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## Manufacturing Consent to Climate Inaction: A Case Study of The Globe and Mail 's Pipeline Coverage

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Jason MacLean\*

Manufacturing Consent to Climate Inaction:  
A Case Study of *The Globe and Mail's*  
Pipeline Coverage

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*Canada has long been a climate change policy laggard. Canada is among the world's poorest-performing countries in terms of climate action—not only is Canada's greenhouse gas emissions-reduction target under the Paris Agreement insufficiently ambitious, Canada is not even remotely on track to meet it. Canada's enduring inaction on climate change is legitimized and sustained by its mainstream corporate news media, which contribute to the oil and gas industry's capture of Canadian climate and energy policy. In this article, I examine how Canada's leading national newspaper, The Globe and Mail, editorially framed the completion of the controversial expansion of the Trans Mountain oil pipeline as being in the "public interest." The Globe and Mail's editorial coverage of the Trans Mountain pipeline (among others) is a case study of how corporate new media promote the production and export of fossil fuels at the expense of effective, science-based climate law and policy.*

*Le Canada est depuis longtemps à la traîne en matière de politique sur les changements climatiques. Il est l'un des pays les moins performants au monde en matière d'action climatique—non seulement l'objectif de réduction des émissions de gaz à effet de serre du Canada en vertu de l'Accord de Paris n'est pas suffisamment ambitieux, mais il n'est même pas en voie d'être atteint. L'inaction persistante du Canada en matière de changements climatiques est légitimée et soutenue par ses principaux médias d'information, qui contribuent à ce que l'industrie pétrolière et gazière prenne en otage la politique canadienne en matière de climat et d'énergie. Dans cet article, j'examine comment le principal journal national du Canada, The Globe and Mail, a dit que l'achèvement de l'expansion controversée du pipeline Trans Mountain était « dans l'intérêt public ». La couverture éditoriale du quotidien The Globe and Mail sur le pipeline Trans Mountain (entre autres) constitue une étude de cas sur la façon dont les nouveaux médias d'entreprise favorisent la production et l'exportation de combustibles fossiles au détriment d'une législation et de politiques climatiques efficaces et fondées sur la science.*

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*As the crisis escalates...*

... in our natural world, we refuse to turn away from the climate catastrophe and species extinction. For *The Guardian*, reporting on the environment is a priority. We give reporting on climate, nature and pollution the prominence it deserves, stories which often go unreported by others in the media. At this pivotal time for our species and our planet, we are determined to inform readers about threats, consequences and solutions based on scientific facts, not political prejudice or business interests.

[...]

Our editorial independence means we set our own agenda and voice our own opinions. Guardian journalism is free from commercial and political bias and not influenced by billionaire owners and shareholders. This means we can give a voice to those less heard, explore where others turn away, and rigorously challenge those in power.<sup>1</sup>

**May 21: Pipeline smarts debated. Plus other letters to the editor**

Your editorialists tell us that “Ideologies aside, expanding the Trans Mountain Pipeline is a no brainer” (*Pipelines and Political Risk*, May 17). That statement

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1. This message appears at the conclusion of each of *The Guardian’s* online articles concerning the environment. See e.g. Editorial, “The Guardian view on climate crisis: what can we do?,” *The Guardian* (11 August 2019), online: <<https://www.theguardian.com/commentisfree/2019/aug/11/the-guardian-view-on-climate-crisis-what-can-we-do>> [<https://perma.cc/UX32-U76Y>].

*has only two interpretations. Either the millions of Canadians who oppose it are without a brain or The Globe and Mail's editorial board is. It's clearly neither.*

*The Globe is being ideological and hypocritical. By supporting the Trans Mountain expansion, The Globe is supporting promoting the business interests of a foreign corporation and its investors, the spending of Canadian taxpayers' dollars to insure them, pushing action counter to meeting national CO2 emission commitments, putting B.C.'s and the ocean environment at risk, ignoring Indigenous rights, promoting dubious "national interest" as fact, and looking to the end of its nose rather than the future of our grandchildren in a hotter world.*

*Rob Garrard, Victoria2*

### *Introduction*

Regulatory capture is arguably the most important—and least studied—dimension of both business regulation and regulation writ large. Regulatory capture is the result or process by which regulation, either in law or application, is systematically directed away from the public interest towards the special, private interests of regulated industries, largely but not exclusively by the intent and actions of industries themselves.<sup>3</sup> There is scarcely an area of economic regulation untouched by industry capture. According to the economist George Stigler, whose foundational work on regulatory capture earned a Nobel prize in economics, until the centrality of capture to the “basic logic of political life” is understood, “reformers will be ill-equipped to use the state for their reforms and victims of the state’s support for special groups will be helpless to protect themselves.”<sup>4</sup>

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2. Rob Garrard, “Letter to the editor,” *The Globe and Mail* (21 May 2018), online: <<https://www.theglobeandmail.com/opinion/letters/article-may-21-pipeline-smarts-debated-plus-other-letters-to-the-editor/>> [<https://perma.cc/2WL4-9MJT>].

3. Daniel Carpenter & David A Moss, “Introduction” in Daniel Carpenter & David A Moss, eds, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York, NY: Cambridge University Press, 2014) at 13. See also Brink Lindsey & Steven M Teles, *The Captured Economy: How the Powerful Enrich Themselves, Slow Down Growth, and Increase Inequality* (New York, NY: Oxford University Press, 2017). For an application of regulatory capture in the Canadian context, see Jason MacLean, “Striking at the Root Problem of Canadian Environmental Law: Identifying and Escaping Regulatory Capture” (2016) 29 *J Envtl L & Prac* 111 [MacLean, “The Root Problem of Canadian Environmental Law”]; Jason MacLean, “Regulatory Capture and the Role of Academics in Public Policymaking: Lessons from Canada’s Environmental Regulatory Review Process” (2019) 52:2 *UBC L Rev* 479 [MacLean, “Regulatory Capture and the Role of Academics”].

4. George J Stigler, “The Theory of Economic Regulation” (1971) 2:1 *The Bell Journal of Economics and Management Science* 3 at 18 [Stigler, “Economic Regulation”]; see also George J Stigler, “Supplementary Note on Economic Theories of Regulation” in George J. Stigler, *The Citizen and the State: Essays on Regulation* (Chicago, IL: University of Chicago Press, 1975) at 140. For an assessment of Stigler’s contribution to the theory of regulation, see Sam Peltzman, “George Stigler’s Contribution to the Economic Analysis of Regulation” (1993) 101:5 *Journal of Political Economy* 818; Christopher Carrigan & Cary Coglianese, “George J. Stigler, ‘The Theory of Economic Regulation’” in Steven J Balla, Martin Lodge & Edward C Page, eds, *The Oxford Handbook of Classics in Public Policy and Administration* (Oxford, UK: Oxford University Press, 2015) at ch 20.

Such victims range from start-ups<sup>5</sup> to established firms,<sup>6</sup> and from consumers concerned about high prices and unfair policies<sup>7</sup> to citizens concerned about climate change.<sup>8</sup>

Regulatory capture is often difficult to detect directly. This difficulty stems in large part from the sometimes vague and shifting meaning of the salient “public interest”—or, alternately, the “national interest”—in respect of any given regulatory issue. Even the economic approach of quantitatively weighing the benefits accrued by industry against the costs borne by the public in respect of a given piece of regulation begs the questions of who the relevant public constituency is and how its interests are to be defined and prioritized.<sup>9</sup> The public interest includes not only costs but also beliefs and values; it has an irreducible normative dimension that is contingent not only on context, but also competing discursive constructions.

The normative dimension of the public interest in respect of any given area of regulation remains equally complex and difficult to establish even in statutory regimes where regulators are subject to a legal “public interest” standard. As the Supreme Court of Canada recently observed, the “public interest is a broad concept and what it requires will depend on the particular context.”<sup>10</sup>

5. See e.g. Bradley Tusk, *The Fixer: My Adventures Saving Startups from Death by Politics* (New York, NY: Portfolio, 2018); Evan Burfield & JD Harrison, *Regulatory Hacking: A Playbook for Startups* (New York, NY: Portfolio, 2018). For a review of these books in relation to the concept of regulatory capture, see Jonathan A Knee, “Review: Why Start-Ups Need a Regulatory Strategy to Succeed,” *The New York Times* (11 September 2018), online: <<https://www.nytimes.com/2018/09/11/business/dealbook/fixer-regulatory-hacking-review.html>> [<https://perma.cc/P7U3-TAX3>].

6. Veronique de Rugy, “How Special Interests Hide the True Costs of Tariffs,” *The New York Times* (29 August 2018), online: <<https://www.nytimes.com/2018/08/29/opinion/tariffs-trump-trade-special-interests.html>> [<https://perma.cc/FNQ5-XWCH>] [de Rugy, “True Costs of Tariffs”].

7. *Ibid.* See also Daniel Schwarcz, “Preventing Capture Through Consumer Empowerment Programs: Some Evidence from Insurance Regulation” in Carpenter & Moss, *supra* note 3 at 365.

8. See e.g. Auden Schendler & Andrew P Jones, “Stopping Climate Change Is Hopeless. Let’s Do It,” *The New York Times* (6 October 2018), online: <<https://www.nytimes.com/2018/10/06/opinion/sunday/climate-change-global-warming.html>> [<https://perma.cc/73EE-SDYF>] [Schendler & Jones, “Stopping Climate Change”]; see also Bill McKibben, “Free California of Fossil Fuels,” *The New York Times* (8 August 2018), online: <<https://www.nytimes.com/2018/08/08/opinion/fires-california-fossil-fuels.html>> [<https://perma.cc/36CW-QMT4>].

9. Stigler, “Economic Regulation,” *supra* note 4 at 10. For an argument that public interest regulation can be based entirely on quantitative cost-benefit analysis of objective facts (as opposed to normative values), see Cass R. Sunstein, *The Cost-Benefit Revolution* (Cambridge, MA: MIT Press, 2018).

10. *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 34; see also the discussion of the wide margin of appreciation that the Federal Court of Appeal afforded to the National Energy Board’s interpretation of “any public interest” under its controlling statute in relation to oil sands pipelines and climate change in *Forest Ethics Advocacy Association, and Donna Sinclair v The National Energy Board, The Attorney General of Canada and Enbridge Pipelines Inc.*, 2014 FCA 245 at para 69 (CanLII). For a discussion of how the composition of regulatory bodies

For these reasons, the mainstream news media are attracting increasing scrutiny both as a means and as strategic sites in and of themselves of regulatory reform in the public interest. The media play a significant role in manufacturing public opinion, including public opinion about what constitutes the “public interest,”<sup>11</sup> the starting point of regulatory analysis, including regulatory reform. A growing number of studies and commentaries, for example, are paying attention to how—and how often—the news media are covering climate change science and policy for precisely this purpose<sup>12</sup>: climate policy reform requires a sufficiently-informed public motivated to press elected representatives and public decisionmakers to act in the public interest.

Growing attention is also being paid to the ways in which powerful industry interests influence the media to shape public discourse and attitudes about climate change and climate change policy options. There is an intersection between the public interest in meaningful and effective climate change action and the mainstream news media as a mechanism of regulatory capture employed by entrenched special interests. Two US climate change commentators have described this intersection in the following terms:

To save civilization, most of us would need to supplement our standard daily practices—eating, caring for family and community, faith—with a steady push on the big forces that are restraining progress, *the most*

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affects their determinations of the “public interest” in respect of statutory environmental assessments of projects such as the Trans Mountain pipeline, see Meinhard Doelle & A John Sinclair, “The new IAA in Canada: From revolutionary thoughts to reality” (2019) 79 *Environmental Impact Assessment Review* 1, <<https://doi.org/10.1016/j.eiar.2019.106292>> [ <https://perma.cc/8JEF-FP2T>].

11. See e.g. Catherine Happer & Greg Philo, “The Role of the Media in the Construction of Public Belief and Social Change” (2013) 1:1 *Journal of Social and Political Psychology* 321; Lesley Henderson & Shona Hilton, “The media and public health: where next for critical analysis?” (2018) 28:4 *Critical Public Health* 373; Maxwell T Boykoff, “We Speak for the Trees: Media Reporting on the Environment” (2009) 34 *Annual Review of Environment and Resources* 431.

12. See e.g. Anthony Leiserowitz *et al.*, *Climate Change in the American Mind: March 2018* (New Haven, CT: Yale Program on Climate Change Communication, 2017), online: <<http://climatecommunication.yale.edu/publications/climate-change-american-mind-march-2018/>> [ <https://perma.cc/SSK5-L7UH>]; Ted MacDonald, “National TV news is still failing to properly incorporate climate change into hurricane coverage” (24 September 2018), *Media Matters for America* (blog), online: <<https://www.mediamatters.org/blog/2018/09/24/National-TV-news-is-still-failing-to-properly-incorporate-climate-change-into-hurricane-co/221423>> [ [perma.cc/V8FB-9PNL](https://perma.cc/V8FB-9PNL)]; Joe Romm, “TV networks are misinforming the public on climate change” (25 September 2018), *Think Progress* (blog), online: <<https://thinkprogress.org/tv-media-hurricane-florence-misinforming-public-on-climate-change-889551935ce1/>> [ [perma.cc/9ATG-M44P](https://perma.cc/9ATG-M44P)]; John Gibbons, “Climate change reporting should be obligatory,” *The Irish Times* (26 April 2019), online: <<https://www.irishtimes.com/opinion/climate-change-reporting-should-be-obligatory-1.3871618>> [ [perma.cc/6ZRW-HSZG](https://perma.cc/6ZRW-HSZG)]; Mark Hertsgaard & Kyle Pope, “The media are complacent while the world burns,” *Columbia Journalism Review* (22 April 2019), online: <[https://www.cjr.org/special\\_report/climate-change-media.php](https://www.cjr.org/special_report/climate-change-media.php)> [ [perma.cc/4EL8-M8TX](https://perma.cc/4EL8-M8TX)].

*prominent being the fossil fuel industry's co-option of government, education, science and media.*<sup>13</sup>

To understand what such a “steady push” should consist of, it is necessary not only to identify media co-optation and distortion generally but also to shine a light on specific instances of such distortion with a view to exposing how they contribute to reshaping—and redirecting—the public interest.

There has, for example, recently been a proliferation of educational initiatives designed to improve individuals’ evaluation of the quality of information presented by the news media and other information platforms.<sup>14</sup> While such longer-term initiatives are laudable, it is also important to better understand how the media influence the construction and perception of the public interest in respect of regulatory issues that are pressing and urgent in the short-term, especially climate change mitigation, given the nature and degree of the threat posed by climate change. Moreover, because even well-educated individuals are susceptible to media bias and tend to default to pre-committed political ideologies, improved media literacy in itself is not a panacea.<sup>15</sup> Research on the nature of how the media distort the public interest and that informs how best to respond to and counter such distortions is urgently required.

With these broad and challenging considerations in mind, I critically examine how Canada’s leading newspaper, *The Globe and Mail*, has constructed the “public interest” in respect of the controversial Trans Mountain oil pipeline expansion project. My central argument is that *The Globe and Mail*’s coverage of the Trans Mountain pipeline serves to legitimize and sustain climate change policy *inaction* in Canada, to the short-term benefit of Canada’s oil and gas sector, and at the expense of the public and the environment. The article unfolds as follows: In the first section I briefly discuss the political economy of the mainstream news media in democratic societies, and describe the media “propaganda model” as a useful analytical lens to read *The Globe and Mail*’s coverage of the Trans Mountain project, specifically its editorial characterization of the “national interest” in approving and completing the project as soon as

13. Schendler & Jones, “Stopping Climate Change,” *supra* note 8 [emphasis added].

14. David MJ Lazer *et al*, “The science of fake news: Addressing fake news requires a multidisciplinary effort” (2018) 359:6380 *Science* 1094 at 1095 [Lazer *et al*, “Science of fake news”].

15. The Information Society Project & The Floyd Abrams Institute for Freedom of Expression, “Fighting Fake News: Workshop Report” (New Haven, CT: Yale Law School, 2017) at 11, online: <<https://law.yale.edu/isip/initiatives/floyd-abrams-institute-freedom-expression/practitioner-scholar-conferences-first-amendment-topics/fighting-fake-news-workshop>> [perma.cc/5TKH-LNGW] [Information Society Project, “Fighting Fake News”].



possible. I proceed in the second section by briefly introducing *The Globe and Mail* as Canada's newspaper of record along with the history thus far of the Trans Mountain project, and then provide a critical account of *The Globe and Mail's* editorial coverage of the project vis-à-vis Canada's interests and obligations in respect of mitigating climate change. In the third section of the article I discuss the difficulties inherent in seeking to reform the news media as a means of countering this form of regulatory capture. I conclude by discussing the limitations of the analysis and suggesting avenues of future research.

I. *Democracy dies in darkness: The political economy of the fourth estate*

"Democracy dies in darkness" is the motto of the *Washington Post* newspaper.<sup>16</sup> The motto signals the foundational public-interest role that a free and independent press plays in democratic societies by shining a light on the special interests and workings of power. As Edmund Burke reportedly remarked, "there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important far than them all."<sup>17</sup> And yet, the press and mass communications media more generally have always been bound up in the exercise of political-economic power, so much so that neither can be understood in isolation from the other.<sup>18</sup> There is an apparent and abiding tension between the news media as watchdog and the news media as lapdog.<sup>19</sup>

Arguably the most powerful explanatory model of the media's role in shaping democratic discussion and debate about public policy is the "propaganda model" developed by Edward Herman and Noam Chomsky.<sup>20</sup> Propaganda is a provocative term, but in its more nuanced formulation it has considerable explanatory power. Herman and Chomsky argue that the mainstream news media in democratic societies do not play an overtly

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16. Paul Farhi, "The Washington Post's new slogan turns out to be an old saying," *Washington Post* (24 February 2017), online: <[https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5\\_story.html?utm\\_term=.6f948243a7a7](https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5_story.html?utm_term=.6f948243a7a7)> [perma.cc/D3YS-Q4G7].

