

“Regulatory capture” and “extractive hegemony”: the relevance of Nicos Poulantzas’ theory of the state to contemporary environmental politics in Canada

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Abstract

This paper considers the relevance of Nicos Poulantzas’ theory of the state to debates about hydrocarbon extraction and environmental assessment in Canada. I begin with a brief summary of Poulantzas’ work, followed by an overview of the politics of hydrocarbon extraction in Canada. Next, I examine recent public policy debates about the assessment and regulation of energy extraction in Canada. These debates, which focus on the concept of “regulatory capture,” fall victim to many of the problems Poulantzas identifies with instrumentalist approaches to the state. Critical accounts of regulatory capture have helped expose the fact that oil companies exercise an incredible degree of control over the Canadian state. However, it offers limited guidance for long-term strategies to confront extractive capital. In the section on “Environmental assessment and extractive hegemony,” I draw on Poulantzas to examine recent academic debates about the role of environmental assessment in the reproduction of extractive capitalism in Canada. Scholars have shown a more nuanced understanding of the power dynamics at play in the assessment and regulation of energy projects in Canada. Nevertheless, engagement with Poulantzas’ work can help deepen and expand these critiques, especially his emphasis on the role of state-organized material concessions in producing consent to capitalism.

Keywords

environmental assessment, extraction, hegemony, hydrocarbons, state theory

“Captura reglamentaria” y “Hegemonía extractiva”: la relevancia de la teoría del estado de Nicos Poulantzas para la política ambiental contemporánea en Canadá

Resumen

Este artículo considera la relevancia de la teoría del estado de Nicos Poulantzas para los debates sobre la extracción de hidrocarburos y la evaluación ambiental en Canadá. Comienzo con un breve resumen del trabajo de Poulantzas, seguido de una descripción general de la política de extracción de hidrocarburos en Canadá. A continuación, examino los recientes debates de política pública sobre la evaluación y regulación de la extracción de energía en Canadá. Estos debates, que se centran en el concepto de “captura regulatoria”, son víctimas de muchos de los problemas que Poulantzas identifica con los enfoques instrumentalistas del estado. Los análisis críticos de la captura regulatoria han ayudado a exponer el hecho de que las compañías petroleras ejercen un increíble grado de control sobre el estado canadiense. Sin embargo, ofrecen una guía limitada para estrategias a largo plazo para enfrentar el capital extractivo. En la cuarta sección, recorro a Poulantzas para examinar los debates académicos recientes sobre el papel de la evaluación ambiental en la reproducción del capitalismo extractivo en Canadá. Los académicos han

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demostrado una comprensión más matizada de la dinámica de poder en juego en la evaluación y regulación de proyectos de energía en Canadá. Sin embargo, el compromiso con el trabajo de Poulantzas puede ayudar a profundizar y expandir estas críticas, especialmente el énfasis de Poulantzas en el papel de las concesiones materiales organizadas por el estado para producir el consentimiento al capitalismo.

Palabras claves

Teoría del Estado, Hegemonía, Extracción, Hidrocarburos, Evaluación Ambiental

The need to transition off fossil fuel is one of the most urgent political issues of our time. Increasingly dire predictions from climate scientists demonstrate that we must rapidly reduce carbon emissions to address the ongoing climate crisis (Intergovernmental Panel on Climate Change, 2014, Intergovernmental Panel of Climate Change, 2018). Despite bold rhetoric from some elected officials, the Canadian state has made little progress in curbing greenhouse gas emissions. One of the biggest obstacles to the transition to a low-carbon economy is Canada's ongoing economic dependence on fossil fuels extraction (Adkin, 2016). It is therefore not surprising that Canadian fossil fuel extraction in general—and the Alberta tar sands in particular—have become a primary target for the climate movement, both in Canada and internationally (Carter, 2016; Kellogg, 2015).

