



Neglected Structures of Governance in U.S.-Canadian Cross-Border Relationships

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Introduction

On different occasions over the past several years, I have had the opportunity of examining the everyday policy-making activities of industry and government leaders involved in the planning of Alaska's natural gas pipeline project, a proposed 3,500-mile steel pipe that would deliver Alaska's vast reserves of arctic natural gas to mid-continental Canadian and U.S. energy consumers. In particular, I have observed how these leaders articulate the ongoing political dynamics and economic risks in response to the indeterminacy of social, political, and market conditions associated with the project. What I have found curious about these activities is that policy-makers are often drawn into ad hoc problem-solving on issues that defy characterization in terms of the new structures of governance described by scholars of U.S.-Canadian relationships.

My aim in this paper is to use the Alaska pipeline planning process as a case study to foreground the relevance of one neglected structure of governance to infrastructural planning in U.S.-Canadian cross-border relationships. I identify this structure of governance as the impact of competing knowledge systems that pertain to periods of regulation *and* restructuring. Elsewhere, I identify additional neglected structures of governance, such as the critical role

of techno-economic uncertainty in shaping representations of progress, and the emergence of undisputed assumptions, such as energy forecasting, in fields of controversy and disagreement (Mason 2006, 2005).

I argue that these neglected structures of governance reflect a diversity of forces that affect new styles of thinking and acting which impact in unpredictable ways those relations of governance currently under consideration by scholars of U.S.-Canadian affairs. I begin by identifying briefly the recent interest in governance in U.S.-Canadian studies and then relate my research on the Alaska pipeline context. My resources for the study include analyses of economic and regulation literature on U.S. and Canadian natural gas markets as well as government and industry reports on arctic natural gas development (e.g., Doucet and Littlechild 2006). A key source of knowledge comes from ethnography gathered during 2001 and again in 2003 in the Office of the Alaska Governor. During these periods, I became familiar with potential sponsors and plans of Alaskan and western Canadian natural gas development. I learned also of the value placed by government and industry participants on various systems of knowledge that govern these projects.

Ethnography is itself a tool for gaining access to systems of thought and action by which the analysis of small, local occurrences are set against an analysis of large phenomena and in which both levels can be understood only in terms of one another (Burawoy 2000). Ethnographically based studies of large technical systems (e.g., pipelines, power plants) are of recent origin, but current research calls attention to examining systems of knowledge through which scientific, government, and industrial domains of society are involved (Mason 2007). This approach often involves looking over the shoulders of diverse groups at the prism of technology, economics, and regulation, and learning diverse points of view of experts, laypeople, men, women, etc. (Traweek 1988).

Modes of U.S.-Canadian Governance

There is increasing scholarly interest in the new structures of governance and models of social development in U.S.-Canadian cross-border relationships that have arisen over the past two decades. Academics are writing on a wide variety of topics, ranging from the emergence of new co-management regimes surrounding development of key resources (particularly of the energy sector), to how federal, state, and provincial governments should respond to the involvement of indigenous peoples and organizations that require self-government.

On the empirical level, this interest reflects the specialization of scholars focusing on commodity flows and cultural exchanges, as these factors shape and intertwine with the economies, politics, and social contexts of North America—all this at a time when transnational interactions are calling into question national sovereignty, stirring controversy about new forms of asso-

ciation that transcend national functions (e.g., Cellucci 2005; Boychuk 2004; Manley 2005; Schwarz 2005).

On the analytical level, the research tends to approach its subject matter from two sides:

- First, from the perspective of the breakdown of segmentation associated with core/periphery relations—that is, the passing of powers to local authorities from a central government—often called devolution or retreat of the state (e.g., ARCUS 1998; Young 1992).
- Second, from the perspective of the productive aspects involved in translating society into an *object* of government, recently described as a shift from “government” to “governance,” which includes the tensions articulated by government techniques for regulating its citizens—markets, etc. (Dukert 2000, 350; Gattinger 2005; Richter 2005).

Still, these U.S.-Canadian studies may also be viewed as evidence in support of some of the unique aspects of globalization—in particular, the changing role of nation-states, state control, and governance. According to this theoretically nuanced literature, nation-states have lost the ability and willingness to detail the order of their societies and are increasingly turning to regulating mobilities—that is, ensuring the conditions for favorable interaction of market processes and commodity flows (Urry 2000). What this means is that states have become less able to act purposefully and to influence the outcomes of global processes. For example, in what Manuel Castells (1996) terms “network society,” states have been transformed from sovereign subjects into strategic actors, who foster productivity and competitiveness of their economies (or not) by allying themselves with economic interests that are structured by global rules favorable to capital flows.