17. Quoted in C Edwin Baker, *Media Concentration and Democracy: Why Ownership Matters* (New York: Cambridge University Press, 2007) at 5.

18. Paul Starr, *The Creation of the Media: Political Origins of Modern Communications* (New York: Basic Books, 2004) at 1. See also Helen Holmes & David Taras, eds, *Seeing Ourselves: Media Power and Policy in Canada*, 2nd ed (Toronto, ON: Harcourt Brace & Company, Canada, 1996).

19. See e.g. Lawrence Lessig, *America, Compromised* (Chicago: The University of Chicago Press, 2018), especially ch 3 ("The Media"); Pierre Bourdieu, *On Television* (Cambridge: Polity Press, 1998). For an analysis in the Canadian context, see e.g. Kelly Blidook, "Choice and Content: Media Ownership and Democratic Ideals in Canada" (2009) 3:2 *The Canadian Political Science Review* 52.

20. Edward S Herman & Noam Chomsky, *Manufacturing Consent: The Political Economy of the News Media* (New York: Pantheon, 1988).

oppressive function as they do in totalitarian states. The news media in democratic societies “permit—indeed, encourage—spirited debate, criticism, and dissent as long as these remain faithfully within the system of presuppositions and principles that constitute an elite consensus, a system so powerful as to be internalized largely without awareness.”<sup>21</sup>

In contrast to the popular perception that propaganda is exclusively state-based and operates principally through the use of intimidation and fear-mongering, the news media in democratic societies tend not to explicitly proclaim a particular party line (*i.e.* the narrow spectrum of debate acceptable to the political-economic elite), but rather they *presuppose* it, “thus helping to establish it even more deeply as the very precondition of discussion, while also providing the appearance of lively debate.”<sup>22</sup>

In the United States, for example, the Federal Communications Commission maintained an official policy from 1949 to 1987 *requiring* broadcast news providers to present controversial public interest topics in a “balanced” manner.<sup>23</sup> Known as the “Fairness Doctrine,” this policy had the effect of ensuring that roughly equal time was accorded to each side of controversial subjects, independent of merit.<sup>24</sup> The “Fairness Doctrine” has subsequently come to be understood by media and policy scholars as a vehicle of propaganda, one that has been effectively deployed by the tobacco industry and the fossil fuels industry.<sup>25</sup>

The following factors account for the news media’s distortional propaganda role in otherwise democratic societies: (a) concentrated corporate ownership of the news media; (b) advertising as the primary revenue source for media outlets; (c) political-economic elite perspectives as the predominant sources of news; (d) “flak,” or government efforts to suppress views critical of political-economic elites; and (e) “anticommunism” via the promotion of capitalism as an economic system,

21. *Ibid* at 302.

22. *Ibid* at 17. This understanding of propaganda owes a considerable debt to the work of political theorist Antonio Gramsci, particularly Gramsci’s conception of hegemony. For a discussion of the relevance of Gramsci’s theory to the politics of climate change, see Geoff Mann & Joel Wainwright, *Climate Leviathan: A Political Theory of Our Planetary Future* (New York: Verso, 2018) at 87-98.

23. Much has been written about the Fairness Doctrine. For a discussion connecting the doctrine to mainstream media propaganda, see e.g. James Owen Weatherall, Cailin O’Connor & Justin P Bruner, “How to Beat Science and Influence People: Policy Makers and Propaganda in Epistemic Networks” (2019) *The British Journal for Philosophy of Science* [forthcoming] at 14-15.

24. *Ibid*.

25. See e.g. Naomi Oreskes & Erik M Conway, *Merchants of Doubt* (New York: Bloomsbury Press, 2019); Naomi Oreskes & Erik M Conway, *The Collapse of Western Civilization: A View from the Future* (New York: Columbia University Press, 2014).

including the promotion of market-based governance and regulatory measures.<sup>26</sup>

Given these prevailing conditions of media ownership, concentration, and composition, perhaps it should not be surprising—let alone controversial—that the mainstream news media “serve to mobilize support for the special interests that dominate the state and private activity” through the strategic use of “choices, emphases, and omissions.”<sup>27</sup> Subsequent empirical work on US news media bias strongly supports the media propaganda model.<sup>28</sup>

While Herman and Chomsky’s propaganda model is based on the US news media, Canadian analyses have, *mutatis mutandis*, consistently arrived at substantially similar findings. Mainstream news journalism in Canada, according to one study focused on the relationship between the media and the prevailing normative order, “is concerned primarily with communications among elite, authorized knowers.”<sup>29</sup> “We can begin to understand how news media circulate and reinforce dominant values and meanings,” another study explains, “by examining ownership of Canadian media, their dependence on advertising revenue and its implications, and some typical patterns of news presentation.”<sup>30</sup> According to the Kent Commission, Canada’s Royal Commission on Newspapers, “it was left-wing viewpoints that tended to be under-represented as commercialism increased its hold.”<sup>31</sup> And as *Globe and Mail* columnist Jeffrey Simpson

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26. Herman & Chomsky, *supra* note 20 at 4-31. Public Choice theory provides a largely if not entirely complementary account of the relationship between the mainstream media and public policymakers. On one such account, the media, “to maximize readership or viewing audiences and thus enhance advertising revenues, will trivialize complex policy issues, sensationalize mishaps that may not reflect systemic policy failures, and turn over issues at a rapid rate with minimal investigative follow-up to cater to readers’ and viewers’ limited attention spans (rational ignorance):” Michael J Trebilcock & Edward M Iacobucci, “Privatization and Accountability” (2003) 116 Harv L Rev 1422 at 1440.

27. Herman & Chomsky, *supra* note 20 at xi.

28. For a comprehensive review of the literature, see Anthony R DiMaggio, “The Propaganda Model and Manufacturing Consent: U.S. Public Compliance and Resistance” in James McGilvray, ed, *The Cambridge Companion to Chomsky*, 2nd ed (New York: Cambridge University Press, 2017) at 291.

29. Richard V Ericson, Patricia Baranek & Janet BL Chan, *Visualizing Deviance: A Study of News Organization* (Toronto, ON: University of Toronto Press, 1987) at 351. See also James Winter, *Democracy’s Oxygen: How Corporations Control the News* (Montreal, QB: Black Rose Books, 1997).

30. Robert Hackett, Richard Pinet & Myles Ruggles, “News for Whom? Hegemony and Monopoly versus Democracy in Canadian Media” in Homes & Taras, *supra* note 18 at 259 [Hackett, Pinet & Ruggles, “News for Whom?”]. See also See Jennifer Ellen Good, “The Framing of Climate Change in Canadian, American, and International Newspapers: A Media Propaganda Model Analysis” (2008) 33:2 Canadian Journal of Communication 233; Shane Gunster & Robert Neubauer, “From Public Relations to Mob Rule: Media Framing of Social License in Canada” (2018) 43:1 Canadian Journal of Communication 11.

31. Canada, *Royal Commission on Newspapers* (Kent Commission) (Hull, QB: 1981) at 15, online: <<http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/kent1981-eng/kent1981-eng.htm>> [<https://perma.cc/ZT5H-WJXX>].

observed in 1996, “more [news media] commentators than ever are ideologues of the right.”<sup>32</sup>

Given the political and economic importance of the news media generally, a growing number of researchers based in democratic societies are investigating mainstream media representations of climate change, the most pressing public interest issue of our time.<sup>33</sup> Of course, climate change is not a discrete public policy issue that can be meaningfully discussed in isolation from other public policy concerns, including issues of economic competitiveness, growth, and inequality. It follows that media representations of a number of important business and economic issues—e.g. domestic and foreign investment, international trade, job growth, natural resources extraction, infrastructure, energy costs, commodity prices, and many more—may have significant climate change implications, even if those implications are not always framed as such. This may help explain the curious finding that scholarly research on *Canadian* media representations of climate change appears to be *declining*.<sup>34</sup>

While analyses of media representations of climate change are interesting and important in and of themselves,<sup>35</sup> such analyses do not always directly connect the form and substance of those representations to the critically important issue of climate policy action (or *inaction*, as is more often the case) in political and economic context.<sup>36</sup> This is particularly problematic in light of recent integrated assessment modeling suggesting that rapid and widespread changes in both individual behaviour and socioeconomic systems are urgently required to limit global warming to 1.5 degrees Celsius above the pre-industrial norm.<sup>37</sup>

Utilizing Herman and Chomsky’s media propaganda model, I analyze a contextually-important set of media representations in relation to a particular climate policy outcome. In the next section, I provide an

32. Jeffrey Simpson, “Our industry is chasing its tale,” *The Globe and Mail* (18 April 1996) at A17.

33. Mike A Schäfer & Inga Schlichting, “Media Representations of Climate Change: A Meta-Analysis of the Research Field” (2014) 8:2 *Environmental Communication* 142.

34. *Ibid* at 149. But see the recent special thematic issue of the *Canadian Journal of Communication*, “Communicating Power: Energy, Canada, and the Field(s) of Communication” (2018) 43:1.

35. See e.g. Brigitte Nerlich, “Climate change through an editorial lens” (2018) 8:6 *Nature Climate Change* 458 [Nerlich, “Climate change through an editorial lens”].

36. See e.g. Linda Steg, “Limiting climate change requires research on climate action” (2018) 8:9 *Nature Climate Change* 754.

37. See e.g. Arnulf Grubler *et al*, “A low energy demand scenario for meeting the 1.5 °C target and sustainable development goals without negative emissions technologies” (2018) 3:6 *Nature Energy* 517; Detlef P van Vuuren *et al*, “Alternative pathways to the 1.5 °C target reduce the need for negative emission technologies” (2018) 8:4 *Nature Climate Change* 391. See also the discussion of the UN IPCC’s most recent summary report to policymakers regarding the urgent and unprecedented actions required to meet the 1.5° C target in the concluding section of this article.

account of *The Globe and Mail's* editorial coverage of the controversial Trans Mountain oil pipeline expansion project. The analytical aim of this account is to conceptualize and expose mainstream media representations of climate change policy as a means of fossil fuels industries' capture of climate change policymaking, with the regrettable result being the legitimization of climate policy *inaction* in Canada.

Before proceeding, however, a brief discussion of the article's methodology, including an important methodological caveat, is in order.

In this article I focus on editorial representations—narrative “framings”—of fossil fuels infrastructure (specifically the Trans Mountain oil pipeline expansion project) and the relationship of fossil fuels infrastructure to climate change policy.<sup>38</sup> For the purposes of this study, I used (a) the search function on *The Globe and Mail's* online homepage, (b) Factiva, a global news database, and, as a crude catch-all, (c) the search engine of Google to identify the total set of articles published by *The Globe and Mail* that refer to the Trans Mountain project; from 2012 until the time of writing, 2,132 “items” published in *The Globe and Mail* referred to Trans Mountain. Those items include *Globe* editorials (written by the newspaper's editorial board representing the newspaper's official viewpoint), letters to the editor, columns written by *Globe* staff columnists (which virtually always accord with the newspaper's official editorial viewpoints), news reports written by *Globe* staff reporters and reporters working for other news agencies, and independently-contributed opinion-editorials (“op-eds”) that are accepted for publication by the *Globe's* editors; the authors of independently-contributed op-eds include academics, various industry representatives, political commentators, members of nongovernmental organizations, freelance journalists, politicians and other prominent public figures and officials, and still others. The total number of items referring to Trans Mountain is inflated, however, because this number also and unavoidably includes online links embedded within individual items to other items also referring to Trans Mountain.

In the course of conducting the analysis described below, I read all the editorials, independent op-eds, staff columns, news reports, and letters to the editor yielded by the searches described above (286 items in all). The discussion below, however, focuses primarily on *The Globe and Mail's* editorials, which as a set of nominally independent and “balanced” normative framings of the public interest has a narrative coherence and depth that lends itself to a richer, more suggestive analysis.

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38. Nerlich, “Climate change through an editorial lens,” *supra* note 35 at 459.

Moreover, I conducted the analysis of *The Globe and Mail*'s editorial coverage of Trans Mountain in a qualitative manner so as to best represent the inescapably value-laden narrative context and discursive nature of the editorials themselves. This approach accords with both the predominant approach to analyzing media representations in the field of Canadian communication studies,<sup>39</sup> as well as the model advocated in a leading socio-legal study of media concentration, content, and democratic politics.<sup>40</sup> Rather than coding and counting these editorials through the top-down use of *a priori* categories, based on their availability as data rather than their conceptual relevance,<sup>41</sup> I have instead opted to read the entire corpus of relevant editorials closely and in full, and to analyze them in an inductive, textured manner sensitive to their political and public policy context. As I will illustrate in considerable detail below, specific narrative phraseologies reflect specific normative framings. Such phraseologies recur throughout *The Globe and Mail*'s editorial coverage of the Trans Mountain pipeline, and this recurring feature is highly instructive from a media propaganda and regulatory capture perspective. Finally, by quoting extensively from the editorials and providing publicly-accessible links to them, readers can judge for themselves whether or not, and to what extent, they trust my interpretations.

That said, the following methodological caveat is crucially important: I do not posit either a direct or invariable cause-and-effect relationship between media representations and public policy outcomes. As Herman and Chomsky caution, their propaganda model describes forces that help to explain how the news media tend to operate, which is strongly suggestive—but not independently determinative—of the kind of legitimizing function the news media play. The media propaganda model does not claim or imply that propaganda emanating from the news media is always effective, directly or indirectly; as Herman and Chomsky are at pains to emphasize, “the system is not all powerful.”<sup>42</sup>

39. See e.g. Alan O'Connor, “Fairness and Balance in CBC Radio News: Chronicle of a Complaint” (2019) 44:1 *Canadian Journal of Communication* 133; Andrew Chater, “An Examination of the Framing of Climate Change by the Government of Canada, 2006–2016” (2018) 43:4 *Canadian Journal of Communication* 150; Yasmin Jiwani, “Barbarians in/of the Land: Reflections of Muslim Youth in the Canadian Press” (2016) 11:1 *Journal of Contemporary Issues in Education* 36.

40. Baker, *supra* note 17 at 19–26. Baker offers “six cautions about the use of positivist social science research” (at 20) in respect of the study of media effects on democratic politics, and argues—convincingly, in my view—that “the impulse of many social scientists to be value-neutral is equivalent to the ostrich sticking its head in the sand” (at 23).

41. This is Baker's third caution against the use of positivist statistical evidence, namely, that the availability of evidence should not determine the content of investigations: *ibid* at 23.

42. Herman & Chomsky, *supra* note 20 at xii, 306.

## II. The *Globe and Mail* and the “people’s pipeline”

### 1. The *Globe and Mail*: *Canada’s newspaper of record*

*The Globe and Mail* is widely regarded as Canada’s “newspaper of record.”<sup>43</sup> *The Globe* is owned by the Thomson family, the wealthiest family in Canada,<sup>44</sup> through its private holding company and investment arm, The Woodbridge Company Limited,<sup>45</sup> which is also the principal and controlling shareholder of Thomson Reuters Corporation, a publicly-traded media corporation listed on both the New York and Toronto Stock Exchanges.<sup>46</sup> Through its print and digital formats, the *Globe* claims to reach over six million readers per week.<sup>47</sup> It is not an exaggeration to claim, as does the *Globe*, that the *Globe* “is Canada’s foremost news media company and a part of Canada’s fabric.”<sup>48</sup>

The *Globe* views itself as “independent but not neutral.”<sup>49</sup> The *Globe’s* motto, adopted upon its founding in 1844, is a quote from the pseudonymous English political writer Junius: “The subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures.”<sup>50</sup> This motto continues to appear on the *Globe’s* editorial page as well as its online home page, and not unlike the *Washington Post’s* motto it signals the newspaper’s commitment to independent reporting and commentary.

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43. See e.g. David Hayes, *Power and Influence: The Globe and Mail and the News Revolution* (Toronto, ON: Key Porter Books, 1992); Wallace Clement, *Understanding Canada: Building on the New Canadian Political Economy* (Montreal, QC: McGill-Queens University Press, 1996) at 343; Nick Fillmore, “What’s behind the shake up at ‘Canada’s newspaper of record’?,” *rabble.ca* (2 June 2009), online: <<http://www.rabble.ca/news/2009/06/shake-globe>> [perma.cc/6YAH-42MY]; “Globe and Mail to cut jobs,” *The Strait Times* (11 January 2009), online: <[https://web.archive.org/web/20090130083617/http://www.straittimes.com/Breaking%2BNews/Money/Story/STIStory\\_324744.html](https://web.archive.org/web/20090130083617/http://www.straittimes.com/Breaking%2BNews/Money/Story/STIStory_324744.html)> [perma.cc/7HRN-FTE4]. Encyclopaedia Britannica’s online entry for *The Globe and Mail* describes it as a “daily newspaper published in Toronto, the most prestigious and influential news journal in Canada,” online: <<https://www.britannica.com/topic/The-Globe-and-Mail>> [perma.cc/824Y-3U4U] [Britannica, “The Globe and Mail”].

44. “Canada’s Richest People 2018: The Top 25 Richest Canadians,” *Canadian Business* (9 November 2017), online: <<https://www.canadianbusiness.com/lists-and-rankings/richest-people/top-25-richest-canadians-2018/>> [perma.cc/HP78-RWGW].

45. See Bloomberg.com, “Company Overview of The Woodbridge Company Limited,” *Bloomberg* (27 September 2018), online: <<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=1173195>> [perma.cc/9NB9-3KE3]; see also *The Globe and Mail*, “About Us,” online: <<https://www.theglobeandmail.com/about/>> [perma.cc/C8VE-4VCA] [*Globe*, “About Us”].

46. Thomson Reuters, online: <<https://www.thomsonreuters.com/en.html>> [perma.cc/64GM-AZUQ]. In the fourth quarter of 2018, Thomson Reuters reported revenue of US\$1.52 billion, and its share price reached US\$73.24, a record high for the company: Matt Scuffham, “Thomson Reuters shares hit record high on earnings beat,” *The Globe and Mail* (27 February 2019), B6.

47. *Globe*, “About Us,” *supra* note 45.