The tar sands have also become a lightning rod for Indigenous resistance. Like other forms of extraction in Canada, the oil industry is premised on the dispossession of Indigenous lands and resources, the destruction of Indigenous subsistence economies, and the violation of Indigenous rights (Estes, 2019; Kuokkanen, 2019; Laboucan-Massimo, 2014; Westman and Joly, 2019). It is therefore part of a broader settler-colonial project, whereby dispossession of Indigenous territory drives Canadian national development (Adams, 1999; Coulthard, 2014; Dorries et al., 2019; Manuel and Derrickson, 2015; Nungak, 2017; Pasternak, 2017; Shipley, 2020; Venne, 2017).

A key tactic for both the climate justice and Indigenous sovereignty movements is resistance to the construction of new infrastructure necessary for the expansion of the Alberta oil patch (Estes, 2019; Grossman, 2019; Haluza-Delay and Carter, 2016; Kipfer, 2018; Smith, 2015). Alliances of Indigenous and climate activists have engaged in multiple forms of resistance to tar sands pipelines in recent years. In some cases, this resistance has proven successful, as several important proposals for pipelines have been delayed, shelved, or abandoned.

Prime Minister Stephen Harper's conservative government (2005–2016) responded to this resistance with legislative and discursive tactics intended to change the balance of forces in favor of the oil industry. The most notorious legislative changes were made in 2012 via two “omnibus” bills that significantly revised Canada's environmental assessment framework. Among other things, this legislation reduced the number of projects requiring assessment, restricted public participation in hearings, and removed “downstream effects” (including climate change)

from the possible scope of assessments. It also removed federal protection for many lakes and revised the “Indian Act” in ways that helped pave the way for the privatization of collective reserve lands (Kino-nda-niimi Collective, 2014; Schmidt, 2018). Despite popular mobilizations and litigation (Coulthard, 2014; Kino-nda-niimi Collective, 2014), these omnibus bills were passed into law. An important result of these legislative changes was a strategic bias in Canada's regulatory system in favor of extractive capital (McCreary, 2014; Peyton and Franks, 2016).

Harper's administration also succeeded in establishing as “common sense” for many Canadians a discourse wherein energy extraction is equated to economic development (Peyton and Franks, 2016). Opposition to pipelines and the expansion of the tar sands was criminalized by equating it with violence and characterizing it as antithetical to economic prosperity and Canadian national security (Billon and Carter, 2010; Stefanick, 2015; Zalik and Feldman, 2011). Environmental NGOs were specifically singled out by portraying them as “foreign” agents working against Canada's “national interest” (Haluza-Delay and Carter, 2016).

Liberal Prime Minister Justin Trudeau was elected in 2015 based on a campaign that promised progressive change. His platform included serious action on climate change, major reform of Canada's environmental assessment process, and a new relationship with Indigenous peoples that respected their right to provide or withhold their consent to oil extraction and pipeline construction. For many environmentalists in Canada, Trudeau's ascendance was a source of hope for fundamental change in Canadian environmental policy (Doelle and Sinclair, 2019).

According to journalist and activist Lukacs (2019), the campaign that brought Trudeau to power was a conscious attempt to ward off radical challenges to Canadian capitalism with limited concessions to Indigenous peoples, social movements, and the working class. This political project was supported by large sections of the Canadian capitalist class, which according to Lukacs had grown weary of Harper's heavy-handed approach to promoting extraction. However, despite Trudeau's progressive veneer, Lukacs argues that he had no intention of seriously constraining the expansion of oil extraction in Canada.

In any case, by the end of his first term in office in 2019, Trudeau had failed to deliver on many of his progressive promises. He made notably little progress in curbing carbon emissions (MacNeil and Paterson, 2018), while his reforms to environmental governance have proven disappointing (Doelle

and Sinclair, 2019). Moreover, his government demonstrated a commitment to expanding Canadian oil production, as well as a lack of serious commitment to respecting the right of Indigenous peoples to provide or withhold their consent to oil extraction. This was made painfully clear when the Trudeau government purchased and issued approvals for an expansion of the floundering Trans Mountain Pipeline, despite ongoing opposition by several Indigenous communities along the pipeline's path.

