peoples around the world.[28]

In a somewhat compatible line of argument, economic nationalists questioned the wisdom of a development strategy for Canada premised upon energy exports to the United States, arguing that the linkages were not there for balanced development and, after 1973 especially, raising concerns about security of domestic supply. Former Liberal Cabinet minister and university professor Eric Kierans questioned the timing and financing of the project, and its benefit to Canada.[29]

The testimony to the Inquiry, and the report itself, also record one of the first sustained public debates on the nature of industrial development in modern North American history. This is expressed in another dichotomy, as the conflict between industrialization and environmental conservation. Northern poet Jim Green (then a settlement manager) spoke for many non-Aboriginal people of the time when he stated:

> ...The pipeline is the latest example of a long series of mistakes that have happened on this land when some people think more about money than they do about people. The pipeline is the most recent step taken to destroy what little is left of my home. It began with my ancestors taking the cream off the top of the European continent. Then they came to colonize this land for greater riches. More money faster. Then came the whole process of manifest destiny. God is on our side, the Indians are savages, never did anything for the country --and on and on-- until today, and look what's left.[30]

Green's way of framing the issue was in direct contrast to that put forward by the pipeline proponents. Pierre Genest, lawyer for the pipeline company, stated:

[28] Some key organizational and community testimony in this vein, as well as analyses presented to Berger by academics and others who were engaged by the debates, was published in Watkins 1977. The Dene Declaration: Statement of Rights, reflecting the Indian Brotherhood's analysis, was passed at the Second Joint General Assembly of the Indian Brotherhood of the NWT and the Metis Association of the NWT on 19 July 1975, at Fort Simpson. The Inquiry was still in session. The Dene Declaration appears in Appendix B of this paper.

[29] Watkins 1977; Page 1986. See Eric Kierans, "Canadians Question the Proposed Pipeline" CBC Archives, broadcast January 28, 1973, filed at http://archives.cbc.ca/politics/rights_freedoms/topics/295/.

[30] Quoted in O'Malley 1976 p 268.

> ...the hard fact is that without some kind of economic development, this land --this northern land, enormous, beautiful and awe-inspiring as it is-- is not now supporting the population of the Northwest Territories. The hard fact is that many northerners whose forebearers lived off the land do not want to go back to the traditional means of making a livelihood. The hard fact is that at present there is insufficient economic activity in the North to give the opportunity for all those who seek wage employment to fulfill themselves in these territories....[31]

Chief Frank T'Seleie of Fort Good Hope told Justice Berger that

> There will be no pipeline because we, the Dene people, will force your own nation to realize that you would lose too much if you ever allowed these plans to proceed. It is your concern about your future, as well as our concern about ours, that will stop the pipeline.....

Addressing Bob Blair, President of Foothills Pipeline, T'Seleie stated

> You are coming to destroy a people that have a history of thirty thousand years. Why? For twenty yeras of gas? Are you really that insane? The original General Custer was exactly that insane. You still have a chance to learn, a chance to be remembered by history as something other than a fool bent on destroying everything he touched.... You can destroy my nation, Mr. Blair, or you could be a great help to give us our freedom. Which choice to you make, Mr. Blair? Which choice do you make for your children and mine?
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> ...Our Dene nation is like this great river. It has been flowing before any of us can remember. We take our strength and our wisdom and our ways from the flow and direction that has been established for us by ancestors we never knew, ancestors of a thousand years ago. Their wisdom flows through us to our children and our grandchildren to generations we will never know. We will live out our lives as we must and we will die in peace because we will know that our people and this river will flow on after us.[32]

While T'Seleie's words were unusually confrontational, his themes of resistance, solidarity and generational continuity, and his explanation of the place of humans in creation, may be found in much of the testimony by Dene community members before Berger.

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[31] O'Malley p1-2.

[32] Reprinted in Watkins 1977 p 13, 16-7. This selection of passages from among thousands of pages of verbatim testimony is inevitably misleading and should not be seen as representative. The words quoted here are chosen to make a particular point. Watkins 1977 and O'Malley 1976 contain many more, longer excerpts, but even these do not do justice to the rich variety of views Berger heard.