48. *Ibid.*

49. Britannica, “The Globe and Mail,” *supra* note 43.

50. Wikipedia, “*The Globe and Mail*,” online: <[https://en.wikipedia.org/wiki/The\\_Globe\\_and\\_Mail](https://en.wikipedia.org/wiki/The_Globe_and_Mail)> [perma.cc/7Q2Y-7CZA].

In an editorial published on World Press Freedom Day, the *Globe* made its commitment to journalistic independence explicit, writing that the “health of democratic institutions, and wider participatory democracy, is directly linked to an independent press.”<sup>51</sup> The *Globe*’s Public Editor similarly explained that the media’s role “is to question the authorities.”<sup>52</sup> Indeed, according to the *Globe*’s own “Editorial Code of Conduct,” as a matter of “journalistic principle,” the *Globe* commits to “seek to provide reasonable accounts of competing views in any controversy so as to enable readers to make up their own minds.”<sup>53</sup>

The *Globe* routinely celebrates its own journalistic competence and integrity in service of the public interest.<sup>54</sup> According to its online homepage, the *Globe* has won more national newspaper awards than any other news organization in Canada, including multiple Michener Awards for public-service journalism.<sup>55</sup> Upon recently receiving two Jack Webster awards (which recognize excellence in journalism in British Columbia) for its reporting on the Trans Mountain pipeline, the *Globe*’s Editor-in-Chief remarked that “*explaining policies that will decide our environmental future [is] central to our role.*”<sup>56</sup>

With these editorial principles and commitments in place, I turn to a brief description of the controversial Trans Mountain pipeline expansion project, followed by an account and analysis of the *Globe*’s editorial coverage—and *promotion*—of the project in light of its editorial and journalistic commitments.

## 2. *The Trans Mountain pipeline expansion project*

The Trans Mountain pipeline system was originally constructed in 1953, and since then has transported oil from Edmonton, Alberta to a coastal marine terminal located in Burnaby, British Columbia.<sup>57</sup> The pipeline was

51. “Globe editorial: Democracy’s immutable need for a free press,” *The Globe and Mail* (2 May 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-democracys-immutable-need-for-a-free-press/>> [perma.cc/G9KG-N949].

52. Sylvia Stead, “Without dutiful reporting, we abandon truth in news,” *The Globe and Mail* (25 April 2018), online: <<https://www.theglobeandmail.com/public-editor/article-without-dutiful-reporting-we-abandon-truth-in-news/>> [perma.cc/TC43-8P34].

53. *The Globe and Mail*, “Editorial Code of Conduct,” online: <<https://www.theglobeandmail.com/about/editorial-code/>> [perma.cc/VY97-P252] [*Globe*, “Code of Conduct”].

54. See e.g. “Globe and Mail’s Unfounded investigation wins Michener Award,” *The Globe and Mail* (12 June 2018), online: <<https://www.theglobeandmail.com/canada/article-globe-and-mail-wins-michener-award-for-series-on-police-handling-of-3/>> [perma.cc/5FLA-BMXL].

55. *Globe*, “About Us,” *supra* note 45.

56. “The Globe and Mail wins B.C. awards for stories on Trans Mountain pipeline, opioids,” *The Globe and Mail* (13 October 2017), online: <<https://www.theglobeandmail.com/news/national/the-globe-and-mail-wins-bc-awards-for-stories-on-trans-mountain-pipeline-opioids/article36581042/>> [perma.cc/K6A3-U5L7] [emphasis added] [*Globe*, “Globe wins B.C. awards”].

57. “Explainer: Trans Mountain, Trudeau and the B.C.-Alberta feud: A guide to the political saga so



originally owned by the Texas-based company Kinder Morgan; Kinder Morgan's shareholders approved the company's sale of the pipeline for \$4.3 billion to the Government of Canada on 30 August 2018.<sup>58</sup> Since 2012, Kinder Morgan had been seeking provincial and federal approval of its proposed expansion of the project—a “twinning” of the pipeline in the form of an additional (larger) pipeline to be constructed along the route of the existing pipeline, a construction project initially valued at \$7.4 billion. Presently, Trans Mountain carries approximately 300,000 barrels of oil per day.<sup>59</sup> If the expansion of the pipeline is completed, Trans Mountain would have the capacity to transport approximately 890,000 barrels per day, an approximately threefold increase in the pipeline's capacity.<sup>60</sup>

The National Energy Board (NEB) reviewed the Trans Mountain expansion proposal, which Kinder Morgan submitted to the NEB on 16 December 2013.<sup>61</sup> On 19 May 2016, the NEB issued a report to the federal Governor in Council (Cabinet) recommending that the Trans Mountain expansion project be approved subject to 157 technical conditions.<sup>62</sup> Following the release of the NEB's report, the federal Minister of Natural Resources named a three-member ministerial expert panel to further review the project proposal. The objective of the expert panel was to hear from Indigenous communities and other Canadians along the proposed pipeline and shipping route to hear views that may not have been considered as part of the initial NEB review.

The federal government's additional consultation phase was designed to consider the extent to which the NEB's recommended conditions for the project effectively responded to concerns raised by Indigenous communities, and to identify any outstanding issues and potential accommodation measures necessary to mitigate adverse impacts on their rights.<sup>63</sup> It is important to note, however, that neither the NEB's review nor the federal government's supplemental review of the Trans Mountain expansion meaningfully considered the project's climate change implications. The government's supplemental review was not able “to

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far”, *The Globe and Mail* (21 September 2018), online: <<https://www.theglobeandmail.com/politics/article-trans-mountain-kinder-morgan-pipeline-bc-alberta-explainer/>> [perma.cc/F2NW-SQ3F] [*Globe and Mail*, “Trans Mountain Explainer”].

58. *Ibid.*

59. *Ibid.*

60. *Ibid.*

61. National Energy Board, “Trans Mountain Pipeline ULC—Trans Mountain Expansion Project,” online: <<https://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxfpsn/index-eng.html>> [perma.cc/32S6-M7LK].

62. *Ibid.*

63. *Ibid.*

conclude definitively on whether emissions will increase as a result of the project.”<sup>64</sup> Curiously, the government’s supplemental review nevertheless concluded that the project will “not impact the emissions protections that underpin the plan to meet or exceed Canada’s 2030 target of at least [a] 30 per cent reduction below 2005 levels of emissions.”<sup>65</sup> The federal government has thus far refused to disclose the financial risks that climate change poses to Trans Mountain’s long-term commercial prospects, even as it encourages Canadian corporations to disclose their own climate risks.<sup>66</sup>

At the conclusion of the government’s additional review, on 29 November 2016 the Governor in Council directed the NEB to issue a Certificate of Public Convenience and Necessity pursuant to the *National Energy Board Act* for the Trans Mountain expansion project.<sup>67</sup> On 30 January 2018, the BC provincial government announced its intention to develop additional measures to improve its “preparedness, response and recovery” relating to spills of heavy oil, including diluted bitumen, the oil that would flow through the Trans Mountain pipeline expansion. The purpose of the new regulations, the BC government explained, was to ensure immediate and geographically-specific responses following a spill of heavy crude oil, whether from a pipeline or from the rail or truck transport of oil; maximize the application of regulations to marine spills so as to complement existing federal measures; restrict the increase of diluted bitumen and other heavy oil transportation until the behaviour and effects

64. Government of Canada, Natural Resources Canada, “Trans Mountain Expansion Project,” online: <<https://www.nrcan.gc.ca/energy/resources/19142>> [perma.cc/2QJA-PWHL].

65. *Ibid.* For an initial analysis of this apparent contradiction, see Chris Tollefson & Jason MacLean, “Here is why B.C. must do its own review of the Trans Mountain pipeline,” *The Globe and Mail* (23 May 2017), online: <[https://www.theglobeandmail.com/opinion/why-bc-must-do-its-own-review-of-the-trans-mountain-pipeline/article35095482/?utm\\_source=Shared+Article+Sent+to+User&utm\\_medium=E-mail:+Newsletters+/-E-Blasts+/-etc.&utm\\_campaign=Shared+Web+Article+Links](https://www.theglobeandmail.com/opinion/why-bc-must-do-its-own-review-of-the-trans-mountain-pipeline/article35095482/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail:+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links)> [perma.cc/4RV2-EEVC].

66. See Shawn McCarthy, “Ottawa won’t commit to disclosing carbon risk for expansion of Trans Mountain pipeline,” *The Globe and Mail* (19 April 2018), online: <<https://www.theglobeandmail.com/business/article-ottawa-non-committal-to-carbon-risk-disclosure-for-trans-mountain/>> [perma.cc/422F-277W] [McCarthy, “Ottawa won’t disclose carbon risk of Trans Mountain”]; Shawn McCarthy, “Lack of climate clarity threatens oil reserve values, report says,” *The Globe and Mail* (17 January 2019), online: <<https://www.theglobeandmail.com/business/article-canadian-oil-reserves-at-risk-from-policies-to-combat-global-warming/>> [perma.cc/5ZA3-VEKC]. McCarthy reports that, “[t]o date, the government of Canada—which owns the Trans Mountain system—has not conducted an analysis of how an international effort to avert the worst effects of global warming would affect the pipeline’s long-term profitability.”

67. *Ibid.* See also “Prime Minister Justin Trudeau’s Pipeline Announcement” (29 November 2016), online: <<https://pm.gc.ca/eng/news/2016/11/29/prime-minister-justin-trudeaus-pipeline-announcement>> [perma.cc/YXK8-65XV]. In the same announcement, the government directed the NEB to reject the Northern Gateway proposal.

of spilled heavy oil can be better understood and managed; and allow for compensation for the loss of public and cultural use of land, resources and public amenities resulting from heavy oil spills.<sup>68</sup>

The Trans Mountain project has also been subject to considerable litigation, including litigation concerning jurisdiction and project permitting and, most importantly, certain of the project's adverse environmental effects and the federal government's constitutional duty to consult and accommodate affected Indigenous groups. In *Tsleil-Waututh Nation v Canada (Attorney General)*,<sup>69</sup> the Federal Court of Appeal quashed the government's Order in Council approving the pipeline, and remitted the matter back to the federal Cabinet for a redetermination. This included a referral of certain of the NEB's recommendations and terms and conditions back to the NEB for reconsideration.<sup>70</sup>

Specifically, the Federal Court of Appeal found that the government's approval of the pipeline was unreasonable on account of two flaws in the review process. First, the NEB unreasonably determined that the pipeline's expansion was not likely to cause significant adverse environmental effects. This finding was central to the NEB's report to the Governor in Council, and arose from the NEB's unjustified and unreasonable failure to assess the effects of pipeline-related marine shipping under the *Canadian Environmental Assessment Act, 2012* because it had unreasonably excluded marine shipping from the project's definition. The Court concluded that having been furnished with such a flawed report, the Governor in Council could not legally make the kind of assessment of the

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68. BC Gov News, "Environment and Climate Change Strategy: Additional measures being developed to protect B.C.'s environment from spills" (30 January 2018), online: <<https://news.gov.bc.ca/releases/2018ENV0003-000115>> [perma.cc/45AR-PK59]; for an initial analysis of British Columbia's proposed measures published by the *Globe*, see Jason MacLean, "The constitutional complexity of pipelines: It's as clear as bitumen," *The Globe and Mail* (5 February 2018), online: <<https://www.theglobeandmail.com/opinion/the-constitutional-complexity-of-pipelines-its-as-clear-as-bitumen/article37849206/>> [perma.cc/T4YR-GZ7N]. British Columbia submitted what was considered to be the most controversial of its proposed measures—its authority to restrict the increase of diluted bitumen transportation in British Columbia until the behaviour and effects of spilled bitumen can be better understood and managed—as a reference to the Court of Appeal for British Columbia for a ruling on the measure's constitutionality. For further background on the reference, including British Columbia's proposed legislative measures, see BC Gov News, "Province submits court reference to protect B.C.'s coast" (26 April 2018), online: <<https://news.gov.bc.ca/releases/2018PREM0019-000742>> [perma.cc/H6HX-ZAF6]. The BC Court of Appeal unanimously ruled that the province's proposed regulations are constitutionally invalid: *Reference re Environmental Management Act (British Columbia)*, 2019 BCCA 181. British Columbia is appealing the decision to the Supreme Court of Canada.

69. *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 (CanLII) [*Tsleil-Waututh*].

70. *Ibid* at para 774.

pipeline expansion's environmental effects and the public interest that the *Canadian Environmental Assessment Act, 2012* required.<sup>71</sup>

Second, the Court concluded that the government failed to satisfy its constitutional duty to consult and accommodate affected Indigenous groups. The Court found that the government failed to “engage, dialogue meaningfully and grapple with the concerns expressed to it in good faith by the Indigenous applicants so as to explore possible accommodation of these concerns.”<sup>72</sup> In particular, the Court found that the government failed to make a genuine and sustained effort “to pursue meaningful, two-way dialogue.”<sup>73</sup> The government provided very few responses to affected Indigenous groups' questions, and when the government did respond, the Court found that its responses were brief and generic. More problematic still, the Court found that the government failed to give serious consideration to whether any of the NEB's findings were unreasonable or incorrect. Finally, the government did not consider amending or supplementing the NEB's recommended conditions, which it had the authority to do.<sup>74</sup>

In response to the Federal Court of Appeal's decision quashing the government's approval of the Trans Mountain project, the government directed the NEB to reconsider—in a 22-week timeframe—the effects of the pipeline-related increase in marine tanker traffic on endangered Southern resident killer whales.<sup>75</sup> The government also set out a new consultation process to address the deficiencies in its initial consultations with affected Indigenous groups identified by the Federal Court of Appeal.<sup>76</sup> The federal government re-approved the Trans Mountain pipeline on 18 June 2019.<sup>77</sup>

71. *Ibid* at paras 765-766.

72. *Ibid* at para 754.

73. *Ibid* at para 756.

74. *Ibid* at para 757.

75. Shawn McCarthy & Justine Hunter, “Ottawa orders NEB to review marine-traffic impact from Trans Mountain oil shipments,” *The Globe and Mail* (21 September 2018), online: <<https://www.theglobeandmail.com/business/industry-news/energy-and-resources/article-ottawa-orders-neb-to-reconsider-trans-mountain-expansion-project/>> [perma.cc/8XN4-SR9G]. Upon the completion of its reconsideration, the NEB once again recommended that the project be approved: National Energy Board, “Reconsideration Report—Trans Mountain Expansion Project” (22 February 2019), online: <<http://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/trnsmntnxpnsnrprt-eng.html>> [perma.cc/L2G9-8D9L].

76. See Shawn McCarthy, “Ottawa appoints former judge to oversee consultations with First Nations over Trans Mountain expansion,” *The Globe and Mail* (3 October 2018), online: <<https://www.theglobeandmail.com/business/industry-news/energy-and-resources/article-ottawa-taps-ex-supreme-court-justice-to-oversee-trans-mountain/>> [perma.cc/M8U2-F35Y].

77. Government of Canada, Order in Council PC 2019-0820 (18 June 2019). Both environmental and Indigenous groups immediately commenced legal challenges to the government's re-approval. Those challenges remain pending at this writing.

3. *Manufacturing the public interest: The Globe's promotion of the "people's pipeline"*

Immediately following the Federal Court of Appeal's decision quashing the government's initial approval of the Trans Mountain pipeline expansion, the *Globe* published an editorial entitled "The problem isn't the pipeline, it's the way it was approved."<sup>78</sup> With the proper response, the *Globe* argued, "Canada could end up with both a much-needed pipeline expansion and a clearer set of rules for approving projects of this kind."<sup>79</sup> In a follow-up editorial, the *Globe* added "there is every reason to be confident the *people's pipeline* will get built after a few more hurdles are cleared."<sup>80</sup> "The national interest," the *Globe* declared, "is served by the project going ahead as soon as possible."<sup>81</sup>

The *Globe* is not a recent convert to the cause of the Trans Mountain pipeline expansion. Shortly after Kinder Morgan submitted its original application to the NEB seeking the Board's support for its proposed expansion, there was a provincial election in British Columbia. Polls had suggested that the incumbent Liberals had little chance of prevailing over the favoured New Democratic Party (NDP), which had strongly opposed the Trans Mountain expansion project. The Liberals won a surprising majority government. In the *Globe's* view, the NDP underestimated BC voters' demands for increasing job creation and provincial revenues from natural resources development.<sup>82</sup> The *Globe* urged the new BC Liberal government to become "an open-minded partner with Alberta in its bid to get its oil to tidewaters for export."<sup>83</sup> To do so, the *Globe* added, the BC premier (Christy Clark) must "keep her eye on jobs and growth while at

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78. "Globe editorial: The problem isn't the pipeline, it's the way it was approved," *The Globe and Mail* (30 August 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-the-problem-isnt-the-pipeline-its-the-way-it-was/>> [perma.cc/DT39-VQXQ] [*Globe*, "The problem isn't the pipeline"].

79. *Ibid.*

80. "Globe editorial: Lashing out at Ottawa won't save the people's pipeline," *The Globe and Mail* (31 August 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-lashing-out-at-ottawa-wont-save-the-peoples/>> [perma.cc/G6YG-JDD6] [*Globe*, "Lashing out won't save the people's pipeline"].

81. "Globe editorial: The way forward for Trans Mountain," *The Globe and Mail* (23 September 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-the-way-forward-for-trans-mountain/>> [*Globe*, "The way forward"] [perma.cc/2VHP-J5VQ].

82. "Globe Editorial: B.C. voters choose economic growth in historic general election," *The Globe and Mail* (15 May 2013), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-bc-voters-choose-economic-growth-in-historic-general-election/article11935330/>> [perma.cc/EBT9-3TWQ].