What is noteworthy is that all the above authors call attention to a shift in the definition of governance from one that stresses ideological and political aspects, to one that stresses the technical forms by which society is managed. This latter definition includes the diversity of forces that arrange and direct both individuals and projects into the kinds of administrable objects that embody the style of a particular political-economic power. In short, the notion of governance is that of a contact point where techniques for control articulate with individuals’ techniques of the self, affecting new styles of self-thinking and acting (e.g., Foucault 1991).

From the vantage point of my own research on plans to build Alaska’s natural gas pipeline, the discussion on the increasingly tactical forms of transboundary governance provide an insightful departure point. The Alaska gas pipeline involves various practical systems of knowledge (e.g., regulatory, economic) which perform coordination of action. Since the end-product, once

embarked on, cannot be revised—whether for economic or for technical-systems reasons—permitting, routing, and policy leadership require forms of social organization where specific sequences of policy are made parallel in social time.

At the ethnographic level, however, I have observed that such systems of governance do not always appear as practical systems, as they do when viewed from the macro-political economic level. Nor do they provide the actors working within these structures of governance a sense of coherence that allows for coordination of practices and habits among the public, private, and civic sectors, as some have suggested is the case, particularly in the energy sector (e.g., Gattinger 2005). To demonstrate these contradictions, I first provide a recent history of the rekindled interest in Alaska’s pipeline project and then highlight one ethnographic portrait of its policy and planning. While the ethnography employed has been collected primarily on the “U.S. side” of this project, the process described relates to tensions articulated on the project overall.¹

The Historical Present of Alaska’s Natural Gas Pipeline

Recent challenges of the global oil transition have some observers encouraging investment in new sources of cleaner burning fuel, such as natural gas (CERA 2004). Since the 2001 California energy crisis, for example, industry and government have been struggling to transform the U.S. natural gas industry from a continental supply source into a global delivery system. Critical elements of this system include tapping new supply sources of natural gas from arctic Alaska and arctic Canada through construction of long-distance pipelines.²

The Alaska natural gas pipeline remains in the early planning stages, and involvement in policy, with few exceptions, is restricted to a specific set of stakeholders who exercise a great deal of control over defining the legitimate forms of progress on the project (Reynolds 2003). These stakeholders consist of the owners of the natural gas resource,³ owners of federal permits to build the pipe along a federally designated Alaska Highway route,⁴ elected officials who have legislated the designated pipeline route,⁵ the lead U.S. federal agencies with authority for permitting the project,⁶ and consulting firms that produce energy price forecasts—for example, Cambridge Energy Research Associates (cera.com). As planning unfolds, other groups, such as Canadian politicians and regulatory agencies, communities, project financiers, and gas explorers, will increasingly play a more critical role in defining the project.

Recent planning efforts began in fall 2000, when high prices across the United States rekindled the interest of producers and governments in developing Alaska North Slope gas and nearby Mackenzie Delta gas. A \$125 million feasibility study by Alaska energy producers proposed to take North Slope gas to the mid-continental United States by one of two pipeline routes: (1) the Alaska Highway route, through central Alaska to Alberta, Canada; (2) the

over-the top route, which extends offshore into the Beaufort Sea and across to Canada, where the pipeline would connect with Mackenzie Delta gas supply, then head south to existing interconnections in Alberta.

One year later, by fall 2001, however, energy producers, the state of Alaska, members of the U.S. Congress, and consultants acknowledged that market forces alone would not support the building of an Alaska gas pipeline in the near future (EIA 2001, viii–16). As a result, stakeholders turned their attention to the project's legislative origins—that is, the vocabulary of early federal legislation created in the 1970s, during an initial period of interest in the project. The passage in the U.S. Congress of the Alaska Natural Gas Transportation Act of 1976, or ANGTA, defined early visions of how the Alaska gas pipeline would be built. During this time, corresponding Canadian federal legislation, the Northern Pipeline Act, was also passed (Tussing and Tippee 1995). The ANGTA and Northern Pipeline Act statutes were drafted under unique regulatory conditions (FERC 2001, 5). Since passage of the statutes, North American gas markets have restructured dramatically, which has amplified the difficulty of moving major infrastructure projects through the regulatory process (Robinson and Hoffman 2000).