The Inquiry report reflects upon all of these points of view, resolving them, in a way, by relating land use conflicts directly to Indigenous land rights:[33]

> We have observed the passage of the white man from the eastern seaboard of North America into the great plains and yet farther west. He has penetrated the North, but his occupation of the North is not yet complete. There are those with an abiding faith in technology, who believe that technology can overcome all environmental problems. They believe that there is no point at which the imperatives of industrial development cannot be reconciled with environmental values. But there are other who believe that industrial development must be slowed or halted if we are to preserve the environment.
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> ….A particular idea of progress is firmly embedded in our economic system and in the national consciousness, but there is also in Canada a strong identification with the values of the wilderness and of the land itself. …The judgment of this inquiry must, therefore, recognize at least two sets of powerful, historically entrenched –but conflicting—attitudes and values.
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> ….This opposition of views is particularly clear in the North. The northern native people, along with many other witnesses at the Inquiry, insisted that th eland they have long depended upon will be injured by the construction of a pipeline and the establishment of an energy corridor. …

Although there are dozens of specific issues addressed, with recommendations attached, in the "terms and conditions" set out in the second volume of the report, it is probably fair to say that the Berger report's main argument –and its main political impact-- is contained in these few large ideas: The North is a homeland, and it is the homeland of people who have understood its stewardship, practicing this for millennia. Development plans for the north, made in southern centres of political and corporate power, repeat the pattern of development that has appropriated Indigenous peoples' land and radically transformed, or despoiled, it. In light of this framing view, the report's main recommendations --for a ban on development in the ecologically sensitive Yukon north slope, and a ten year moratorium on development elsewhere to provide breathing space in which to prepare for development that is seen as inevitable—seem moderate in the extreme.

Institutions: A Moment for Innovation

The Berger Inquiry was neither the first nor the last of federally-funded inquiries and commissions dispatched to the North to resolve economic and political

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[33] Berger 1977 Volume One p 29.

dilemmas.[34] It was, however, the most innovative and easily the most widely known. This has something to do with the times, but a great deal to do with the way in which the Inquiry set about its business.[35]

The Inquiry's report documents the measures taken to ensure that residents of the dispersed small communities in the pipeline's path had an opportunity to understand what was in prospect and to make their views known. Intervenor funding was provided to non-governmental organizations representing people who had a stake in the issue; they had the finances and the time to prepare their members for the arrival of the Commission in each community. This was particularly important for the new Aboriginal organizations, none of which was more than a few years old.

Two sorts of hearings were held. For community hearings, the Inquiry staff and Commissioner travelled to settlements throughout the development corridor, hearing from community members in informal settings, sometimes outside, with time allowed for longer interventions, aided by simultaneous interpretation. Citizens were able to testify in their own languages, with sufficient time for explanation and without the distorting effect of sometimes hostile cross-examination. In addition, technical hearings of expert witnesses and formal organizations were held in major centres. At these hearings more conventional, formal rules of participation applied.

Inquiry staff took extraordinary measures to ensure that there was full and sustained media coverage of the hearings in northern and southern Canada. The Canadian Broadcasting Corporation's Northern Service (as it was then known) committed major resources to covering the Inquiry. Managers dispatched a crew of Indigenous language as well English and French reporters to cover the hearings. The hearings themselves were radio broadcast live, while reporters speaking in all of the relevant languages emphasized the highlights. While the hearings were in progress, CBC national television carried frequent stories from the north, with striking visual images from then relatively exotic northern locations. The National Film Board documented the Inquiry, and several books were written, including some for a popular audience, by journalists.[36] All of this coverage served the ideals of wide public discussion and citizen participation well, and, not coincidentally, it ensured that the Inquiry and its final recommendations would not be ignored. Although it is difficult to prove this observation, it seems very likely t hat the sustained media coverage had an important effect on Indigenous political development –providing Dene, Metis and Inuvialuit, as well as their northern co-residents, with the means to have a long and revealing public discussion about the economic and political future

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[34] To mention just two examples, the Carrothers Commission (1966) held hearings in the North as part of its consideration of the development of government in the Northwest Territories, and Drury (1979) considered similar matters.

[35] See Stanton 2010 for a more detailed discussion of these issues, and a reflection on their contemporary relevance.

[36] For example, O'Malley 1976, National Film Board, *The Inquiry Film.*

of their region.[37] It seems likely too that southern Canadian awareness of the large national issues at stake in the North was advanced.