83. *Ibid.*

the same time ensuring that the environment is protected and that First Nations' voices are heard every step of the way."<sup>84</sup>

While the *Globe's* unsolicited pipeline policy advice to the BC government in 2013 might appear to be rooted in a concern for Alberta's oil, the *Globe* has consistently adopted the view that expanding production in Alberta's oil sands is in the broader *national* interest. In an editorial weighing the relative strengths and weaknesses of the Trans Mountain pipeline expansion vis-à-vis Enbridge's Northern Gateway pipeline proposal and TransCanada's Keystone XL proposal, the *Globe* observed that the "long-running development of the Western Canadian oil patch is predicated on much of that resource being exported."<sup>85</sup> After noting that transporting oil by rail is not a viable option to expand oil sands development and ensure that "Canada's oil"<sup>86</sup> gets to foreign markets (a point I will return to below), the *Globe* concluded "pipelines must be built."<sup>87</sup>

Over the next three years (2013–2016), the Trans Mountain pipeline expansion proposal attracted considerably less attention than the longer-running Northern Gateway and Keystone XL proposals. In the *Globe's* comparison of the three pipeline proposals, it considered Trans Mountain to be the least controversial because the proposal consisted largely in constructing a new pipeline along the very same route of a still-operational pipeline.<sup>88</sup>

### *Northern Gateway*

The Northern Gateway proposal, by contrast, was highly controversial and contested vigorously from the very moment it was proposed. The Northern Gateway project consisted of constructing and operating a 1,170 km, 525,000 barrel per day crude oil pipeline along with a 193,000 barrel per day condensate pipeline between Bruderheim, Alberta and the port of Kitimat, British Columbia, where a marine terminal would have

84. *Ibid.*

85. "Editorial: Northern Gateway: A long way yet to cross the Pacific," *The Globe and Mail* (19 December 2013), online: <<https://www.theglobeandmail.com/opinion/editorials/northern-gateway-a-long-way-yet-to-cross-the-pacific/article16064628/>> [perma.cc/7KD3-LAAF].

86. *Ibid.* The *Globe's* staff columnists have also consistently made the same point. See e.g. Gary Mason, "Sorry, Vancouver: The rest of Canada needs pipelines," *The Globe and Mail* (2 December 2016), online: <<https://www.theglobeandmail.com/opinion/sorry-vancouver-the-rest-of-canada-needs-pipelines/article33123104/>> [perma.cc/4XA5-NGVB].

87. *Ibid.*

88. "Editorial: Northern Gateway: A long way yet to cross the Pacific," *The Globe and Mail* (19 December 2013), online: <<https://www.theglobeandmail.com/opinion/editorials/northern-gateway-a-long-way-yet-to-cross-the-pacific/article16064628/>> [perma.cc/K5X7-RRR4].

been constructed.<sup>89</sup> The pipeline would have traversed the Great Bear Rainforest in British Columbia, an area of remarkable biodiversity that has been effectively managed and conserved by Indigenous peoples for thousands of years.<sup>90</sup> A significant oil spill in this area, it was feared, would cause irreparable harm to the environment and the traditional ways of life of local Indigenous peoples.

Beginning in 2010, the Northern Gateway proposal was subjected to an environmental assessment conducted by a Joint Review Panel struck by the federal Minister of the Environment and the NEB.<sup>91</sup> The federal government issued an Order in Council directing the NEB to issue Certificates of Public Convenience in respect of the project pursuant to the *National Energy Board Act* subject to 209 conditions recommended by the Joint Review Panel.<sup>92</sup> Environmental and Indigenous groups commenced a judicial review of the Order in Council, the final report of the Joint Review Panel (which the Governor in Council considered in making its Order), and the Certificates issued by the NEB.

While the judicial review of Northern Gateway was still ongoing—“still languishing” in the *Globe's* opinion—the federal government announced its supplemental review of the Trans Mountain expansion proposal introduced above in the previous section of this article.<sup>93</sup> In an editorial entitled “It’s time to get the Trans Mountain pipeline approved,”<sup>94</sup> the *Globe* suggested that the additional review was welcome, “even if it does come over and above the work of the National Energy Board, which made its essentially favourable report on the pipeline”<sup>95</sup> after the “NEB had been working away for three years.”<sup>96</sup> Meanwhile, as the NEB continued its ongoing review of TransCanada’s Energy East pipeline proposal, the *Globe's* editorial page expressed its “hope the Liberal government doesn’t add yet another extra review for that eastbound project.”<sup>97</sup>

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89. For further details about the Northern Gateway pipeline proposal and its assessment, see Government of Canada, “Joint Review Panel for Northern Gateway Project,” online: <<https://www.canada.ca/en/news/archive/2014/06/joint-review-panel-northern-gateway-project.html>> [perma.cc/4VBC-BNAR] [Government of Canada, “Northern Gateway”].

90. For an account of how the imperatives of conservation and reconciliation intersect in this region, see Deborah Curran, “‘Legalizing’ the Great Bear Rainforest Agreements: Colonial Adaptations Toward Reconciliation and Conservation” (2017) 62:3 McGill LJ 813.

91. Government of Canada, “Northern Gateway,” *supra* note 89.

92. *Gitxaala Nation v Canada*, 2016 FCA 187 at para 51 [*Gitxaala*].

93. “Editorial: It’s time to get the Trans Mountain pipeline approved,” *The Globe and Mail* (22 May 2016), online: <<https://www.theglobeandmail.com/opinion/editorials/its-time-to-get-the-trans-mountain-pipeline-approved/article30107212/>> [perma.cc/U8XL-NSFJ].

94. *Ibid.*

95. *Ibid.*

96. *Ibid.*

97. *Ibid.* The Energy East proposal consisted in converting an approximately 3,000km natural gas

Shortly thereafter, the judicial review of Northern Gateway concluded. In the *Gitxaala* decision, the Federal Court of Appeal quashed the federal Cabinet's Order in Council.<sup>98</sup> The Court found that the federal government fell far short of the mark of satisfying its constitutional duty to consult and accommodate affected Indigenous groups.<sup>99</sup> The Court's reasoning in *Gitxaala*—that the government failed to engage in meaningful dialogue with affected Indigenous groups—anticipates the Court's more recent conclusion in *Tsleil-Waututh* regarding the consultation conducted in respect of the Trans Mountain expansion proposal.<sup>100</sup>

The *Globe* responded to the Federal Court of Appeal's decision in *Gitxaala* by urging the federal government to press forward, stating that the decision “doesn't change the fact that Canada needs a way to get Albertan oil to new markets, and that the most efficient and safest way to do that is via pipeline. The best bet now is Kinder Morgan's Trans Mountain project.”<sup>101</sup>

### *Keystone XL*

The Keystone XL pipeline proposal, on the other hand, was just as controversial as Northern Gateway. Keystone XL was opposed by Indigenous groups whose lands and waters would be traversed by the pipeline and threatened by oil spills, though in contrast to Northern Gateway, this opposition was concentrated more in the United States, where the majority of the construction would occur, and whose president would decide its fate. Environmental groups also opposed Keystone XL on climate change grounds, which the *Globe* characterized as “absurd.”<sup>102</sup> US president Barack Obama first vetoed a bill passed by the US Congress approving Keystone XL,<sup>103</sup> and ultimately rejected the pipeline proposal,

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pipeline from Alberta to Ontario to a diluted bitumen pipeline, and the construction of an additional 1,600km pipeline from Ontario to port terminals and refineries in Quebec and New Brunswick. For additional details, see Government of Canada, “Energy East Project,” online: <<https://ceaa-acee.gc.ca/050/evaluations/proj/80073?culture=en-CA>> [<https://perma.cc/3CUX-LG2B>].

98. *Gitxaala*, *supra* note 92 at para 333.

99. *Ibid* at para 325.

100. *Tsleil-Waututh*, *supra* note 69 at para 754.

101. “Editorial: Ottawa has to prove it can get a pipeline built,” *The Globe and Mail* (4 July 2016), online: <<https://www.theglobeandmail.com/opinion/editorials/ottawa-has-to-prove-it-can-get-a-pipeline-built/article30747419/>> [[perma.cc/W7C6-Q8SW](https://perma.cc/W7C6-Q8SW)].

102. “Editorial: What the election of Donald Trump means for Justin Trudeau,” *The Globe and Mail* (9 November 2016), online: <<https://www.theglobeandmail.com/opinion/editorials/what-the-election-of-donald-trump-means-for-justin-trudeau/article32776713/>> [[perma.cc/74RX-5867](https://perma.cc/74RX-5867)] [*Globe*, “What Trump means for Trudeau”].

103. See Paul Koring, “Obama vetoes promised Keystone XL pipeline bill,” *The Globe and Mail* (24 February 2015), online: <<https://www.theglobeandmail.com/news/world/obama-keystone-pipeline-decision/article23180005/>> [[perma.cc/YN44-FC9Q](https://perma.cc/YN44-FC9Q)].



both because its economic potential had been greatly exaggerated and because it would contribute to climate change.<sup>104</sup> President Obama's spokesperson explained that approving Keystone XL would "incentivize the extraction of some of the dirtiest oil on the planet and... undermine the case" for urgently cutting carbon emissions.<sup>105</sup>

That was the fall of 2015, during the negotiations of a United Nations agreement on climate change in Paris. A year later, however, Donald Trump was elected president of the United States. Trump had promised during his campaign to reverse Obama's decision on Keystone XL on his first day in office. On 24 January 2017, Trump issued a series of executive memoranda to revive the project.<sup>106</sup> According to the *Globe*, Trump's promise to revive Keystone XL was "a game-changer for the Canadian oil patch."<sup>107</sup> At the same time, the *Globe* was careful to caution that it remained to be seen how Trump would follow through on that promise, and on what conditions.<sup>108</sup> Shortly thereafter, in an assessment of Justin Trudeau's first year in office as prime minister, the *Globe* claimed that Trudeau's "best moment came near the end of 2016, when he announced his government's decision to approve the Trans Mountain pipeline expansion."<sup>109</sup>

#### *Trans Mountain expansion*

Despite the Trudeau government's approval, Trans Mountain's prospects were soon threatened by the BC provincial election in the spring of 2017. The *Globe* once again endorsed the Liberals. Regarding oil and pipelines, the *Globe* observed, the BC Liberals have "tried to strike a balance, favouring new projects but demanding environmental assurances and financial returns."<sup>110</sup> Despite the federal government's promise to spend

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104. See Paul Koring, "Canada was irrelevant in Obama's decision to reject Keystone XL pipeline," *The Globe and Mail* (6 November 2016), online: <<https://www.theglobeandmail.com/news/world/canada-was-irrelevant-in-obamas-decision-to-reject-keystone-xl-pipeline/article27164939/>> [perma.cc/A2GN-27WT].

105. *Ibid.*

106. Adrian Morrow & Shawn McCarthy, "Trudeau welcomes Trump's Keystone XL pipeline revival," *The Globe and Mail* (24 January 2017), online: <<https://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/trump-sign-order-to-approve-keystone-xl-pipeline/article33714341/>> [perma.cc/QF83-KH8B].

107. "Editorial: What the election of Donald Trump means for Justin Trudeau (2)," *The Globe and Mail* (11 November 2016), online: <<https://www.theglobeandmail.com/opinion/editorials/what-the-election-of-donald-trump-means-for-justin-trudeau-2/article32827172/>> [perma.cc/E6KT-5CY6].

108. *Globe*, "What Trump means for Trudeau," *supra* note 102. At this writing the Keystone XL project remains mired in legal proceedings in the United States.

109. "Globe editorial: Justin Trudeau's 2016: A year of goals and own-goals," *The Globe and Mail* (26 December 2016), online: <<https://www.theglobeandmail.com/opinion/editorials/justin-trudeaus-2016-a-year-of-goals-and-own-goals/article33419730/>> [perma.cc/7TU4-9X9Y].

110. "Globe editorial: In B.C., hold your nose and vote Liberal," *The Globe and Mail* (5 May 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-in-bc-hold-your-nose/>>

a significant amount of money on spill prevention and remediation, the *Globe* added, “the [BC] NDP is still opposed.”<sup>111</sup> In the *Globe*’s opinion, Trans Mountain was not in the least controversial: “There’s already an existing pipe on the route, as has been for decades. At its terminus, there are already tankers carrying oil from Burnaby to the sea. This is the least intrusive pipeline proposal out there.”<sup>112</sup> The stakes of *not* approving the pipeline expansion, by contrast, were high. According to the *Globe*: “leaving Alberta oil landlocked and stuck in that province, due to an inability to build the most safe and efficient means of oil transport, would be a shock to the economy.”<sup>113</sup>

The BC NDP secured a minority government by striking a cooperation agreement with the Green Party, which effectively held the balance of power after having won a record 17 percent of the vote and three seats in the BC legislature.<sup>114</sup> As a result, the *Globe* argued, “what should be Canada’s least controversial pipeline project is now in jeopardy. It spells big trouble for Alberta’s and Ottawa’s plans for moving landlocked oil to the Pacific. That could be a punch in the gut to the oil industry and a hit for the Canadian economy.”<sup>115</sup>

Soon after the 2017 BC provincial election the *Globe* published its most substantial editorial on the issue of building new pipelines from Alberta to tidewater.<sup>116</sup> The *Globe* began by describing a battle between British Columbia and the federal government “that could have an indelible impact on the future of Canada.”<sup>117</sup> “The issue at hand is pipelines,” the *Globe* argued, and “[i]t comes down to one question: Can Ottawa effectively exercise its responsibilities if the provinces refuse to recognize its authority on controversial issues?”<sup>118</sup> In the *Globe*’s opinion, it was clear and beyond reasonable argument that the federal government has exclusive jurisdiction over the Trans Mountain pipeline expansion, a

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and-vote-liberal/article34906441/> [perma.cc/536K-TPD6].

111. *Ibid.*

112. “Globe editorial: On pipelines, it’s the Trudeau government’s choice, and it’s time to choose,” *The Globe and Mail* (21 May 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-on-pipelines-its-the-trudeau-governments-choice-and-its-time-to-choose/article35066359/>> [perma.cc/9CD2-LGQR].

113. *Ibid.*

114. “Globe editorial: How B.C.’s election has changed everything,” *The Globe and Mail* (26 May 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-how-bcs-election-has-changed-everything/article35125279/>> [perma.cc/NXU5-AMBE].

115. *Ibid.*

116. “Globe editorial: On pipelines, Ottawa must have the final say,” *The Globe and Mail* (4 June 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-on-pipelines-ottawa-must-have-the-final-say/article35194176/>> [perma.cc/DVD7-QJPW].

117. *Ibid.*

118. *Ibid.*

project “critical to Canada’s resource-based economy.”<sup>119</sup> The federal government, the *Globe* explained, has sole jurisdiction over railways, canals, hydro lines, pipelines, and other forms of infrastructure that cross provincial boundaries, as well as jurisdiction over seacoasts, navigation, shipping, and trade and commerce.<sup>120</sup>

Nonetheless, the *Globe* observed, the BC NDP and Greens were preparing “to undertake a bureaucratic guerilla war”<sup>121</sup> against the Trans Mountain project through the use of “clever delay tactics for the sole purpose of usurping the duly exercised authority of the federal government.”<sup>122</sup> The *Globe* further impugned the NDP-Green Party coalition government’s opposition to Trans Mountain by alleging that the parties were positioning themselves as “defenders” of BC’s coastal waters and, “by trying to block the export of crude oil, they claim to be on the side of the angels in the fight against climate change.”<sup>123</sup>

In the same editorial, the *Globe* offered its threefold argument in favour of completing the Trans Mountain pipeline expansion: (a) “Canada has to continue to exist as a resource-based economy while it and the rest of the world transition away from carbon;” (b) “oil sands crude will continue to be shipped even without a pipe, by rail;” and (c) “pipelines are safer than rail.”<sup>124</sup> The *Globe* immediately acknowledged “there is no question that the product it transports will ultimately contribute to greenhouse gas emissions,” but does not at any point in its Trans Mountain coverage to date pursue this critically-important point further.<sup>125</sup>

Neither the NEB’s review nor the federal government’s supplemental review of Trans Mountain meaningfully considered the project’s implications for climate change nor, for that matter, the impact of climate change policies on the long-term commercial viability of the project. Attention to this gap in the government’s review and approval of Trans Mountain emerged only indirectly as a byproduct of the federal government’s decision during the summer of 2017 to direct the NEB to enhance its review of TransCanada’s Energy East proposal by considering its climate change impacts. The government directed the NEB to consider not only the direct greenhouse gas emissions of the project (caused by

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119. *Ibid.*

120. *Ibid.*

121. *Ibid.*

122. *Ibid.* This statement predates the Federal Court of Appeal’s decision in *Tsleil-Waututh*, *supra* note 69, which would show that the federal government had not in fact duly exercised its authority after all.

123. *Ibid.*

124. *Ibid.*

125. *Ibid.*

its construction), but also its contribution to the upstream emissions caused by the processing of extracted bitumen for shipment as well as the downstream emissions caused by the end uses—the combustion—of the oil transported by the pipeline.<sup>126</sup> The government also instructed the NEB to consider how the government’s own climate change policies—including its greenhouse gas emissions reduction targets—would affect the project’s commercial viability.<sup>127</sup> In addition to its implications for Energy East, this new mandate also indirectly threatened Trans Mountain, raising anew unanswered questions about the project’s climate impacts and long-term commercial viability in a carbon-constrained global economy.

In response to this added layer of scrutiny, Energy East’s proponent, TransCanada Corp., decided to withdraw its application to the NEB. The *Globe*’s reaction was pointed: “this was a business decision taken by an industry that’s been forced to swim in a sea of politics.”<sup>128</sup> Citing estimates provided by the Canadian Association of Petroleum Producers (CAPP, the principal lobbyist for the Canadian oil and gas industry) that even under low-price scenarios Canada’s oil sands production was forecasted to rise by an additional 1.3 million barrels per day by 2030,<sup>129</sup> the *Globe* reiterated its position that “Canada still needs extra pipeline capacity.”<sup>130</sup> Absent any mention of climate change or Canada’s greenhouse gas emissions reduction targets, the *Globe* argued that Canada “has to be capable of making evidence-based decisions on projects of national benefit, and making those decisions stick.”<sup>131</sup> The evidence referred to by the *Globe* concerned not climate change, but rather the oil and gas sector’s own forecast of increased oil sands production: “absent another sustained drop in the oil price, or a prolonged global recession, Keystone XL alone can’t suck up all of the new Canadian oil coming on-stream. That’s why Kinder Morgan proposed Trans Mountain’s expansion, and that’s why the Liberals approved it.”<sup>132</sup>

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126. See Mike Hager, “National Energy Board defends Trans Mountain pipeline review,” *The Globe and Mail* (31 August 2017), online: <<https://www.theglobeandmail.com/news/british-columbia/national-energy-board-defends-trans-mountain-review/article36142237/>> [perma.cc/BJ5T-YZX6].