The social-democratic New Democratic Party (NDP), led by Rachel Notley, won the 2015 provincial elections in Alberta. Like Trudeau, Notley's rise to power brought hope for significant political change, especially with regard to environmental issues (Harrison, 2015). Notley's party had been outspoken in its criticism of the previous Conservative administration's neglect of climate change and greenhouse gas emissions.

By the end of her term as Premier, Notley also underwent a drastic shift in approach, as she went to great lengths to show Albertans that she supported the expansion of the tar sands. This drew her into a well-publicized conflict with the NDP party in British Columbia, which she accused of blocking pipeline construction and therefore economic growth in Alberta. Despite Notley's best efforts to rebrand herself as an ally to the oil industry, her party was defeated in a 2019 general election by Jason Kenny's right-wing United Conservative Party. Kenny ran on a platform to aggressively support the expansion of the tar sands, including spending \$30 million on an "energy war room" to counter campaigns by climate organizers and other opponents of tar sands expansion.

These developments highlight the need for a thorough and critical analysis of the Canadian state's relationship with the fossil fuel industry. This paper makes a modest contribution toward this goal by considering how Nicos Poulantzas' theory of the state can offer insights into the ways in which Canada's environmental assessment and regulatory processes helps perpetuate capitalist extraction. It begins with an overview of Poulantzas' approach to the state and a summary of how it has been applied to the fields of political ecology, Canadian studies, and Indigenous studies.

The second section of this paper considers the relevance of Poulantzas' work for public policy debates about the assessment and regulation of energy extraction in Canada. Specifically, I use his critique of instrumentalist approaches to the state to analyze the concept of "regulatory capture"—a term used to describe a situation in which a regulatory institution falls under the direct control of the industry it is supposed to oversee. I focus on two reports from federal policy reviews of environmental assessment and energy regulation. These reports are the outcome of the most extensive public consultations about Canadian environmental assessment and energy regulation in recent decades. I use a combination of secondary sources and gray literature to situate these reports within the broader context of public debates about environmental assessment in Canada. While the overall focus of this paper is on hydrocarbon politics, I also examine how the

concept of regulatory capture has been applied to nuclear issues, because recent debates about regulatory capture have focused on both the hydrocarbon and nuclear industries.

After coding the reports to identify instances where the term "regulatory capture" was used, I considered how regulatory capture was used to explain the power dynamics involved in environmental assessment, as well as the reports' recommended solutions to the problem of capture. The notion of regulatory capture contained in the reports was then compared to the instrumentalist conceptions of the state Poulantzas criticized.

I conclude that Poulantzas' critique of instrumentalist approaches to the state is useful for understanding the limitations of the concept of regulatory capture. Unless it is embedded in a broader strategic-relational approach, regulatory capture can lead to distorted understandings of how environmental assessment helps reproduce extractive capitalism. On its own, the concept is unable to account for, or sufficiently challenge, the role of assessment and regulatory functions in producing the hegemony of extractive capital.

Next, I consider the relevance of Poulantzas' work for scholarly debates about the role of environmental assessment in the reproduction of extractive capitalism in Canada. I focus specifically on critical academic literature examining the assessment and regulation of oil and gas projects. While scholars have critically examined Canadian environmental assessment in the context of various types of extractive industries (see for example: Kennedy Dalseg et al., 2018; Payton, 2017), my focus here is on literature that analyzes assessments of proposed hydrocarbon projects. I made this choice for two reasons. First, it is consistent with the general theme of this paper. Second, because of the unique role of hydrocarbons in the reproduction of capitalism (Huber, 2013) and the climate crisis, scholarly debates around the regulation and assessment of hydrocarbon projects deserve specific attention.

Critical academic literature examining the assessment of proposed hydrocarbon projects shows a much broader understanding of the role of environmental assessment in the reproduction of extractive capitalism. This literature has clearly established how the discourse of environmental assessment reproduces colonial and capitalist relationships, including by containing and demobilizing resistance. Nonetheless, I argue that engagement with Poulantzas' writings can help deepen and expand these critiques. His work about the role of the state in establishing an "unstable equilibrium of compromises" to maintain popular consent to capitalism is especially helpful.