The Mackenzie Valley Pipeline Inquiry introduced some important innovations for northern hearings, including intervenor funding programs, simultaneous Indigenous languages interpretation, and the practice of taking the Inquiry to affected communities. Some of these were later incorporated in the Federal Environmental Assessment Review practices, and (so far) they have survived to this day in successor programs and institutions.[38] Further, the Berger Inquiry hearings represented a major breakthrough in the level of northern public participation they achieved, engaging citizens to an unprecedented degree and permanently raising public expectations about their entitlement to information, engagement and respectful dialogue. The level of participation was related, no doubt, to the sharp political issues facing northerners in the 1970s, and to the mobilization of the Indigenous organizations. But participation was also encouraged by the measures mentioned earlier, and by the Inquiry's policy of openness with regard to information.[39] The Berger Inquiry introduced northerners to territory-wide public participation in discussion of fundamental issues, creating expectations and experiences that underlay many subsequent public policy processes --concerning the future constitution of the NWT, for example, discussed through the NWT Constitutional Alliance process in the early 1980s,

The Inquiry also had a more direct effect on northern political development. There is no doubt that, absent the imminent threat of the pipeline megaproject and the institutional opportunities provided by the courts and the Inquiry for opposing it, Inuvialuit, Dene and Metis would have organized. They had many long-standing concerns related to unfulfilled treaty arrangements and concerns too about recent state interventions in their family and productive lives. On the other hand, the Mackenzie Valley hearing process provided funding to northern Indigenous organizations at just the right moment to ensure their successful establishment – and the consolidation of their community base. Formed in the late 1960s and early 1970s, as Indigenous peoples' organizations were formed all over Canada, the northern organizations faced particular difficulties. In the days before the Internet, wide spread use of fax machines, affordable long distance telephone connections, and full television coverage, with most communities accessible only by water or air, organizing the potential membership was an uniquely expensive and time-

[37] Andrew Cowan, then head of the Northern Service, was a progressive journalist in the tradition of the early days of the CBC. He was aware that news media coverage of the hearings could advance political mobilization, comparing it to the role of the CBC in bringing prairie farmers together in the 1930s and 1940s.

[38] In addition to its influence on future environmental assessment processes, the Inquiry also had an international impact, influencing similar inquiries in Alaska and India. See Stanton 2009: 147 n. 625. Stanton argues also that it is likely that the practices of the Berger Inquiry influenced the design of the Residential Schools Truth and Reconciliation Commission. Stanton 2009: 151 n. 637.

[39] All information presented to the Inquiry was made public, and Commission Counsel were instructed to make their advice to the Commissioner public as soon as it was delivered. Stanton 2009: 185-6.

consuming process. Intervenor funding from the Inquiry provided each of the organizations with the means to send field-workers to each community on several visits, over a sustained period of time. It also provided a unifying issue upon which to focus organizing.

Actors: Expanding the Cast of People Who Matter

I have argued that the Berger Inquiry drew many people into its deliberations who would never otherwise have found a political voice. Many others who would not have paid attention to the dilemmas of northern development began to do so. There were from the beginning major institutional actors as well. Beginning in the late 1960s, the federal departments of Energy, Mines and Resources and Indian Affairs and Northern Development had made significant commitments of resources to preparing the way for the Mackenzie Valley Pipeline, including the conduct of a substantial research program on a wide range of technical issues related to pipeline construction. This research was provided to the Berger Inquiry and provided the primary base for many of its technical recommendations. As the Inquiry proceeded, departmental officials and their political leaders maintained a close watching brief, some surprised and some concerned by the direction that the Inquiry was taking.

The Inquiry report lists those intervenors who were represented by counsel, including the proponents (Canadian Arctic Gas Pipeline Limited and Foothills Pipe Lines Ltd.), environmental organizations (led by the Canadian Arctic Resources Committee)[40] the Indigenous organizations (Committee for Original Peoples Entitlement, Council for Yukon Indians, Indian Brotherhood of the Northwest Territories and the Metis Association of the Northwest Territories) and a number of other interested parties (Environmental Protection Board, Northwest Territories Mental Health Association, Northwest Territories Association of Municipalities, Northwest Territories Chamber of Commerce, and three producer companies: Imperial Oil Limitedé, Gulf Oil Limited, and Shell Canada Limited).