Structuring Risk through Regulation

Tracking down new categories, which are already beginning to appear with the decay of the old ones, is a difficult undertaking. —Ulrich Beck, *Risk Society*

One of the most pressing concerns among leaders involved in the policy and planning of the Alaska pipeline has been the presence of systems of thought that are structurally bound to periods of both regulation *and* restructuring. Efforts to develop the Alaska pipeline span a 30-year period, and thus many uncertainties encountered in current planning arise from a need for integration of decayed components—in particular, of the ANGTA and Northern Pipeline Act. Formerly forgotten sources of knowledge, such as details of congressional legislation, have introduced a recognizably decayed nomenclature of strategic political decision-making and economic logic into contemporary debate. The introduction of these older knowledges provides various forms of “intellectual slag” that have expanded the temporality and depth of coordinates used for navigating how the project moves forward.

This is particularly evident, for example, in the way earlier financial investment in the pipeline has been legitimated through government accounting practices that pertain to a period before industry restructuring. For example, in 2000, more than two decades after stakeholders abandoned initial proposals to build the Alaska pipeline, a consortium of pipeline companies sought claims on investment which they had registered with a regulatory agency some

20 years earlier. While these claims originally were estimated at \$200 million, with a paper accrual of a 14 percent rate of return, in 2001 they were worth \$4 billion (Anchorage Daily News, 9/23/2001).

Thus, assessment of U.S.-Canadian arctic energy planning defies traditional energy policy analysis, in which decision-making is examined through relatively stable forms of competing stakeholder interest, or what Franklin Tugwell (1980) refers to as “cozy triangles”—essentially, insider policy agreements among executive branch agencies, industry, and legislative committees. Stated differently, the case of the Alaska pipeline raises the problem, recognized by Michael Lynch and others working in the discipline of science and technology studies, that systems of regulation and economics initially developed to achieve goals with certainty now, in fact, “structurally determine” new forms of uncertainty (Lynch 1993, 31; Rochlin 2004).

Since much of the debate on this issue pertains to the ANGTA and the Northern Pipeline Act, it is worth looking more closely at how these laws structurally determine the project. The primary purpose of these laws, as they were initially formulated, was to guarantee the swift construction of the Alaska gas pipeline (a response to the cost over-runs experienced during construction of the trans-Alaska oil pipeline during the 1970s). To do this, the ANGTA and the Northern Pipeline Act force unity from a diversity of regulatory authorities that would govern over pipeline construction. The ANGTA, for example, forbids local, state, and federal government from imposing unnecessary restrictions that would impede its expedited construction. The law provides a treaty with Canada in which the Canadian federal government recognizes the need for guarantees that regulatory hurdles will be minimal when the pipe crosses into its own territories and provinces. The ANGTA also provides for the selection of one pipeline route that would travel through central Alaska, called the Alaska Highway route. Finally, the ANGTA provides for the selection of one company to build the pipe along that route. In 1976, this company was a consortium of 11 pipeline companies that were awarded the federal regulatory permit to build the pipe.

Yet the pipeline was never built. The permit was never used. Today, that ANGTA permit belongs to the TransCanada Corporation, which inherited the permit from the original 11 companies.⁷

When I sat down to read the ANGTA law—and, in particular, the transportation system documents that the ANGTA created—what I found was a set of highly detailed instructions for building the pipeline. These documents contain mile-by-mile considerations for how construction should occur. Thus, these federal laws were not simply legal frameworks that force coherence from chaos; they were “system building instruments” (Hughes 1983; also Joerges 1988; Rochlin 1994) that defined the original vision of how Alaska's pipeline would be built. And because the laws and the system they created were written nearly 30 years ago, the envisioned pipeline reflects the language of that

period. Written into this older language are the kinds of political decision-making, economic logic, and less developed technology which pertain to that earlier time. In that era, during the 1970s, the natural gas industry was government regulated in ways that made many project decisions non-competitively based, by today's standards. Since the 1980s, the gas industry has undergone a process of restructuring and is today increasingly more competitive and more global-market-oriented.

Even though the Alaska pipeline was never built, there was no provision ever written into these laws that would explain whether their status would still be credible 30 years later. And this then raises a question: What is the applicability of a 30-year-old law on proposals for building an Alaska pipeline today?