Nicos Poulantzas' theory of the capitalist state

Poulantzas' theory of the state developed gradually over a decade in a series of works, the most important of which include his book *Political Power and Social Class* (1973),

his debate with Ralph Miliband in *New Left Review* (1969/1976), and his final book *State, Power, Socialism* (1978). The general trajectory of his work involved a shift in emphasis from the structure and functional role of the capitalist state in the reproduction of the capitalist mode of production (i.e., a “regional” theory of the state), to one that stressed the role of class struggle in determining the form, structure, and actions of the state (in other words, a “strategic-relational” approach to the state). This entailed a shift from emphasizing the “relative autonomy” of the state to focusing on the state as a “social relation.” Related to this was Poulantzas’ shift from seeing the state as an entity which could only be “smashed” by an external force, to one which could in part be maintained along a “democratic road to socialism” (Das, 1996; Jessop, 1985; Sotiris, 2014, 2017).

However, despite these shifts in emphasis, Poulantzas maintained a conception of the state, drawn from the work of Gramsci (1997), that treats it as a forum for producing the hegemony of the capitalist class.¹ For Poulantzas (1973), hegemony refers to the political practices dominant classes use to persuade subordinate groups to consent to domination. These practices include political, economic, and ideological leadership. Notably, hegemonic powers move beyond their narrow self-interests and take actions that consider the interests of subordinate parties (on this latter point, see also Arrighi, 1994).

According to Poulantzas, the state produces capitalist hegemony by bringing the ruling and subordinate classes into a “variable game of provisional compromises” (Poulantzas, 1978: 140). The state, therefore, plays a functional role in capitalist society by fostering social cohesion in a society fragmented by class and other divisions. The state politically organizes the ruling classes, which are made up of competing fractions with conflicting interests. Because the state as a whole is not directly controlled by any specific group or fraction from the ruling classes, it is able to organize the long-term political interests of capital in general. It does this by imposing compromises that balance the interests of the different fractions of the ruling classes, and thus organizes them into a “power bloc,” usually under the leadership of a specific fraction of capital (Poulantzas, 1978: 127).

The state disorganizes the dominated classes through the imposition of compromises, the propagation of ideology, and physical repression. It is through the state that an “unstable equilibrium of compromise” is forged between dominant and dominated classes (Poulantzas, 1973: 192).

[T]he state organizes and reproduces class hegemony by establishing a variable field of compromises between the dominant and the dominated classes; quite frequently, this will even involve the imposition of short-term material sacrifices on the dominant classes, in order that their long-term domination may be reproduced. (Poulantzas, 1978: 184)

Such concessions may run contrary to the short-term economic interests of the ruling classes, but ultimately serve their long-term political interests, insofar as they help generate political support for the existing order and undermine counter-hegemonic alliances between subordinate groups. Further, there are important limits to the types of concessions the state will impose, as it generally will not make interventions that seriously disrupt the accumulation and reproduction of capital (Poulantzas, 1978: 169).

Poulantzas also argues that the state plays an important role in the production of ideology. He claims that the state operates through a specific ideological framework that “hides” or “excludes” contradictions (Poulantzas, 1973). According to Poulantzas, the state depoliticizes capitalism by imposing an illusion of political equality between “individuals,” uniting these individuals under a “general interest” or “common good,” and applying technical discourses to political problems like class relationships (Poulantzas, 1973).

One of Poulantzas’ most important contributions is his critique of “instrumentalist” conceptions of the state, especially his debate with Ralph Miliband in the pages of *New Left Review*. The exchange began with Poulantzas (1969) review of Miliband’s book *The State in Capitalist Society*. This was followed by a response from Miliband (1970), Miliband’s (1973) review of the English translation of Poulantzas’ book *Political Power and Social Class*, and Poulantzas (1976) response to Miliband’s review.