As important as the institutional interactions were, arguably the most far-reaching impact of the Inquiry was upon the lives of the people who were drawn into its ambit. In the 1970s, northern Indigenous people acted to take their place at the centre of territorial politics, permanently. The Berger Inquiry was the occasion, and perhaps, the midwife, of the birth of a new politics in the Northwest Territories. While the Inquiry was in session, northern Indigenous people, as individuals and through their representative organizations, assumed the national stage. That phase passed, but the northern impact of the Inquiry process was enduring. By listening respectfully to community members' voices, by strengthening their representative organizations, and by endorsing their considerations in its final report, the Berger Inquiry as a social process did a great deal to support the rebalancing of northern

[40] Counsel for CARC represented the Canadian Nature Federation, the Federation of Ontario Naturalists, Pollution Probe, and the Canadian Environmental Law Association). All of the intervenors represented by counsel are listed in Berger 1977 Volume One pp 203-4.

politics to include Indigenous peoples and their concerns. The Inquiry presented an opportunity to Indigenous activists, and they made the most of it.

Who were the activists? Dene, Métis and Inuvialuit leaders, usually senior male harvesters, had been representing their people's interests with outsiders for many decades. The older leadership cohort of the 1960s and 1970s were behind the formation of the new advocacy organizations of this period, but the leaders and staff of the new organizations tended to be young.[41] The Dene, Métis and Inuvialuit activists of the 1960s and 1970s were part of the large generation born after the Second World War. They were mostly bilingual and bicultural high school graduates, rooted in their own communities but also sharing knowledge and cultural preferences with other members of the "Generation of '68" who were making social change in the rest of Canada and around the world.

In the Mackenzie Valley (as in many other parts of the North) the young Indigenous activists were joined by youthful activists from elsewhere in Canada, many moving to the North as "volunteers" for the Company of Young Canadians. Some northerners also became CYC fieldworkers. Many of the CYC generation have remained in the north, raising their families there and staffing the public service.[42]

A third group of individuals were drawn into the Inquiry process –the professionals whose expertise was required. They range from the lawyers working for corporations and Indigenous organizations, to the economists and natural scientists whose expertise was hired by the corporate, environmental and Indigenous interveners to provide the Inquiry with technical and professional opinions. The names of these people, without whose work the report would not have had its scientific value, are listed in the back pages of the Berger report. Finally, some of the technical experts were university professors who later published their work, and by this means they permanently enriched northern studies scholarship in Canada.[43]

Relations: Power Shift and New Alliances

[41] Between 1968 and 1971, Indigenous people in the Northwest Territories formed the Indian Brotherhood of the Northwest Territories (later the Dene Nation), the Metis Association of the Northwest Territories and the Committee for Original Peoples Entitlement (COPE). There was substantial support among Indigenous activists to create the Indigenous equivalent of "One Big Union." COPE became the organization representing Inuvialuit, but in the beginning membership was open. For many years, the Dene Nation leadership sought to include Metis and non-status Indians among its members, and a union of the Metis Association and the Dene Nation was often discussed. The main force working against such unity was the federal government, which refused to make core funding available to organizations that did not respect the status/non-status divide.

[42] To my knowledge there is no published study of the extraordinary alliances of idealist northern and southern youth who came together in the 1970s and remained to change the politics of their region. Such a study should be done. On the CYC, see Hamilton 1970; Dickenson and Campbell 2008.

[43] Some examples are Watkins 1977, Bregha 1979, Page 1986.

A number of significant new relationships were forged during the short time that the Berger Inquiry was in session. The Inquiry had an effect *within* the communities of Inuvialuit, Dene and Métis who organized to respond. Elders and youth discussed the impact of the pipeline project, the meaning of this event in their long history, and how they should respond. Some the results of such discussions may be read in testimony before the Inquiry, where both generational differences and an overriding shared commitment to collective survival and development are evident. It is likely that participation in the Berger Inquiry assisted in the process of building the base of the new Indigenous organizations.

Secondly, the Inquiry reinforced social and sometimes familial relations among young activists from the north and the south, Indigenous and non-Indigenous. Not all of these relationships were enduring, but many were, and it is probably fair to say that northern political life was permanently changed by some of the people who were assimilated into northern society in this way.

Thirdly, and especially while it was in progress, the Inquiry deeply divided northern society. In the early 1970s, the Territorial Council (now the Legislative Assembly of the NWT) was dominated by pro-pipeline members who represented significant portions of the non-Indigenous population. These citizens were dismayed by what seemed to them a sudden turn in their expectations about their place in northern society and particularly, in their relations with Indigenous peoples. Even those non-Indigenous northerners who had reservations about the pipeline experience the social shift, very noticeable in the collection of small communities that then made up northern society.