In fall 2000, this question vexed lead senators of the U.S. Congress, who requested of James Hoecker, then chairman of the Federal Energy Regulatory Commission (FERC), that his agency—the lead U.S. regulatory agency with the authority for permitting new pipelines—identify the ANGTA's continued relevance. The senators' request was controversial, in large part because the current ANGTA permit-holder, TransCanada Corporation, argued that the ANGTA is still good law and that the corporation had the sole right to build the pipe. Alaska energy corporations and the state of Alaska, however, pointed out to Congress that the selection of the pipeline route and selection of pipeline builder should be made in the marketplace, and not by government. The gas industry, they argued, "is a more competitively based industry than when the ANGTA was conceived" (Koonce 2001).

In January 2001, Hoecker returned to the Senate with what he called a Staff Report, indicating that his regulatory lawyers had oriented their efforts toward identifying the continued relevance of the ANGTA. In the report, which took three months to produce, Hoecker stated that he did not know what effect the ANGTA legislation would have on building a pipe today:

There are no simple answers to many of the legal questions currently posed on ANGTA. This is in great measure because [today's pipeline proposal] applicants will be dealing with circumstances that were likely not contemplated when ANGTA was drafted, including changes in the energy market, in pipeline construction technology, in environmental regulation and most notably, the fact that, some 25 years after the enactment of ANGTA, the pipeline project for which ANGTA provided expedited treatment has not been built (FERC 2001, 5).

In short, from his study, Hoecker discovered that there was no significant guidance as to how to build the Alaska pipeline on the regulatory level.

However, the date of the release of the Staff Report on January 18, 2001, coincided with Hoecker's last day of work. As a political appointee of Presi-

dent Clinton, Hoecker was replaced by a President Bush appointee, Patrick Wood. Thus, the status of the status report immediately fell into question. Would a new chairman recognize an outgoing chairman's findings? Or issue a new study? The reaction among the decision-making community could be characterized as one of consensus, albeit a consensus of bewilderment. As one informant stated to me, "We don't know whether what we don't know is what we should know."

But inspired by this cosmos of confusion existing at the regulatory and political level, energy companies, TransCanada, and the state of Alaska began reshaping ANGTA's older understandings into the kind of statute that would achieve their desired future aims. In this period, beginning summer 2001 and continuing through early 2003, it was as if the ANGTA law were being archaeologically excavated and its meanings first recovered and then incorporated into a newer ANGTA law. And because the language of this newer law had only recently emerged from the excavated findings of the past, participation in its drafting began to require a complicated understanding. Its understanding included not only the past, but also how the past had recently been excavated in the present. In short, with its references, cross-references, and genealogical and archaeological references, only an inner circle of stakeholders could participate in the drafting of the newer ANGTA law. According to one Alaska state official, the process ultimately defined "who's a player and who is not."

Conclusion

Through this partial presentation of Alaska natural gas pipeline planning, I have sought to foreground what I observed on the ethnographic level as one neglected structure of governance on infrastructural planning in U.S.-Canadian cross-border relationships. The structure of competing knowledge systems of regulation *and* deregulation is part of a larger assemblage of forces, actors, and forms of knowledge that affect unique styles of thinking as they impact those relations of governance now drawing attention to U.S.-Canadian affairs.

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Notes

1. Having completed a 2006–07 Fulbright-Enders Fellowship at University of Calgary, I am continuing my research on the Canadian planning process of the project.
2. There are 35 trillion cubic feet (tcf) of known Alaska gas reserves, an estimated 156 tcf in the nearby region, and 53 tcf estimated for the Mackenzie Delta in Canada—a significant quantity in a compact area.
3. State of Alaska, Exxon, BP, ConocoPhillips.
4. TransCanada Pipeline Corporation.
5. Alaska state legislature; the U.S. Congress.
6. E.g., Federal Energy Regulatory Commission, Department of Energy.
7. The Alcan Pipeline Company, the original permit holder, was a wholly owned subsidiary of Northwest Pipeline Company. In 1976 the President’s “Decision,” which became a part of the ANGTA system documents, expressly recognized that the Certificate to Build could be transferred by Northwest to a successor. In 1978, it was transferred to a new partnership, named the Alaskan Northwest Natural Gas Transportation Company. After the President’s Decision, various interstate gas pipeline companies joined the Alaskan Northwest partnership through subsidiary corporations. At its peak, 11 interstate pipeline companies were partners in the Alaskan Northwest Partnership.