127. *Ibid.*

128. “Globe editorial: The death of Energy East was a business decision—swimming in politics,” *The Globe and Mail* (5 October 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-the-death-of-energy-east-was-a-business-decision-swimming-in-politics/article36508575/>> [perma.cc/SSCN-AKB3].

129. *Ibid.*

130. *Ibid.*

131. *Ibid.*

132. “Editorial: The Trudeau government made a decision on Trans Mountain. Now it has to make it stick,” *The Globe and Mail* (11 November 2017), online: <<https://www.theglobeandmail.com/opinion/editorials/the-trudeau-government-made-a-decision-on-trans-mountain-now-it-has-to-make->

In early 2018, yet another indirect threat to Trans Mountain arose in the form of British Columbia's proposed oil spill response and recovery regulations introduced above in the previous section of this article. "The project took a serious hit," the *Globe's* editorial page noted, "when B.C. released a proposal to restrict 'the increase of diluted bitumen transportation' in the province until the government completes studies on how 'dilbit,' the tarry crude extracted from Alberta's oil sands and diluted so it can flow through a pipe, behaves in water in the event of a spill."<sup>133</sup> In the *Globe's* view, British Columbia's proposal was nothing more than—the pun presumably intended—a crude delay tactic, especially in light of the *Globe's* claim that "the buoyancy of dilbit has already been subject to years of research," a "fact" the *Globe* claimed was "besides the point."<sup>134</sup> Anticipating its future coverage of the Trans Mountain project, the *Globe* reiterated its position that "the approval of pipelines is without question the jurisdiction of the federal government, as is control over coastal waterways" and concluded that it "would be disastrous if a province were allowed to pretend to recognize that authority while shamelessly undermining it."<sup>135</sup>

In response to British Columbia's proposed oil spill response and recovery regulations, Kinder Morgan decided to suspend all non-essential spending on the Trans Mountain expansion, and further threatened to abandon the project outright unless the federal government guaranteed its ultimate approval.<sup>136</sup> Kinder Morgan's announcement, in the editorial opinion of the *Globe*, was "nothing short of an economic and constitutional disaster for Canada."<sup>137</sup> The *Globe* accused British Columbia of "naked hypocrisy."<sup>138</sup> Noting that the province's opposition to the Trans Mountain

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it-stick/article36922309/> [perma.cc/U3SH-GPVN]. As noted in the previous section, the Trans Mountain pipeline expansion has yet to be assessed in terms of either its contribution to greenhouse gas emissions or the risks to its long-term commercial viability posed by the prospect of increasingly stringent climate change policies and regulations, including greenhouse gas emissions reduction targets. While Kinder Morgan performed a carbon-risk analysis when it issued shares to Kinder Morgan Canada Limited in 2017, its analysis did not include any analysis of the project's commercial viability in the event that oil demand peaked or declined after the year 2030. See McCarthy, "Ottawa won't disclose carbon risk of Trans Mountain," *supra* note 66.

133. "Globe editorial: Trudeau must stand up to B.C.'s crude tactics," *The Globe and Mail* (1 February 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-trudeau-must-stand-up-to-bcs-crude-tactics/article37825229/>> [perma.cc/7WAG-Q2AA].

134. *Ibid.*

135. *Ibid.*

136. "Globe editorial: Trans Mountain is now an economic and constitutional disaster," *The Globe and Mail* (8 April 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-bc-governments-pipeline-hypocrisy-could-come-back/>> [perma.cc/BZK4-YTQ8].

137. *Ibid.*

138. *Ibid.*

expansion was based on “its stated desire to protect the environment,”<sup>139</sup> the *Globe* observed that the province was at the same time “supporting the development of the province’s natural-gas reserves, offering tax breaks to a \$40-billion project that includes, wait for it, a new pipeline and a new tanker terminal on the B.C. coast.”<sup>140</sup> British Columbia, in the *Globe*’s opinion, was precipitating an economic and constitutional crisis “in the name of environmental principles it only adheres to when it is in its political interest, but abandons when it sees a dollar in it.”<sup>141</sup>

The *Globe* further accused British Columbia of hypocrisy when the province filed suit to prevent Alberta’s threat to restrict the supply of oil and gas to British Columbia in retaliation for British Columbia’s proposed oil spill response and recovery regulations from coming to pass.<sup>142</sup> According to the *Globe*, by filing suit, British Columbia “has been forced to admit that fossil fuels are an essential part of peoples’ lives, not to mention the economy, and that the transition away from them will take time.”<sup>143</sup> About BC premier John Horgan, the *Globe* said “he wants to save the planet; he’d just really prefer it if others did the heavy lifting.”<sup>144</sup>

Upon the expiry of Kinder Morgan’s ultimatum, the federal government decided to purchase the Trans Mountain pipeline<sup>145</sup> and assume responsibility for completing its expansion subject to the approval of Kinder Morgan’s shareholders, who would ultimately approve the sale by a margin of 99.98 percent.<sup>146</sup> While the *Globe* wrote approvingly of the government’s purchase of the pipeline—“remember that getting Alberta’s crude to more foreign markets is critical to the country’s economic interests”<sup>147</sup>—it worried that the government might mishandle the project:

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139. *Ibid.*

140. *Ibid.*

141. *Ibid.*

142. “Globe editorial: Alberta scores a point with threat of oil embargo,” *The Globe and Mail* (23 May 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-alberta-scores-a-point-with-threat-of-oil-embargo/>> [perma.cc/RFB4-2EPP] [*Globe*, “Alberta scores a point”].

143. *Ibid.*

144. *Ibid.*

145. “Globe editorial: Ottawa throws your money at its pipeline problem,” *The Globe and Mail* (29 May 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-ottawa-throws-your-money-at-its-pipeline-problem/>> [perma.cc/PWK9-PDB9] [*Globe*, “Ottawa purchases Trans Mountain”].

146. Andrew Willis, “Ottawa stuck with Trans Mountain pipeline other investors wisely rejected,” *The Globe and Mail* (30 August 2018), online: <<https://www.theglobeandmail.com/business/commentary/article-corporate-canada-dodges-a-bullet-on-trans-mountain-while-ottawa-takes/>> [perma.cc/FT4E-VKPR].

147. *Globe*, “Ottawa purchases Trans Mountain,” *supra* note 145.

Among other things, the Trans Mountain expansion has sparked demonstrations at which people have been arrested. That raises the question of whether or not Mr. Trudeau has the stomach for watching Canadians get manacled on his government's behalf, not to mention for telling indigenous communities that the pipeline is going through their land whether they like it or not, or for being attacked for being on the wrong side in the fight against climate change, *one of his pet issues*.<sup>148</sup>

"Then there is the fact," the *Globe* added, cryptically, "that governments are captive to different forces than private companies."<sup>149</sup> (Voters, perhaps?)

Coincidentally, on the same day the shareholders of Kinder Morgan Canada Limited approved the sale of Trans Mountain to the federal government, the Federal Court of Appeal issued its decision quashing the government's initial approval of the project.<sup>150</sup> The *Globe's* response to the Court's decision, seemingly yet another setback for the project, was decidedly more sanguine than its responses to the project's previous setbacks. In its initial editorial response to the Federal Court of Appeal's decision, the *Globe* reiterated its threefold argument in favour of Trans Mountain's expansion and made two specific additional points. First, the *Globe* stated "there is no reason the NEB can't meet the court's requirement to properly assess the impact of increased tanker traffic. The NEB might even find that the mitigation efforts already undertaken by the federal government are adequate."<sup>151</sup> Second, the *Globe* added "as for consultations with Indigenous people, the NEB clearly needs to do better. But no one should mistake the right to be duly consulted with a veto."<sup>152</sup>

In a follow-up editorial published a day later, the *Globe* emphasized that the Federal Court of Appeal in *Tsleil-Waututh* concluded that because the concerns of affected Indigenous groups in respect of the Trans Mountain expansion were specific and focused, "[t]he end result may be a

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148. *Ibid* [emphasis added]. As provocative as this phraseology is, the *Globes* editorial page has also written approvingly—if far less frequently—of the federal government's leadership "on what should be considered one of humanity's defining challenges—arresting man-made climate change that threatens the planet's very future": "Globe editorial: Trudeau's Liberals need to step up their efforts to sell carbon pricing," *The Globe and Mail* (10 August 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-trudeaus-liberals-need-to-step-up-their-efforts-to/>> [perma.cc/V9Y3-S3NH] [*Globe*, "Liberals need to sell carbon pricing"].

149. *Ibid*.

150. *Tsleil-Waututh*, *supra* note 69.

151. *Globe*, "The problem isn't the pipeline," *supra* note 78. This argument ignores the fact, however, that the Federal Court of Appeal carefully considered the federal government's Oceans Protection Plan, but found it to be an inchoate initiative and insufficient to serve as a meaningful response to affected Indigenous group's concerns about diluted bitumen spills: *Tsleil-Waututh*, *supra* note 69 at para 471.

152. *Ibid*.

short delay.”<sup>153</sup> As noted at the outset of this section, the *Globe* discounted the importance of the Federal Court of Appeal’s decision, and asserted “there is every reason to be confident the *people’s pipeline* will get built after a few more hurdles are cleared.”<sup>154</sup> “The national interest,” the *Globe* reiterated, “is served by the project going ahead as soon as possible.”<sup>155</sup>

If national polling is any indication, a majority of Canadians appear to share the *Globe*’s view of the national interest. In a poll of 1,500 Canadians conducted in 2016, 86 percent of respondents—including majorities in each geographic region of Canada—supported a plan to shift Canada’s energy use over the coming decades, including promoting cleaner transportation and buildings, and pricing carbon to encourage a shift toward greater use of cleaner energy.<sup>156</sup> After posing the question about this proposed shift, the pollsters asked respondents the following question: “Let’s imagine while putting in place these measures to encourage a shift to renewable energy, the federal government also approved a new pipeline to get Canada’s oil and gas to new markets, would you strongly support, support, accept, oppose, or strongly oppose such a decision?”<sup>157</sup> The results were 41 percent in support of the proposal with an additional 35 percent prepared to accept it, with only 23 percent opposed. The poll’s authors concluded that “there is a path to creating more comprehensive national support, with a blend of carbon pricing, incentives to promote a shift in energy use, *and adding pipeline capacity to get Canada’s oil to markets while a shift towards more renewable energy is underway.*”<sup>158</sup>

More recent polling reinforces this view. In a survey conducted by Nanos Research on behalf of the University of Ottawa’s Positive Energy initiative, 55 percent of respondents agreed and an additional 29 percent “somewhat agreed” that Canada’s oil and gas sector can play an important *long-term role* domestically and internationally if it operates in an environmentally responsible way. Further, nearly 75 percent of those Canadians surveyed believe that Canada’s oil and gas exports can contribute to *combatting* global climate change.<sup>159</sup>

153. *Globe*, “Lashing out won’t save the people’s pipeline,” *supra* note 80; *Tsleil-Waututh*, *supra* note 69 at para 772.

154. *Globe*, “Lashing out won’t save the people’s pipeline,” *supra* note 80.

155. *Globe*, “The way forward,” *supra* note 81.

156. Bruce Anderson & David Coletto, “Climate, Carbon, and Pipelines: A Path to Consensus,” *Abacus Data* (18 October 2016), online: <<http://abacusdata.ca/climate-carbon-and-pipelines-a-path-to-consensus/>> [perma.cc/ZXE9-USEL].

157. *Ibid.*

158. *Ibid* [emphasis added].

159. Monica Gattinger & Nik Nanos, “Canadians back Ottawa on energy projects, but seek balance,” *The Globe and Mail* (17 April 2018), online: <<https://www.theglobeandmail.com/opinion/article-canadians-back-ottawa-on-energy-projects-but-seek-balance/>> [perma.cc/6799-F3ER]. See also Tony



4. *Letter to the editor: Exposing pipeline propaganda and climate inaction*

A letter to the editor published by the *Globe* in the spring of 2018 neatly summarizes the *Globe's* editorial coverage of the Trans Mountain pipeline expansion, notably its characterization of the project as being in the “national interest”:

Repeating phrases turns them into clichés, expressions requiring minimal reflection, often used by leaders to create mindsets and attitudes, easily weaponized. . . . Instead of using the “national interest” as a sledgehammer, engage in evidence-based conversations: the actual product (dilbit), the carbon footprint, pollution, job numbers, risks, alternative solutions.<sup>160</sup>

This letter writer’s summary closely tracks the media “propaganda model” described above in section II of the article. Before applying that model to the *Globe's* editorial coverage of Trans Mountain, however, it is important to first engage in the evidence-based dialogue rightly suggested by the letter writer. In particular, it is important to assess whether the *Globe's* threefold argument in favour of the Trans Mountain expansion is supported by evidence.

a. *Pipelines support Canada's transition away from fossil fuels*

The *Globe's* first argument in favour of building new pipelines from the oil sands to coastal tidewaters is that Canada must continue to exist as a resource-based (i.e. oil-and-gas-based) economy while Canada and the rest of the world transition away from fossil fuels. The reality, however, is that neither Canada nor “the world” is presently engaged in anything that can fairly be characterized as a transition away from fossil fuels.

Canada is not presently on track to meet the initial greenhouse gas emissions reduction target it set pursuant to its entrance into the Paris climate change agreement: A 30 percent reduction by the year 2030 relative to its greenhouse gas emissions in the baseline year of 2005. Canada is presently on pace to exceed its 2005-level of greenhouse gas emissions in the year 2030 by as much as 30 percent. In fact, Canada’s greenhouse gas emissions *increased* in 2017,<sup>161</sup> and, according to a report authored by

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Coulson, “Canadians remain on board with energy projects,” *The Globe and Mail* (31 August 2018), online: <<https://www.theglobeandmail.com/business/commentary/article-canadians-remain-on-board-with-energy-projects/>> [perma.cc/54PT-RXV4].

160. Clarence Bolt, “Letter to the editor,” *The Globe and Mail* (13 April 2018), online: <<https://www.theglobeandmail.com/opinion/letters/article-april-13-trans-mountain-just-what-is-in-the-national-interest/>> [perma.cc/NKW8-6QSG].

161. Environment and Climate Change Canada, “Canadian Environmental Sustainability Indicators: Greenhouse gas emissions” (Ottawa, 2019) at 17 [Environment and Climate Change Canada, “Greenhouse gas emissions”].

federal government scientists and academics, Canada is warming at twice the rate of the rest of the world, and nearly three times the global rate in the Arctic.<sup>162</sup>

In 2017, the Commissioner observed that “in two important areas—reducing greenhouse gas emissions and adapting to the impacts of climate change—the federal government has yet to do much of the hard work that is required to bring about this fundamental shift.”<sup>163</sup>

Making matters worse, Canada does not presently have a plan to meet its 2030 emissions target, which is already a scientifically *unambitious* emissions-reduction target. In 2018 a government audit coordinated by Canada’s Commissioner of the Environment and Sustainable Development of the climate change mitigation and adaptation policies presently in place in Canada issued the following stark warning:

Canada’s auditors general found that most governments in Canada were not on track to meet their commitments to reducing greenhouse gas emissions and were not ready for the impacts of climate change. On the basis of current federal, provincial, and territorial policies and actions, Canada is not expected to meet its 2020 target for reducing greenhouse gas emissions. *Meeting Canada’s 2030 target will require substantial effort and actions beyond those currently planned or in place.* Most Canadian governments have not assessed and, therefore, do not fully understand what risks they face and what actions they should take to adapt to a changing climate.<sup>164</sup>

The Commissioner reached the same conclusion again in 2019.<sup>165</sup>

Nor is the federal government presently prepared to contribute to the implementation of the United Nations 2030 Agenda for Sustainable Development, which consists of 17 aspirational sustainable development

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162. Jeff Lewis & Janice Dickson, “Report on climate change shows Canada warming at twice the rate of rest of world,” *The Globe and Mail* (1 April 2019), online: <<https://www.theglobeandmail.com/canada/article-report-on-climate-change-shows-canada-warming-at-twice-the-rate-of/>> [perma.cc/TE2P-ZN8U]. The report referred to in the *Globe’s* news story is Natural Resources Canada, “Canada’s Changing Climate Report” (April 2019), online: <<https://www.nrcan.gc.ca/environment/impacts-adaptation/21177>> [perma.cc/YCJ2-PM8H].

163. Commissioner of the Environment and Sustainable Development, “The Commissioner’s Perspective” (October 2017), online: <[http://publications.gc.ca/site/archivee-archived.html?url=http://publications.gc.ca/collections/collection\\_2017/bvg-oag/FA1-26-2017-1-0-eng.pdf](http://publications.gc.ca/site/archivee-archived.html?url=http://publications.gc.ca/collections/collection_2017/bvg-oag/FA1-26-2017-1-0-eng.pdf)> [perma.cc/YVR3-EN5K].

164. Commissioner of the Environment and Sustainable Development, “Perspectives on Climate Change Action in Canada—A Collaborative Report from Auditors General—March 2018” (27 March 2018), online: <[http://www.oag-bvg.gc.ca/internet/English/parl\\_otp\\_201803\\_e\\_42883.html](http://www.oag-bvg.gc.ca/internet/English/parl_otp_201803_e_42883.html)> [perma.cc/7XUA-TDLF].