Fourthly, the Canadian Arctic Resources Committee became the focus of a new northern-focussed environmentalist alliance, and for a time, CARC and other organizations began to develop relationships with certain aspects of the federal bureaucracy where sympathizers could be found even while they worked, post-Berger, to maintain a northern presence.

Finally, the Inquiry drew together activists from a number of Generation of '68 social movements. Economic nationalists, environmentalists, and Indigenous rights campaigners found common cause, if not always means of cooperating.

It is difficult to arrive at even relative assessments of the importance of these various relationships. It is clear that the discussion among Indigenous people about the future of their region would have taken place in the absence of any pipeline project; Indigenous people had already begun to organize before they knew of the pipeline project, and the times favoured rehabilitation of the treaty relationship and new standards of democracy and social inclusion. It is for these participants to determine the extent of the difference that the Berger Inquiry made.

Last Thoughts

The Berger Inquiry took place at a moment in Canadian history when it was still possible to believe that an independent national economic policy was possible. The modern environmental movement was only beginning to take its contemporary shape. Indigenous people all over the country were in the midst of the long struggle that would result in the inclusion of "aboriginal and treaty rights" in the Constitution, a series of modern treaty negotiations, and numerous initiatives in Indigenous self-government. From this perspective, the Inquiry appears as a prism – catching the energy from all of these social movements, refracting it to display their essential elements. Much seemed possible.

Was the Inquiry an actor as well? Certainly. For a few years, due to its distinctive operating procedures, it became an important aspect of northern political life, and I have tried to show that its legacy lingers. It is evident that although the Berger Inquiry was not a royal commission, and did not have a large national policy mandate, it does belong in the set of commissions of inquiry identified by Jenson as occasions for resetting reigning policy paradigms.[44] It crystallized the key insight of the time, identifying the gap between the view of the North as a frontier and the reality that it was a homeland.

The analysis in this chapter has emphasized the innovative conduct of the inquiry itself, its role in the political mobilization of northern Indigenous people, and its impact on federal northern development policy. These are arguably the most dramatic aspects of the story and it is important that they be well-understood. In the spirit of encouraging further research, I would like to mention four other important aspects of this history that given the limitations of space and format, I have not discussed here.

First, although this chapter makes some generalizations about the role of the Berger Inquiry in the political mobilization of northern Indigenous peoples, in fact very little is written about this, or about any possible long term effect of participation in the Inquiry. It is obvious that the Inquiry marked a sharp break with the colonial, exclusionary politics of the past, in which the needs of northern Indigenous people were determined by outsiders. It also drew into political action a generation of young people, more young men than young women, but women too. They became important interlocutors and many went on to positions of leadership in territorial government and in the rest of Canada.[45] The story of this remarkable generation remains to be told.

Another story could be told, hardly mentioned in my account, about the impact of the Inquiry on the societies of permanent residents of northern cities, towns and

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[44] Jenson 1994.

[45] To name just two of many, Dene Nation leader Georges Erasmus became National Chief of the Assembly of First Nations, Co-Chair of the Royal Commission on Aboriginal Peoples, and President of the Aboriginal Healing Foundation; Ethel Blondin-Andrew rose in the NWT public service to the rank of Deputy Minister, and then served as a Liberal Member of Parliament and Cabinet Minister.

villages, and on northern governance. There were many northerners who regretted the "Berger time" because it brought dissention and disruption where before there had been what seemed to them, peaceful coexistence of Indigenous and non-Indigenous neighbours. Virtually all of the non-Indigenous northerners who were in the North were there as a result of the federal northern development policies which were the focus of Indigenous resistance; most would feel the sting of this. The Inquiry brought many southerners into the discussion, perceived by this group as lacking little understanding of northern issues and pushing their own agenda. No doubt there was a grain of truth in this perception. Though the angry sobriquet "outside agitators" was hardly warranted (the political initiative was with the Indigenous leaders), it is certainly true that those who were brought north to work on the Indigenous side did not have the personal stake and experience of the long-term northerners, most of whom were sidelined and disempowered during the Berger years. This is a story worth telling.