My primary interest in this exchange is Poulantzas’ critique of instrumentalism—conceptions of the state that perceive it as “only a simple tool or instrument manipulated at will by the ruling class” (Poulantzas, 1969: 74). In other words, “instrumentalism” refers to an approach to the study of the state that emphasizes the ways in which the capitalist class directly controls the state. According to Poulantzas, analyses of the state premised on instrumentalism can help demystify the dominant bourgeois ideology that the state is a neutral arbiter that represents the “common good.” However, he maintains that this approach cannot account for the role the state plays in organizing the hegemony of the capitalist class. This is because “the capitalist state best serves the interests of the capitalist class only when members of this class do not participate directly in the state apparatus” (Poulantzas, 1969: 73). The state can only organize the compromises necessary for capitalist hegemony insofar as it is “relatively autonomous” from capital (Poulantzas, 1969: 74). As such, a focus on class backgrounds and personal relationships of politicians and bureaucrats is, for Poulantzas, a limited and ultimately inappropriate approach to the state.

While Poulantzas took care to emphasize the value and complexity of Miliband’s study—and did not accuse him of being a simple instrumentalist—he nonetheless argued that Miliband’s work suffered from some of the problems inherent in the instrumentalist tradition. This was because of Miliband’s focus on documenting the ways in which members of the capitalist class participated directly in the state’s political and

bureaucratic apparatuses. Several critics have subsequently argued that Poulantzas' association of Miliband with "instrumentalist" conceptions of the state was simplistic and unfair (Barrow, 2008; Panitch, 2019). Jessop (2008) claims that neither participant understood each other's position, and that the "non-debate" ultimately amounted to little more than a "dialogue of the deaf." However, while Poulantzas' accusations of instrumentalism on Miliband's part may have been inaccurate, his critique of instrumentalism still offers important insights into Canadian environmental politics.

Since Poulantzas' untimely death in 1979, Bob Jessop has emerged as one of the most well-known interpreters of Poulantzas' work. In a series of books, Jessop has expanded Poulantzas' insight that the state best conceived as a "social relation" to construct a "strategic-relational approach" to the study of the state. For Jessop, the strategic-relational approach sees the state as a material condensate of a social relation. It reflects, is constituted by, and helps to constitute a relationship of power between struggling classes. As a result, the state is shot through with strategic biases that privilege certain actors, issues, identities, and strategies (Jessop, 1990, 2007b).

In recent years, there has been a growing interest in the strategic-relational approach to the state by geographers and political ecologists (Ahmed, 2018; Loftus, 2020). In a 2007 keynote speech (published a decade later in the *Journal of Political Ecology*), Jessop discussed Poulantzas' limited engagement with environmental issues and speculated about how he might have approached ecological questions if he had addressed them more thoroughly. According to Jessop, Poulantzas would have made significant contributions to political ecology's approach to the state, especially regarding the role of the state in managing ecological crises (Jessop, 2017). Ulrich Brand, Christoph Gorg, and others have used the strategic-relational approach to explore barriers to transitioning to sustainable economies (Görg et al., 2017) as well as to examine environmental governance at national and international spatial scales (Brand and Görg, 2008; Brand et al., 2008, 2011). Plank (2017) uses it to inform a study of the agrofuel industry in the Ukraine, while Pichler engages it to examine sustainability certification processes for palm oil producers in South East Asia (Pichler, 2013) and movements for socio-ecological justice (Pichler, 2017).

Poulantzas' work has also influenced several important academic debates in Canada. For example, several key debates in the 1980s about the nature of the Canadian state engaged Poulantzas' work (see Albo and Jenson, 1989 for an overview). Kulchyski (2005) draws upon Poulantzas' insights about how the state constructs modern forms of subjectivity to explain the Canadian state's colonization of Indigenous peoples. Mortimer-Sandilands (2009) uses Poulantzas' writings about nationalism to examine the role of ideas about nature and wilderness in Canadian identity.

The strategic-relational approach has also been used to inform international scholarship examining Indigenous peoples and the politics of colonization. Andreucci and Radhuber

(2017) use this approach to explain the expansion of extractive capitalism under Evo Morales' "post-neoliberal" government in Bolivia (see also Radhuber, 2012). Howlett (2010) similarly draws upon Poulantzas to understand relationships between mining companies and Indigenous peoples in Australia. Stewart-Harawira (2013) uses his work to examine changes in the relationship between Indigenous peoples and states brought about by neoliberal globalization.