165. Jeff Lewis, “Canada not doing enough to fight climate change, federal environment commissioner warns,” *The Globe and Mail* (2 April 2019), online: <<https://www.theglobeandmail.com/canada/article-canada-isnt-doing-enough-to-fight-climate-change-federal-environment/>> [perma.cc/3UNV-AJGQ].

goals (SDGs) directed toward achieving socially, economically, and environmentally sustainable development worldwide. According to the Commissioner, Canada has “not adequately prepared to implement the United Nations 2030 Agenda.”<sup>166</sup> Specifically, the Commissioner found that “there was no governance structure and limited national consultation and engagement on the 2030 Agenda. There was no implementation plan with a system to measure, monitor, and report on progress nationally.”<sup>167</sup>

Nor, finally, can it be claimed that “the world” is presently transitioning away from fossil fuels. No major industrialized country is presently on pace to meet its initial greenhouse gas emissions reduction target under the Paris climate change agreement.<sup>168</sup> Moreover, according to the International Energy Agency (IEA), the global transformation toward a clean energy system is not presently in line with stated international policy goals.<sup>169</sup> As reported by *The Economist* in 2018, rising global energy demand is causing a corresponding increase in the use of fossil fuels.<sup>170</sup> Most strikingly, in its special report on global warming of 1.5 degrees Celsius, the highly ambitious and aspirational target of the Paris Climate Agreement, the UN Intergovernmental Panel on Climate Change (IPCC) underscored the urgent need for the global community to undertake rapid, systemic, and unprecedented changes in how governments, industries, and societies function in order to limit warming to 1.5 degrees Celsius above the pre-industrial norm and thereby increase the likelihood of staving off the most catastrophic impacts of climate change.<sup>171</sup>

The *Globe's* first argument in favour of the Trans Mountain expansion project is thus materially inaccurate and misleading. Neither Canada nor

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166. Commissioner of the Environment and Sustainable Development, “Report2—Canada’s Preparedness to Implement the United Nations Sustainable Development Goals” (24 April 2018), online: <[http://www.oag-bvg.gc.ca/internet/English/att\\_\\_e\\_43001.html](http://www.oag-bvg.gc.ca/internet/English/att__e_43001.html)> [perma.cc/TSD9-PYER].

167. *Ibid.*

168. Climate Action Tracker, “Improvement in warming outlook as India and China move ahead, but Paris Agreement gap still looms large” (14 November 2017), online: <<https://climateactiontracker.org/press/improvement-warming-outlook-india-and-china-move-ahead-paris-agreement-gap-still-looms-large/>> [perma.cc/499N-HGKP].

169. International Energy Agency, “Energy Technology Perspectives 2017: Catalysing Energy Technology Transformations” (OECD/IEA, 2017), online: <<https://www.iea.org/etp/>> [perma.cc/SP55-A9DM].

170. “The world is losing the war against climate change,” *The Economist* (2 August 2018), online: <<https://www.economist.com/leaders/2018/08/02/the-world-is-losing-the-war-against-climate-change>> [perma.cc/55QR-TF2L].

171. UN Intergovernmental Panel on Climate Change, “Global Warming of 1.5° C: Summary for Policymakers” (November 2018), online: <<https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>> [perma.cc/BB27-F242]. For a preliminary analysis of the implications of this report for Canada’s current climate change policies, see Jason MacLean, “The problem with Canada’s gradual climate policy,” *Policy Options* (26 October 2018), online: <<https://policyoptions.irpp.org/magazines/october-2018/the-problem-with-canadas-gradual-climate-policy/>> [perma.cc/987E-3X6L].

the world is yet transitioning toward a low-to-zero-carbon economy. The *Globe's* assertion that such a transition is already underway, however, gives the impression that more radical decarbonization measures are presently unnecessary. This mischaracterization tacitly legitimizes climate *inaction* in the short-to-medium term. It also effectively discourages—if not outright precludes—reasoned discussion and debate about the kinds of decarbonization policies that Canada should be urgently pursuing now (e.g. building, instead of new diluted bitumen pipelines, long-distance transmission lines capable of carrying zero-carbon electricity).

Indeed, on this particular point the *Globe* is explicit. In an editorial on Bill C-69 and its proposal of a new *Impact Assessment Act* to replace the *Canadian Environmental Assessment Act, 2012* enacted by the Harper government, the *Globe* offers the following opinion:

Major pipeline and other resource projects should be judged on their impact on their *immediate environment* and on Indigenous peoples, and on the possibility of mitigating impacts that cannot be avoided....*Things like downstream greenhouse-gas emissions*, or “the intersection of sex and gender with other identity factors,” as the law proposes, *should be kept out of the discussion*.<sup>172</sup>

The *Globe's* argument also obscures the crucially inconvenient fact that the construction of new oil sands pipelines does not merely “continue” current levels of oil sands production, Canada’s largest and fastest-growing source of greenhouse gas emissions;<sup>173</sup> instead, the construction of a new pipeline to tidewater would facilitate the *expansion* of oil sands production, and such expansion is directly at odds with transitioning toward a low-to-zero-carbon economy.<sup>174</sup> In the *Globe's* editorial propaganda, however,

172. “Editorial: A Pipeline bill with too many holes in it,” *The Globe and Mail* (12 March 2019), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-fixing-the-pipeline-bill-while-its-still-in-the/>> [perma.cc/H5KC-BK4X] [emphasis added].

173. See Bora Plumptre, “Three takeaways from Canada’s latest greenhouse gas emissions data: What we’ve learned from this year’s National Inventory Report” (12 July 2018), *Pembina Institute* (blog), online: <<http://www.pembina.org/blog/three-takeaways-canadas-latest-greenhouse-gas-emissions-data>> [perma.cc/39PG-JKA9]. See also Environmental Defence & Stand.Earth, “Canada’s Oil & Gas Challenge: A Summary Analysis of Rising Oil and Gas Industry Emissions in Canada and Progress Towards Meeting Climate Targets” (2018) at 2, reporting that the oil and gas sector is “the largest and fastest growing source of GHG emissions in Canada,” online: <<https://environmentaldefence.ca/report/canadas-oil-and-gas-challenge/>> [perma.cc/2UYF-QVSR].

174. See e.g. Mark Jaccard, “Trudeau’s Orwellian logic: We reduce emissions by increasing them,” *The Globe and Mail* (20 February 2018), online: <<https://www.theglobeandmail.com/opinion/trudeaus-orwellian-logic-reduce-emissions-by-increasing-them/article38021585/>> [perma.cc/M3WM-HTSD] [Jaccard, “Trudeau’s Orwellian logic”]. According to scenarios developed by the relatively conservative International Energy Agency, the demand for oil must *peak soon after the year 2020* in order to be consistent with the decarbonization pathways required to meet the temperature goals of the Paris Climate Agreement. See Caroline Lee, “Commentary: Where are we on the road to

the complementary policy option of reducing greenhouse gas emissions by way of *both* supply-side measures,<sup>175</sup> such as a moratorium on new fossil fuels infrastructure paired with the phased-out retirement of existing fossil fuels infrastructure,<sup>176</sup> and demand-side measures at the point of combustion, such as pricing carbon, is so “absurd”<sup>177</sup> as to be *unthinkable*, and thus outside of what Herman and Chomsky describe as “the system of presuppositions and principles that constitute an elite consensus, a system so powerful as to be internalized largely without awareness.”<sup>178</sup>

Perhaps concerned that its heretofore separate Trans Mountain pipeline and carbon price editorials’ “choices, emphases, and omissions”<sup>179</sup> were proving *too* subtle, or perhaps out of a concern over the federal government’s further delay in (yet again) approving the Trans Mountain pipeline (“Trans Mountain’s long imprisonment in limbo”<sup>180</sup>), the *Globe* published an editorial in the spring of 2019 seeking to end the debate once and for all. In “Yes to both carbon taxes and pipelines,” the *Globe* declared “Canada can cut greenhouse gas emissions while *building pipelines*. Canada can lower greenhouse gas emissions while allowing the oil industry to *grow*.”<sup>181</sup>

Would that it were so simple.

How does the *Globe* rationalize what Canadian energy economist Mark Jaccard characterizes as the oil and gas sector’s—and the Prime Minister’s—Orwellian logic?<sup>182</sup> According to the *Globe*, “because oil

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clean energy?,” *International Energy Agency Newsroom* (4 May 2018), online: <<https://www.iea.org/newsroom/news/2018/may/commentary-where-are-we-on-the-road-to-clean-energy.html>> [perma.cc/2KM6-DVYP].

175. See e.g. Michael Lazarus & Harro van Asselt, “Fossil fuel supply and climate policy: exploring the road less taken” (2018) 150 *Climatic Change* 1 [Lazarus & van Asselt, “Fossil fuel supply and climate policy”].

176. See e.g. Christopher J Smith *et al*, “Current fossil fuel infrastructure does not yet commit is to 1.5° C warming” (2019) 10:101 *Nature Communications* 1, doi:10.1038/s41467-018-07999-w; see also Wendy J Palen *et al*, “Energy: Consider the global impacts of oil pipelines” (2014) 510 *Nature* 465, doi:10.1038/510465a.

177. *Globe*, “What Trump means for Trudeau,” *supra* note 102.

178. Herman & Chomsky, *supra* note 20 at 302.

179. *Ibid* at xi.

180. “Editorial: Yes to both carbon taxes and pipelines,” *The Globe and Mail* (2 May 2019), online: <<https://www.theglobeandmail.com/opinion/editorials/article-no-you-dont-have-to-choose-canada-should-say-yes-to-both-carbon/>> [perma.cc/6ZR8-F8XM] [*Globe*, “Yes to both carbon taxes and pipelines”].

181. *Ibid* [emphasis added]. The title of the editorial’s online version (the *Globe*’s print and online editorial and other article titles frequently diverge, at least partially) is even more telling: “No, you don’t have to choose. Canada should say ‘Yes’ to both carbon taxes and pipelines.”

182. Jaccard, “Trudeau’s Orwellian logic,” *supra* note 174. Political scientist Kathryn Harrison likens this so-called strategy of expanding oil production to reduce greenhouse gas emissions to “eating more cake to build up strength to go on a diet”: Kathryn Harrison, “How ‘serious’ is a climate plan that relies on pipelines?,” *National Observer* (4 July 2019), online: <<https://www.nationalobserver.com>>

blocked from one source ends up being replaced by another, it's an entirely symbolic gesture" to oppose the construction of new pipelines.<sup>183</sup> "And in an oil-producing country such as Canada," the *Globe* adds, "stopping a needed pipeline is not just an empty gesture, but counter-productive. It does nothing for the environment, while placing a big fat minus sign on the economic side of the ledger."<sup>184</sup>

The *Globe's* bald, unsubstantiated logic is an example of the tenuous assumption in neoclassical economics of "perfect substitution."<sup>185</sup> In the absence of an actor capable of setting and controlling market prices, however, this assumption simply does not hold.<sup>186</sup> Just as in other markets, reducing the supply of oil and gas by limiting the development of those resources' production and transmission infrastructure will tend to increase their prices and, in turn, *reduce* their demand.<sup>187</sup>

The *Globe's* logic more likely stems from a strategic bet that other oil-and-gas-producing countries will effectively defect from the Paris Climate Agreement. Assuming, *arguendo*, that such a bet is a safe one, does it logically—let alone morally—follow that Canada too should defect, rather than attempt to lead by example as a climate policy innovator? On this point the *Globe* is explicit: "as long as the world uses oil, Canada should continue to produce it."<sup>188</sup>

Thus far, owing largely to the outsized political influence of entrenched special interests, supply-side climate policy measures represent the road

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com/2019/07/04/opinion/how-serious-climate-plan-relies-pipelines> [perma.cc/6USQ-QYEV].

183. Lazarus & van Asselt, "Fossil fuel supply and climate policy," *supra* note 175 at 5.

184. *Ibid.*

185. *Ibid.*

186. *Ibid.* While the Organization of the Petroleum Exporting Countries (OPEC), of which Canada is *not* a member, attempts to play this price-controlling role in the global oil market, its ability to do is increasingly in question (and in any event has never been complete). See e.g. Thijs Van de Graaf, "Is OPEC dead? Oil exporters, the Paris agreement and the transition to a post-carbon world" (2017) 23 *Energy Res Soc Sci* 182.

187. Lazarus & van Asselt, "Fossil fuel supply and climate policy," *supra* note 175 at 5.

188. Editorial, "Canada needs higher crude prices, and that means pipelines," *The Globe and Mail* (1 August 2019), online: <<https://www.theglobeandmail.com/opinion/editorials/article-canada-needs-higher-crude-prices-and-that-means-pipelines/>> [perma.cc/2S9W-KFZM] [*Globe*, "Canada needs higher crude prices"]. Note that the quote continues as follows: "even as we bring in policies to discourage its use, or make it cleaner." But no such policies are being brought in. Oil sands production is Canada's largest and fastest growing source of greenhouse gas emissions, and it is a significant source of global greenhouse gas emissions. Canada's crude oil is among the most carbon-intensive in the world, ranking below only Venezuela in terms of major oil-producing countries. See John Liggio *et al.*, "Measured Canadian oil sands CO<sub>2</sub> emissions are higher than estimates made using internationally recommended methods" (2019) *Nature Communications* 10:1863, <https://doi.org/10.1038/s41467-019-09714-9>; Mohammad S Masnadi *et al.*, "Global carbon intensity of crude oil production" (2018) 361:6405 *Science* 851 at 852; Environment and Climate Change Canada, "Greenhouse gas emissions," *supra* note 161 at 7-8.

less taken.<sup>189</sup> But this need not be the case. Supply-side climate change policies have been shown to promote climate change mitigation in a number of ways, including by: (a) increasing the scale of emissions reductions available at a given marginal cost, thereby “widening” the mitigation cost curve by expanding the range of abatement measures available to policymakers;<sup>190</sup> (b) slowing investment in fossil fuel production and transmission infrastructure, thereby reducing “carbon lock-in” and overproduction;<sup>191</sup> (c) increasing moral pressure and public support for climate action by making such action more readily observable by the public, because such actions are comparatively more certain and exact as compared with efficiency measures spread across an exponentially larger number of individual investment and consumption decisions;<sup>192</sup> (d) reducing administrative and transaction costs, because fewer projects and facilities produce fossil fuels than use them;<sup>193</sup> and (e) diminishing the incentive of fossil fuels producers to accelerate production in the near term to avoid the sunk costs of stranded fossil fuels assets because they may, as a matter of risk management, anticipate increasingly stringent carbon prices in the medium-to-long term; this risk is known as the “green paradox” and has also been described as a “sell-out” scenario.<sup>194</sup>

According to the *Globe*, however, “pipelines have become a favourite symbolic target and a litmus test of environmental commitment. A false test.”<sup>195</sup>

According to a growing number of climate change policy scholars, by contrast, “supply-side policies—from removing fossil fuel subsidies, to taxing production, to retiring assets—have the potential to offer governments valuable new tools to achieve climate goals and deserve a closer look.”<sup>196</sup>

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189. MacLean, “The Root Problem of Canadian Environmental Law,” *supra* note 3.

190. Taren Fæhn *et al.*, “Climate policies in a fossil fuel producing country: demand versus supply side policies” (2017) 38 *Energy J* 77.

191. Peter Erikson, Michael Lazarus & Kevin Tempest, “Carbon lock-in from fossil fuel supply infrastructure” (Seattle, 2015) Stockholm Environment Institute, online: <<https://mediamanager.sei.org/documents/Publications/Climate/SEI-DB-2015-Carbon-lock-in-supply-side.pdf>>.

192. Paul Collier & AJ Venables, “Closing coal: economic and moral incentives” (2014) 30 *Ox Rev Econ Policy* 492.

193. Lazarus & van Asselt, “Fossil fuel supply and climate policy,” *supra* note 175 at 4.

194. Hans-Werner Sinn, “Public policies against global warming: a supply side approach” (2008) 15 *Int Tax Public Finance* 360; but see Nico Bauer *et al.*, “Divestment prevails over the green paradox when anticipating strong future climate policies” (2018) 8 *Nature Climate Change* 130. See also Jean-Francois Mercure *et al.*, “Macroeconomic impact of stranded fossil fuel assets” (2018) 8 *Nature Climate Change* 588.

195. *Globe*, “Yes to both carbon taxes and pipelines,” *supra* note 180.

196. Lazarus & van Asselt, “Fossil fuel supply and climate policy,” *supra* note 175 at 5.

b. *Even without a new pipeline, oil sands crude will be shipped by rail*  
 The *Globe's* second and closely related argument in favour of the Trans Mountain pipeline is essentially an argument of inevitability: Alberta's oil is going to be moved one way or another, whether by pipe or by rail. Opposing pipeline construction is not an effective way of opposing oil sands production, let alone mitigating climate change (a position, as noted above, the *Globe* characterizes as "absurd"). According to the *Globe*, we should build new pipelines because pipelines are economically more efficient than rail and, in the *Globe's* third and closely related argument (discussed below), pipelines are *safer* than rail:

Environmental groups portray the Trans Mountain expansion, which would triple the pipeline's capacity, as a betrayal of Mr. Trudeau's stated desire to make Canada a leader in the fight against climate change.

But that position doesn't take into account the fact that Alberta oil will still be produced and shipped without the pipeline expansion, only by the far more dangerous method of rail transport.<sup>197</sup>

The *Globe's* inevitability argument is not only misleading, it is also contradicted by the *Globe's* other editorial commentary and its own business reporting. The *Globe* has consistently reported and expressed its opinion that oil sands production cannot *expand* without the construction of new pipelines (or added pipeline capacity). Representative articles include "Canadian oil collapses amid pipeline and rail bottleneck,"<sup>198</sup> "Oil sands glut set to worsen as output exceeds pipeline space,"<sup>199</sup> "Pipeline constraints to cost Canadian economy \$10.7-billion in 2018: Scotiabank,"<sup>200</sup> and "Trans Mountain's failure would be costly for Canada, Scotiabank CEO warns."<sup>201</sup>

197. Editorial, "Can Trudeau keep his pipeline pact?," *The Globe and Mail* (20 June 2019), online: <<https://www.theglobeandmail.com/opinion/editorials/article-ottawa-approves-a-pipeline-now-it-has-to-actually-build-it/>> [perma.cc/PVB8-K7HJ].