A third neglected area concerns the impact of the Berger Inquiry on the federal public service and decision-making about northern development policy. In this chapter I have implied that the Inquiry led to some reconsideration about how northern policy decisions were made, but the mechanism for this remains to be tracked. From our current situation, nearly forty years later, many changes in northern policy-making are apparent. One important change is the "off-loading" of substantive, research-based policy discussion to environmental assessment processes and other public fora, accompanied by a diminution in federal research and policy analysis capacity. It may be that the social and organizational processes set in motion during the Berger Inquiry bear some responsibility for this change -- but the research on this question remains to be done.

Finally, even less is known about the impact of the Inquiry on corporate culture and practices in the vast, powerful, international energy resource industry. Certainly corporations have adjusted their planning and their practices to incorporate far-sighted efforts to develop working relationships with affected communities. This has led, in Canada, to a distinctive array of corporate "good practices" that are not always followed by these same corporations in other parts of the world. As the energy industry remains an enormous force in the northern political economy, it would be well if more of its inner workings were known to scholarship.

Appendix A. Chronology of Negotiated Agreements Between the Crown and Indigenous Authorities in the Territories

1984	Inuvialuit Final Agreement
1992	Gwich'in (Dene/Métis) Comprehensive Land Claim Agreement
1993	Nunavut Comprehensive Land Claim Agreement
1993	Council for Yukon Indians Umbrella Final Agreement Pursuant to the Umbrella Agreement: 1993 Vuntut Gwich'in First Nation 1993 First Nation of Na-Cho Nyak Dun 1993 Teslin Tlingit Council 1993 Champagne and Aishihik First Nation 1997 Little Salmon/Carmacks First Nation 1997 Selkirk First Nation 1998 Trondek Hawch'in 2002 Ta'an Kwach'an Council 2003 Kluane First Nation 2004 Kwanlin Dun First Nation 2005 Carcross/Tagish First Nation
1994	Sahtu Dene and Métis Comprehensive Land Claim Agreement
2005	Tlicho Agreement

Appendix B: Dene Declaration: Statement of Rights

We the Dene of the Northwest Territories insist on the right to be regarded by ourselves and the world as a nation.

Our struggle is for the recognition of the Dene Nation by the Government and peoples of Canada and the peoples and governments of the world.

As once Europe was the exclusive homeland of the European peoples, Africa the exclusive homeland of the African peoples, the New World, North and South America, was the exclusive homeland of Aboriginal peoples of the New World, the Amerindian and the Inuit.

The New World like other parts of the world has suffered the experience of colonization and imperialism. Other peoples have occupied the eland –often with force—and foreign governments have imposed themselves on our people. Ancient civilizations and ways of life have been destroyed.

Colonialism and imperialism are now dead or dying. Recent years have witnessed the birth of new nations or rebirth of old nations out of the ashes of colonialism.

As Europe is the place where you will find European countries with European governments for European peoples, now also you will find in Africa or Asia the existence of African and Asian countries with African and Asian governments for the African and Asian peoples.

The African and Asian peoples –the peoples of the Third World—have fought for and won the right to self-determination, the right to recognition as distinct peoples and the recognition of themselves as nations.

But in the New World the Native peoples have not fared so well. Even in countries in South America where the Native peoples are the vase majority of the population *there is not one country which has an Amerindian government for the Amerindian peoples.*

Nowhere in the New World have the Native peoples won the right to self-determination and the right to recognition by the world as a distinct people and as Nations.

While the Native people of Canada are a minority in their homeland, the Native people of the Northwest Territories, the Dene and the Inuit, are a majority of the population of the Northwest Territories.

The Dene find themselves as part of a country. That country is Canada. But the Government of Canada is not the government of the Dene. The Government of the

Northwest Territories is not the government of the Dene. These governments were not the choice of the Dene, they were imposed on the Dene.

What we the Dene are struggling for is recognition of the Dene nation by the government and peoples of the world.

And while there are realities we are forced to submit to, such as the existence of a country called Canada, we insist on the right to self-determination as a distinct people and the recognition of the Dene Nation.

We the Dene are part of the Fourth World. And as the peoples and Nations of the world have come to recognize the existence and rights of those peoples who make up the Third World they day must come and will come when the nations of the Fourth World will come to be recognized and respected. The challenge to the Dene and the world is to find the way for the recognition of the Dene nation.

Our pleas to the world are to help us in our struggle to find a place in the world community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene Nation.

This Declaration was passed at the 2nd Joint General Assembly of the Indian Brotherhood of the NWT and the Metis Association of the NWT on 19 July 1975 at Fort Simpson.

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