198. Robert Tuttle, "Canadian oil collapses amid pipeline and rail bottleneck," *The Globe and Mail* (12 December 2017), online: <<https://www.theglobeandmail.com/globe-investor/inside-the-market/market-updates/canadian-oil-collapses-amid-pipeline-and-rail-bottleneck/article37303601/>> [perma.cc/U23S-FSQB].

199. Jeff Lewis, "Oil-sands glut set to worsen as output exceeds pipeline space," *The Globe and Mail* (15 December 2017), online: <<https://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/oil-sands-price-discounts-expected-to-rise-as-output-exceeds-pipeline-capacity/article37342424/>> [perma.cc/ND4F-F3KN].

200. Ian Bickis, "Pipeline constraints to cost Canadian economy \$10.7-billion in 2018: Scotiabank," *The Globe and Mail* (20 February 2018), online: <<https://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/pipeline-constraints-to-cost-economy-107-billion-in-2018-scotiabank/article38030883/>> [perma.cc/UN6S-FLG9].

201. James Bradshaw, "Trans Mountain's failure would be costly for Canada, Scotiabank CEO warns," *The Globe and Mail* (10 April 2018), online: <<https://www.theglobeandmail.com/business/article-trans-mountains-failure-would-be-costly-for-canada-scotiabank-ceo/>> [perma.cc/6PGF-



Scotiabank's logic, which is given ample voice by the *Globe*, is especially telling. In the fall of 2018, Canadian oil producers were missing out on the then-latest surge in global crude prices, with Canadian heavy oil—Western Canadian Select—being traded at a record-high discount relative to the Western Texas Intermediate price benchmark. The cause, according to Scotiabank, was that oil-by-rail services failed “to keep pace with voracious demand for non-pipeline egress out of Western Canada.”<sup>202</sup>

The Bank of Montreal has similarly warned in the *Globe's* business pages of “ugly consequences” if the Trans Mountain pipeline expansion is not completed.<sup>203</sup> In a related analysis, Capital Economics, an independent economic research firm cited by the *Globe*,<sup>204</sup> concluded that “without added transportation [pipeline] capacity, there is a risk that the discount on Canadian heavy oil could increase again.”<sup>205</sup>

Deloitte LLP reached the same conclusion. In analysis cited by the *Globe*, Deloitte concluded “[t]here simply isn't enough pipeline or rail shipment capacity to get all the Canadian crude to market, leaving Canadian producers unable to take advantage of higher prices and *increased demand* in the United States as its economy continues to grow.”<sup>206</sup>

Perhaps the most telling illustration of this argument was the warning issued by the president and CEO of the Royal Bank of Canada, Dave McKay, in an op-ed published by the *Globe*. According to McKay: “As our [oil and gas] resources sector copes with a growing crisis, we worry that Canada is not setting up our energy industry for growth and success in a changing world.”<sup>207</sup>

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WJBK].

202. Scotiabank, “Trade Fear Drags on Metal Demand Expectations, Canadian Crude Discounts Swell as Rail Lags” (26 September 2018), online: <[https://www.gbm.scotiabank.com/scpt/gbm/scotiaeconomics63/SCPI\\_2018-09\\_26.pdf](https://www.gbm.scotiabank.com/scpt/gbm/scotiaeconomics63/SCPI_2018-09_26.pdf)> [perma.cc/YX7L-NHTX].

203. Michael Babad, “BMO warns of ugly consequences in Trans Mountain pipeline project dies,” *The Globe and Mail* (23 April 2018), online: <<https://www.theglobeandmail.com/business/briefing/article-bmo-warns-of-vicious-fallout-if-trans-mountain-pipeline-project-dies/>> [perma.cc/GYK3-54NA].

204. *Ibid.*

205. *Ibid.* It is interesting to note that in April 2018, the price of Alberta's brand of heavy oil, Western Canadian Select, was on the rise, which narrowed the discount relative to the US benchmark West Texas Intermediate. But by September 2018 the discount was at a record high. In the interim, Canadian pipeline capacity (in terms of infrastructure availability) remained constant. While an examination of the variability of domestic and global oil prices is beyond the scope of this article, this discrepancy is nonetheless sufficient to establish that the causal relationship that the *Globe* posits between pipeline capacity and the discount on Alberta's heavy oil is overly simplistic and incomplete.

206. Shawn McCarthy, “Price of Canadian heavy oil hits 10-year low compared with benchmark WTI crude,” *The Globe and Mail* (5 October 2018), online: <<https://www.theglobeandmail.com/business/article-price-of-canadian-heavy-oil-hits-10-year-low-compared-with-benchmark/>> [perma.cc/YT2W-HBZH].

207. Dave McKay, “The energy-hungry world isn't waiting for Canada,” *The Globe and Mail* (3 April

Rail transport's inability to keep pace with growing oil sands production belies the *Globe's* repeated assertion that Alberta's oil will inevitably move one way or the other. If rail were really a ready—if not perfect—substitute for pipelines, then rail transport would grow as much as needed to meet increased demand and production, and to facilitate shipment, not only to US refineries where the price of Canada's heavy oil is (sometimes) heavily discounted, but also to Canada's Pacific coast and ultimately to Asian markets, where a higher price for Canada's oil can *arguably* be had.<sup>208</sup> Preferring pipelines to rail is not solely about economic efficiency;<sup>209</sup> the preference for expanding pipeline capacity is equally a preference for expanded, long-term oil sands *production*. As the *Globe* itself explains, “[b]uilding pipelines to carry crude out of Alberta is a long game.”<sup>210</sup> By characterizing the choice as one between pipeline and rail as a matter of relative economic efficiency, however, the *Globe's* editorial commentary obscures the policy issue's otherwise clear climate change implications, and as a result, its true costs and benefits.

The *Globe's* inevitability argument similarly obscures the fact that there is nothing fixed or inevitable about the future global demand for oil and gas. The IEA's 2018 world energy outlook corroborates this point. Commenting on the “huge gap” between the IEA's “current policies scenario”—i.e., business as usual—and its “sustainable development scenario,” whereby accelerated clean energy transitions put the world on track to meet ambitious goals for climate change mitigation, universal access to energy, and clean air, the IEA explains that “[n]one of these potential pathways is preordained; all are possible. The actions taken by governments will be decisive in determining which path we follow.”<sup>211</sup>

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2019), online: <<https://www.theglobeandmail.com/business/commentary/article-the-energy-hungry-world-isnt-waiting-for-canada/>> [perma.cc/NB62-JJCD].

208. Note, however, that even this claim is disputed. Former CIBC World Markets Chief Economist Jeff Rubin argues that “Asian markets have historically paid less, not more, than the United States for heavy oil”: Jeff Rubin, “Morneau had better options for Canada's energy sector,” *The Globe and Mail* (29 May 2018), online: <<https://www.theglobeandmail.com/opinion/article-morneau-had-better-options-for-canadas-energy-sector/>> [perma.cc/ZG4R-UVYW].

209. In fact, the selective and complementary use of rail transport to adjust to the inherent volatility of supply and demand in the oil and gas sector is itself an arguably efficient feature of oil transport in North America. Rail functions, not necessarily as an alternative to pipelines, but as a complement to pipelines. See Thomas R Covert & Ryan Kellogg, “Crude by Rail, Option Value, and Pipeline Investment” (2017) NBER Working Paper No 23855, online: <<http://www.nber.org/papers/w23855>> [perma.cc/SCW8-QWY7].

210. “Editorial: Does Ottawa feel the pain in the oil patch?,” *The Globe and Mail* (11 March 2019), online: <<https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-does-ottawa-feel-the-pain-in-albertas-oil-industry/>> [perma.cc/6LWW-9XB9] [*Globe*, “Pain in the oil patch”].

211. International Energy Agency, “World Energy Outlook 2018: Executive Summary” (2018) at 1, online: <[www.iea.org/weo2018/](http://www.iea.org/weo2018/)> [perma.cc/RCF9-X8Q2].

c. *Pipeline transport is safer than rail transport*

The *Globe's* third and closely related claim, that transporting oil by pipeline is safer than transporting oil by rail, is similarly misleading. An apples-to-apples comparison is not possible. When pipelines leak, far more oil is spilled as compared with rail accidents, but pipeline leaks are unlikely to cause explosions. Rail car derailments are associated with a greater chance of human harm and property destruction, but the resulting spills are easier to contain and tend to cause less ecological harm (which can also have significant, if indirect, adverse effects on public health).<sup>212</sup> These differences aside, the harms associated with each of these modes of oil transport can be substantial.

The *Globe's* assertion that oil pipelines are safer than railway cars is further misleading because it presents Canadians with what is a doubly false choice. First, Canadians should not be forced to choose between two highly risky options. From a public safety perspective, oil should not move across Canada, whether by pipeline or rail, unless it can be moved reasonably safely; the *Globe's* reasoning that “the optics of shipping crude by rail are not good in light of the Lac-Mégantic disaster” brings this false and unacceptable public policy choice into stark relief.<sup>213</sup>

Moreover, the supposed choice between pipelines and rail as the only options up for debate presupposes that oil *should* move in the first place. This tacit presupposition obscures the more fundamental question of whether moving oil at all, let alone moving *more* oil, is consistent with our domestic economic interests, as well as our international obligations as a country to mitigate global climate change.

d. *The Globe's pipeline coverage as media propaganda and regulatory capture*

Taken together, each of the elements of the *Globe's* threefold argument in favour of the Trans Mountain pipeline expansion—and new pipeline construction generally—is less an argument than an article of ideology. The *Globe's* editorial coverage of Trans Mountain certainly fails to vindicate its own Editorial Code of Conduct. Not even remotely does the *Globe's* Trans Mountain coverage meet the standard of providing

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212. See e.g. Tracy Johnson, “Pipelines vs. trains: Which is better for moving oil?,” *CBC News* (10 March 2015), online: <<https://www.cbc.ca/news/business/pipelines-vs-trains-which-is-better-for-moving-oil-1.2988407>> [perma.cc/KN7F-9X4H]; David Biello, “Are Pipelines Safer Than Railroads for Carrying Oil?,” *Scientific American* (10 July 2013), online: <<https://blogs.scientificamerican.com/observations/are-pipelines-safer-than-railroads-for-carrying-oil/>> [perma.cc/AL75-TMLB]; David Z Morris, “Pipelines: The Worst Way to Move Oil, Except for All the Rest,” *Fortune* (28 August 2016), online: <<http://fortune.com/2016/08/28/pipelines-vs-trains-oil-transport/>> [perma.cc/8GP6-6CJL].

213. *Globe*, “Pain in the oil patch,” *supra* note 210.

a “reasonable accounting of competing views in any controversy so as to enable readers to make up their own minds.”<sup>214</sup> Rather, the *Globe’s* coverage of Trans Mountain (and pipelines more generally) reflects the media propaganda model introduced earlier in this article. Instead of providing a balanced and informed account of the costs and benefits of the project and its alternatives, the *Globe’s* coverage of Trans Mountain consists of a series of strategically misleading choices, emphases, and omissions. Further consideration of the media propaganda model suggests a broader, structural explanation of the *Globe’s* misleading coverage of Trans Mountain.

The *Globe* is owned and controlled by a corporate conglomerate having extensive non-media holdings and financial interests. The *Globe’s* owner, the Thomson family, has been described as the “archetype” of this form of corporate empire, with holdings in real estate, oil and gas, insurance, and financial and management services.<sup>215</sup> This type of ownership situation increases the risk of media outlets being misused to support other parts of the corporate group.<sup>216</sup> For example, Thomson Reuters, the global media and financial research services company controlled by the Thomson family, includes a commodities trading service—EIKON—designed “for deep analysis and to find growth opportunities in the power, gas, coal, carbon, and oil commodity markets.”<sup>217</sup> This business line also offers the “ability to visualize the flows, shipping, pipeline, and infrastructure across the energy value chain.”<sup>218</sup> This does not suggest, let alone establish, that Thomson Reuters’ financial interests in the oil and gas sector are a direct cause of the *Globe’s* editorial agenda. It is, however, relevant to the broader organizational and ideological context in which the *Globe* operates.

Similarly, the *Globe’s* directors and senior managers remain, broadly speaking, part of Canada’s “corporate elite.”<sup>219</sup> Accordingly, one would expect the *Globe* to be broadly sympathetic to the corporate elite’s views of the public interest.<sup>220</sup> Notably, Canada’s corporate elite includes its major financial institutions. Five of Canada’s six largest banks, for example, have significant financial exposure to the oil sands (i.e. BMO, CIBC, Scotiabank, RBC, and TD Bank) as well as board members in common

214. *Globe*, “Editorial Code of Conduct,” *supra* note 53.

215. Hackett, Pinet & Ruggles, “News for Whom?,” *supra* note 30 at 263.

216. *Ibid.*

217. Thomson Reuters EIKON, online: <<https://financial.thomsonreuters.com/en/products/tools-applications/trading-investment-tools/eikon-trading-software/energy-trading.html>> [perma.cc/T2QP-JY5K].

218. *Ibid.*

219. Wallace Clement, *The Canadian Corporate Elite* (Toronto, ON: McClelland and Stewart, 1975).

220. P Audley, *Canada’s Cultural Industries* (Toronto, ON: James Lorimer/CIEP, 1983) at 27.

with oil sands companies.<sup>221</sup> In 2017, the top five Canadian banks provided US\$33-billion in debt and equity financing to oil sands producers, liquefied natural gas operations, and coal-fired power producers.<sup>222</sup> That figure more than doubled those banks' level of investment in the oil sands in 2016.<sup>223</sup> Some of those banks (e.g. BMO, CIBC, RBC, and Scotiabank) have repeatedly warned about the economic risks of not approving the Trans Mountain expansion project, and the *Globe* has consistently reported those warnings without disclosing those banks' financial exposure to oil sands projects or their interlocking directorships with oil sands companies.

The *Globe's* corporate ownership context helps explain—if not excuse—the *Globe's* strategic use of misleading choices, emphases, and omissions in its promotion of the Trans Mountain pipeline expansion as a project in Canada's national public interest. The *Globe* frames the pipeline's expansion as a responsible means of maintaining Canada's (non-renewable) resource-based economy while Canada transitions to a low-carbon economy but omits to explain that no such transition is yet underway, despite it being a matter of utmost urgency. Further, the *Globe* does not explain that the Trans Mountain pipeline expansion is itself a means of *expanding* production in Canada's oil and gas sector, and that such an expansion is directly at odds with hastening the transition towards decarbonization. By portraying that transition as a longer-term project, the *Globe* materially misstates the climate-science-and-policy consensus that decarbonization can, and *must*, begin immediately.

Moreover, by consistently framing the Trans Mountain project in terms of relative safety (as compared with rail transport), the *Globe* effectively omits a meaningful discussion of the project's direct, upstream, and downstream climate impacts. Even when the *Globe* does discuss Trans Mountain in connection with climate change, it does so by diminishing its importance and, critically, its urgency.

Finally, in its coverage of the issue of constitutional jurisdiction over pipeline approvals, the *Globe* omits any discussion whatsoever of the fact that jurisdiction over environmental protection in Canada is shared

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221. See e.g. Hamish Stewart, "Why are directors at Canada's biggest banks ignoring climate risk?," *National Observer* (19 April 2016), online: <<https://www.nationalobserver.com/2016/04/19/opinion/why-are-directors-canada%E2%80%99s-biggest-banks-ignoring-climate-risk>> [perma.cc/F3VV-FQ8A]. See also Rainforest Action Network, "Banking on Climate Change: Fossil Fuel Finance Report Card 2018" (2018), online: <<https://www.ran.org/bankingonclimatechange2018/>> [perma.cc/7HFF-4KGE].

222. James Bradshaw & Shawn McCarthy, "TD vows to continue financing resource sector," *The Globe and Mail* (29 March 2018), online: <<https://www.theglobeandmail.com/business/article-td-vows-to-continue-financing-resource-sector/>> [perma.cc/LK32-F663].

223. *Ibid.*

between the federal government and the provinces. Instead, the *Globe* treats the Trans Mountain project as simply an interprovincial undertaking under exclusive federal jurisdiction and ignores the fact that the adverse environmental impacts of potential oil spills in British Columbia triggers the shared, cooperative jurisdiction of the federal government and British Columbia. The *Globe* has even gone as far as impugning British Columbia's proposal for further scientific study of how spilled diluted bitumen behaves in marine environments, asserting that "the buoyancy of dilbit has already been subject to years of research" without also acknowledging that such research, including a comprehensive study conducted by the Royal Society of Canada, clearly explains that there are serious gaps in our understanding of the behaviour and effects of diluted bitumen spilled in cold-water environments.<sup>224</sup>

The *Globe's* editorial coverage of the jurisdictional dispute in respect of Trans Mountain is also notably inconsistent with its coverage of the federal government's carbon pricing framework. While the issue of jurisdiction over Trans Mountain is better understood as falling within the cooperative, federal-provincial jurisdiction over environmental protection, there is little question that the federal government possesses ample and exclusive jurisdiction to impose a national price on carbon, whether pursuant to its criminal law power, its taxation power, or its residual jurisdiction under the national concern branch of its peace, order, and good government (POGG) power.<sup>225</sup> Yet in response to a number of provinces' decision to oppose a national carbon price and formally challenge its constitutional

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224. Canadian Press, "Oil spills' environmental impact: Knowledge gaps cited in new report," *CBC News* (25 November 2015), online: <<https://www.cbc.ca/amp/1.3336221>> [perma.cc/W4GA-NESX]. See also Stephanie J Green *et al*, "Oil sands and the marine environment: current knowledge and future challenges" (2017) 15:2 *Front Ecol Environ* 74. Remarkably, however, the *Globe* later published a news report on a research project in the Experimental Lakes Area addressing the "dearth of information on how to deal with oil-related accidents," noting that "[e]xperts say the need for such studies is acute": Ivan Semeniuk, "Slick science: How researchers are preparing for Canada's next major oil spill," *The Globe and Mail* (30 July 2019), online: <<https://www.theglobeandmail.com/canada/article-slick-science-how-researchers-are-preparing-for-canadas-next-major/>> [perma.cc/K55R-BNHH] A telling feature of the *Globe's* editorial coverage of the Trans Mountain project is its refusal to engage with the scientific and other expert evidence concerning the adverse effects of the project.

225. See Nathalie Chalifour, "Saskatchewan, Ontario and the constitutionality of a national carbon price," *The Globe and Mail* (27 September 2018), online: <<https://www.theglobeandmail.com/opinion/article-saskatchewan-ontario-and-the-constitutionality-of-a-national-carbon/>> [perma.cc/MDF3-X9QA]. See also Nathalie J Chalifour, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions through Regulations, A National Cap and Trade Program, or a National Carbon Tax" (2016) 33 *NJCL* 331; Jason MacLean, "Alberta's support of the national climate plan is nice, but hardly necessary," *Maclean's* (24 February 2018), online: <<https://www.macleans.ca/news/canada/albertas-support-of-the-national-climate-plan-is-nice-but-hardly-necessary/>> [perma.cc/6GKA-MCPE].

validity, the *Globe* has refrained from arguing in favour of the federal government's jurisdiction, let alone chastising those provinces—as the *Globe* chastised British Columbia—for usurping the government's duly exercised authority. Instead, the *Globe* argued that the federal government needs step up its efforts “to sell carbon pricing.”<sup>226</sup> The *Globe's* analysis omitted any reference to the government's exclusive jurisdiction to price carbon nationally, and framed the issue as being exclusively political, rather than legal, in nature. The contrast to the *Globe's* characterization of the much more complex jurisdictional issue in respect of Trans Mountain is stark and telling.

Overall, the *Globe's* editorial coverage of Trans Mountain is systematically misleading. It amounts to an abdication of its self-proclaimed public interest role and responsibility and is better characterized as media propaganda than independent journalism. Not only does it offer but a partial—and highly partisan—perspective on the project and its implications, it serves to narrow the parameters of the project's public discussion in a manner that directly supports the special interests of the oil and gas industry.

While the *Globe's* editorial commentary, as well as that of its staff columnists, on Trans Mountain is uniformly one-sided and misleading, the *Globe* does *occasionally* publish independent opinion-editorials expressing viewpoints outside the narrow terms of reference established by the *Globe's* coverage, many of which have been cited throughout this article. But this, too, is entirely consistent with the media propaganda model of Herman and Chomsky. By allowing dissenting views, though limited in frequency, the *Globe* creates the impression that lively dissent is possible and indeed occurring, thereby preempting easy accusations of bias. What is especially revealing is how the *Globe's* editorial page refuses to join issue with those independent dissenting views on the Trans Mountain project that it has published. Now it may well be that the *Globe* simply finds those views unconvincing, and it is reasonable to assume that many readers have reached precisely this conclusion: namely, that those views are not even worth discussing. If, however, those views were fit to print in Canada's leading newspaper in the first place, then they are also presumably credible enough to merit consideration and a response; indeed, many of them are written by academics who are experts in their respective fields of study, and in other instances, such as the letters to the editor quoted above, the arguments are compelling. In respect of

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226. *Globe*, “Liberals need to sell carbon pricing,” *supra* note 148.

Trans Mountain, the *Globe*'s practice is simply to ignore—and thereby marginalize—these dissenting views. The *Globe*'s coverage of the Trans Mountain controversy is simply impossible to reconcile with its self-congratulatory claim that “*explaining policies that will decide our environmental future [is] central to our role.*”<sup>227</sup>

On the contrary, the *Globe*'s coverage contributes to the legitimization of policy and regulatory *inaction* on climate change, the larger context in which the *Globe*'s coverage of Trans Mountain should have been presented. Here the connection between media propaganda and regulatory capture comes into clear view. The Canadian oil and gas industry is opposed to supply-side climate mitigation measures, and is lobbying, not only against any supply-side production curtailments, but in favour of publicly subsidized supply-side expansion.

On 1 August 2019, the lead executives of three Canadian oil sands companies took what the *Globe*'s editorial board characterized (without further explanation) as “the newsworthy step” of placing a full-page advertisement in newspapers (including the *Globe*) “asking Canadians to keep the health of the *energy industry* in mind when they vote in the federal election in October.”<sup>228</sup>

Notice first the oil and gas industry and the *Globe*'s subtle use of the synecdoche “energy industry,” which has the rhetorical effect of identifying the whole of the energy industry with only its nonrenewable part, the oil and gas sector, neatly eliding Canada's renewable energy sector. Far less subtle, however, is the *Globe*'s identification of the oil and gas industry's special interests with the broader public interest, the *sine qua non* of regulatory capture:

What everyone should want—from oil executives to people in other provinces—is higher prices for exported Canadian oil. That puts money in everyone's pockets, *without necessarily increasing emissions.*

The one and only way to achieve that is for Alberta producers to get their crude to tidewater, or across the border. That means pipelines, in particular the Trans Mountain expansion that the Trudeau government is trying to stickhandle into existence.

A vibrant oil industry is a good thing for Canada.<sup>229</sup>

The *Globe* immediately added that “[e]fforts to cut emissions, through carbon taxes, regulations and new technologies, are also necessary—for

227. *Globe*, “Globe wins B.C. awards,” *supra* note 56 [emphasis added].

228. *Globe*, “Canada needs higher crude prices,” *supra* note 188 [emphasis added].

229. *Ibid.*



Canada and the world.”<sup>230</sup> But *not*, in the *Globe's* strategic, propagandistic omission, by means of curtailing oil and gas production or ceasing construction of new oil and gas infrastructure, notwithstanding the fact that, according to Environment and Climate Change Canada, in 2017 “the oil and gas sector was the largest source of GHG emissions [in Canada], accounting for 27% of total national emissions.”<sup>231</sup>

It is difficult to conceive of a clearer example of how media propaganda contributes to regulatory capture and, in this instance, legitimizes climate policy inaction.

This raises questions about whether and how to improve media news coverage of and editorial commentary on law and policy matters implicating the public interest, climate change foremost among them. In the next section of the article, I canvass the challenges of achieving this sort of regulatory reform in the public interest, including reform of the news media as both a means and an end of regulatory reform.

### III. *Propaganda, fake news, and the catch-22 of fixing the fourth estate*

News media propaganda of the kind discussed in this article suggests the need for some kind of structural regulatory reform; if the *Globe's* coverage of the Trans Mountain controversy is at all representative, media self-regulation is plainly insufficient. Direct government regulation of the news media, however, is a doubly-difficult prospect. First, and most obviously, there is the constitutional protection of freedom of the press. But even if laws and regulations could be carefully tailored to pass constitutional muster (certainly not impossible, press freedom is not absolute), the enforcement of any such regulations would have to maintain—and be perceived to maintain—impartiality, free of either political or corporate interference. The failure to meet this standard would be an ironic result if the goal were to enhance the editorial independence of the news media from the government of the day and the corporate interests influencing both media coverage and government regulations.

Moreover, any such attempt at regulatory reform would necessarily confront the catch-22 of countering regulatory capture: The very same special interests responsible for media propaganda benefit from such propaganda, and are well positioned to use their influence to shield the media—and their own interests—from proposed public interest regulatory reforms.<sup>232</sup> This catch-22 is even more pronounced in the context of

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230. *Ibid.*

231. Environment and Climate Change Canada, “Greenhouse gas emissions,” *supra* note 161 at 8.

232. For further discussion of the “catch-22” of reforming regulatory capture, see MacLean, “Regulatory Capture and the Role of Academics,” *supra* note 3 at 514-522.

proposed media reforms because the news media themselves are ideally positioned to publicly protect their own freedoms by invoking the very principles of journalistic integrity and independence—the “marketplace of ideas”—that they arguably honour more in the breach than in observance.

Perhaps ironically, concerns about the anti-democratic effects of “fake news” as distinct from but related to mainstream media propaganda are drawing more scholarly and regulatory attention to the form and substance of the emerging news and information ecosystem of the 21st century.<sup>233</sup> This is ironic insofar as one of the key concerns about fake news is its potential to devalue and delegitimize established voices of expertise and authoritative institutions, including the corporate mainstream news media.<sup>234</sup> While fake news is defined as fabricated information that mimics mainstream news media content but which is produced by outlets lacking the mainstream news media’s established editorial norms and processes for ensuring objectivity, scholars also argue that fake news “overlaps with other information disorders, such as misinformation (false or misleading information) and disinformation (false information that is purposely spread to deceive people).”<sup>235</sup> Scholarly and regulatory analyses of fake news, as understood in this broader sense of information disorder, may bring additional needed attention to the erosion of the established corporate news media’s editorial norms and processes for ensuring objectivity.

Fake news and mainstream media propaganda are strikingly similar phenomena raising conceptually similar concerns. After all, from the perspective of the misinformed and misled reader, there is no apparent difference between these kinds of information: both are presented as factual, objective, and capable and deserving of belief. In short, both appear—or at least attempt to appear—to be true. Consequently, one of the key cognitive mechanisms responsible for the “believability” of fake news, familiarity through repeated exposure, may also influence the “believability” of mainstream news media propaganda.<sup>236</sup> This experimental finding in respect of fake news holds true even in cases of highly implausible and partisan claims: Both become more believable with repetition.<sup>237</sup> Such findings may have implications beyond fake news on social media: “they suggest that politicians who continuously repeat

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233. Lazer *et al.*, “Science of fake news,” *supra* note 14 at 1096.

234. Information Society Project, “Fighting Fake News,” *supra* note 15 at 3.

235. Lazer *et al.*, “Science of fake news,” *supra* note 14 at 1094.

236. See Gordon Pennycook, Tyrone D Cannon & David G Rand, “Prior exposure increases perceived accuracy of fake news” (2018) *Journal of Experimental Psychology: General*, online: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2958246](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958246)>.

237. *Ibid.*

false statements will be successful, at least to some extent, in convincing people those statements are in fact true.<sup>238</sup> This, in turn, suggests that a leading newspaper that repeatedly claims that an oil pipeline project is in the national public interest will be successful, to some extent, perhaps to a significant extent, in convincing its readers that its repeated claim is true. This similarly suggests that a claim as ostensibly implausible and partisan—Orwellian, even—as the *Globe's* claim that approving the Trans Mountain oil pipeline expansion is critical to Canada's efforts to reduce its greenhouse gas emissions and mitigate climate change will prove convincing, if repeated often enough.<sup>239</sup>

The research and regulatory reform agendas arising out of both mainstream news media propaganda and social media fake news are daunting, requiring nothing less than the creation of an information ecosystem that values and promotes the pursuit and verification of the truth.<sup>240</sup> Direct government regulation generally raises concerns—some legitimate, some simply seeking to avoid regulation altogether—about free enterprise, free markets, and human agency. The concentrated ownership of 20th-century news media companies significantly shaped the information available to individuals to consider as citizens and consumers, and those institutions still significantly influence individuals' understandings of important policy issues. However, those institutions—imperfect as they are—are now under threat by much larger Internet oligopolies that are shaping people's experience and understanding of the world on a global scale.<sup>241</sup> Not only is it incumbent on law and policy scholars to think about how to hold these massive new corporate entities to account, but scholars across disciplines must also collaborate on efforts to reduce the spread of propaganda and fake news and, most importantly, address the underlying political and regulatory fault lines that propaganda and fake news have exposed.

### *Conclusion*

As an examination of the discursive construction of the public interest in respect of a controversial oil pipeline project via a close reading of the editorial coverage of a leading national newspaper, the findings of this article are necessarily limited. A more comprehensive account would also have examined television news coverage of the project, although in

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238. *Ibid.*

239. Jaccard, "Trudeau's Orwellian logic," *supra* note 174.

240. Lazer *et al.*, "Science of fake news," *supra* note 14 at 1096.

241. *Ibid.*

Canada, mainstream newspaper coverage has tended to set the agenda for television news coverage.<sup>242</sup>

Another limitation is the omission of commentary on social media about the Trans Mountain pipeline and its climate change implications. While the *Globe's* and other Canadian newspapers' coverage is also shared via social media, directly examining social media representations and campaigns would doubtless reveal additional dimensions of the public perception of the relationship between oil sands development and climate change.<sup>243</sup>

Perhaps the most serious limitation is this article's lack of ready regulatory reform proposals, be they at the level of Canada's news media (including the *Globe* and its failure to live up to its own Editorial Code of Conduct), at the level of Canada's stalled and unambitious climate change policy and regulatory framework, or at the global level of the spread of false and misleading information and its adverse effects on democracy. While a checklist of potentially-useful measures, such as the recommendations provided by the Council of Europe's report on "Information Disorder,"<sup>244</sup> should not be discounted, absent an analysis of how such reform proposals can address both the specific substantive problem of mainstream media propaganda as well as the broader structural difficulties of reforming media institutions, such measures are mere aspirations. There are no ready solutions to these difficulties. Nothing short of an ambitious, integrated, and interdisciplinary action-research agenda will suffice.

In the meantime, however, in addition to amplifying calls to promote interdisciplinary research on how reduce the spread of false and misleading information, there are two additional avenues that law and policy scholars can immediately pursue.<sup>245</sup> The first is to defend and exercise academic freedom in order to assist and collaborate with those independent media and information outlets that remain committed to seeking and expressing

242. Hackett, Pinet & Ruggles, "News for Whom?," *supra* note 30 at 261. Anecdotally, I can report that this appears to remain the case. Like many Canadian academics I suspect, I am a compulsive viewer of CBC's news programme "Power and Politics." The topics covered and discussed on "Power and Politics" tend to track quite closely topics covered first by the *Globe*.

243. For an exploration of these other sources, including the social media campaigns of the Canadian oil and gas industry, see e.g. Jason MacLean, "Paris and Pipelines? Canada's Climate Policy Puzzle" (2018) 32:1 *J Envtl L & Prac* 47 at 55-56. See also Maria Bakardjieva, Mylym Felt & Rhon Teruelle, "Framing the Pipeline Problem: Civic Claimsmakers and Social Media" (2018) 43:1 *Canadian Journal of Communication* 147.

244. Claire Wardle & Hossein Derakhshan, "Information Disorder: Toward an interdisciplinary framework for research and policymaking" (Council of Europe, 2017) at 80-84, online: <<https://edoc.coe.int/en/media/7495-information-disorder-toward-an-interdisciplinary-framework-for-research-and-policy-making.html>> [perma.cc/ZH2K-ZBFM].

245. Lazer *et al.*, "Science of fake news," *supra* note 14 at 1096.

the truth in news.<sup>246</sup> A timely case in point is the climate change reporting of *The Guardian*, whose statement of editorial independence is quoted at the outset of this article. As I wrote the first draft of this concluding section, *The Guardian* reported that a special report of the IPCC (discussed above) indicated that “urgent and unprecedented changes” are required in order to limit global warming to 1.5 degrees Celsius above the pre-industrial norm.<sup>247</sup> Relying on commentary from academics involved in climate science and policy research, *The Guardian* not only conveyed the findings of the IPCC’s report, but it also presented the critically important argument that the report was, rather than being truly alarming, in fact “incredibly conservative” because of its failure to discuss either the likely rise in climate-driven refugees or the danger of irreversible climate tipping points and a resulting “hothouse Earth” scenario.<sup>248</sup>

*The Guardian's* climate reporting proceeded to relate how the IPCC’s report may actually *underestimate* the scale of the challenge of decarbonization, noting how a number of countries nominally supportive of the Paris Climate Agreement are “involved in fossil fuel extraction that runs against the spirit of their [emissions-reduction] commitments. Britain is pushing ahead with gas fracking, Norway with oil exploration in the Arctic, and the German government wants to tear down Hambach forest to dig for coal.”<sup>249</sup> Similarly independent and critical reporting is being done in Canada by *The Narwhal* and *The National Observer*,<sup>250</sup> and both are open to collaborations with law and policy scholars.

The second avenue is to undertake more “engaged scholarship” and, in so doing, directly counter media propaganda and other misleading information in scholars’ respective areas of academic expertise. The political scientist Jessica Green argues that the time has come to rethink the relationship between the academy and advocacy.<sup>251</sup> Research that seeks to

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246. Brian Leiter, “Why Academic Freedom” in Donald A. Downs & Chris W. Suprenant, eds, *The Value and Limits of Academic Speech: Philosophical, Political, and Legal Perspectives* (New York, NY: Routledge, 2018).

247. Jonathan Watts, “Huge risk if global warming passes 1.5° C, warns landmark UN report,” *The Guardian* (8 October 2018), online: <<https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report>> [perma.cc/UHT2-Y24C].

248. *Ibid.* See also *The Guardian's* critical commentary aided by academic research on the IPCC’s more recent special report on the relationship between land use and climate change: George Monbiot, “We can’t keep eating as we are — why isn’t the IPCC shouting this from the rooftops?,” *The Guardian* (8 August 2019), online: <<https://www.theguardian.com/commentisfree/2019/aug/08/ipcc-land-climate-report-carbon-cost-meat-dairy>> [perma.cc/REQ8-5DJ8].

249. *Ibid.*

250. *The Narwhal*: <http://thenarwhal.ca/> [perma.cc/652H-WWY3]; *The National Observer*: <https://www.nationalobserver.com/> [perma.cc/8UVG-8K5Y].

251. Jessica F. Green, “Why We Need a More Activist Academy,” *The Chronicle of Higher Education* (15 July 2018), online: <<https://www.chronicle.com/article/Why-We-Need-a-More-Activist/243924>>

connect theoretical insights to public policy problems must become more prevalent. Responding in particular to the existential threat of climate change, Green argues, requires that academics with relevant expertise “lay bare the entrenched economic interests that prevent governments from phasing out fossil fuels.”<sup>252</sup> The analysis undertaken in this article is a modest attempt to do just that.

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[[perma.cc/3XUD-A6AK](https://perma.cc/3XUD-A6AK)].

252. *Ibid.* Green’s call echoes the call to academics originally issued in 1967 by Noam Chomsky to speak the truth and expose lies. See Noam Chomsky, *The Responsibility of Intellectuals* (New York, NY: The New Press, 2017) at 17. See also John P Smol, “A crisis in science literacy and communication: Does Reluctance to engage the public make academic scientists complicit?” (2018) 3 FACETS 952.