This article contributes to these bodies of scholarship by applying Poulantzas' ideas to two contemporary debates about environmental governance in Canada. First, I use Poulantzas' critique of instrumentalism to highlight the limitations of the use of the concept of "regulatory capture" in public policy debates. Second, I argue that Poulantzas' emphasis on the role of the state in negotiating an "unstable equilibrium of compromises" can contribute to academic debates about the role of environmental assessment in the reproduction of extractive capitalism.

Energy extraction and regulatory capture in Canada

Most recent criticism of resource management in Canada focuses on the way in which regulatory and assessment processes have become biased in favor of extractive industries. Until recently, the regulation of hydrocarbon exports, inter-provincial and international pipelines, and hydrocarbon extraction in the far north fell under the jurisdiction of the National Energy Board (NEB). Regulation of uranium mining and nuclear power was the responsibility of the Canadian Nuclear Safety Commission (CNSC). A long list of institutions are responsible for environmental assessment in Canada. The Canadian Environmental Assessment Agency (recently renamed the Impact Assessment Agency) is responsible for federal environmental assessment. Each provincial government in Canada has its own body for assessment within its jurisdiction. In regions where Indigenous peoples have signed modern treaties, co-management assessment boards have been established to facilitate greater Indigenous participation in assessment processes. Until recently, both the NEB and CNSC had responsibility for conducting environmental assessments for projects that fell under their respective mandates. To address the obvious problem of overlapping jurisdictions, when specific proposals for energy extraction are assessed, temporary Joint Review Panels are usually established with members from all relevant assessment organizations.

Critics of Canada's regulatory and assessment processes frequently highlight the changes to environmental governance by Stephen Harper's government. Criticism of Harper's reforms is often premised on the concept of "regulatory capture." Environmental journalist Nikiforuk (2011) describes regulatory capture as a situation in which an

ostensibly neutral and independent regulatory body is controlled by private interests: “whenever industry captures the power of the state to foster private goals...regulators get captured and corruption surely follows.”

According to Nikiforuk, the NEB was a captured regulator because it was primarily funded through industry levies and personnel frequently moved between industry and the NEB. Former Chair of British Columbia Hydro Eliesen (2016) argued that the NEB’s review of a proposed pipeline in Western Canada “exposed the Board as a captured regulator.” He claimed that the review’s outcome was “predetermined” by the NEB “narrowly scoping its list of issues, removing cross-examination, and refusing to compel answers to information requests.” Critics who charge that the NEB is a captured regulator often cite the appointment of a Kinder Morgan consultant to the board during its review of Kinder Morgan’s proposed Trans Mountain expansion project, as well as the private meetings NEB panel members held with TransCanada consultants during its review of TransCanada’s Energy East pipeline (Nikiforuk, 2017).

Kevin Taft, former leader of the Alberta Liberal Party, takes this argument further, and contends that the oil industry has not only captured important regulators like the NEB, but has created a “deep state” in Alberta and Canada. He defines a deep state as a “state-within-a-state” which is created “when several key public institutions are captured and held for a long period of time by the same private interest.” Taft documents the capture of various state institutions, including political parties, government agencies, regulators, and universities. According to Taft, “the oil industry has captured and held enough different public institutions for a long enough time that a deep state has formed in Alberta and to a lesser degree across Canada, which by its nature resists meaningful action on global warming” (Taft, 2017: 10).

The CNSC, Canada’s nuclear regulator, has likewise been repeatedly accused of regulatory capture. For example, several prominent environmental organizations operating in Canada have questioned the CNSC’s independence from the nuclear industry, including Greenpeace Canada, Ecojustice, Mining Watch Canada, the Sierra Club, and the Canadian Environmental Law Association (Bennett, 2013; Bernier et al., 2016). The CNSC’s critics argue that it was captured by the nuclear industry, partially as a result of the actions of Stephen Harper’s Conservative government. Specifically, they cite Harper’s firing of former CNSC chair Linda Keen—allegedly because of her insistence on stronger regulatory oversight for nuclear reactors—and her replacement with Michael Binder. Since his 2008 appointment, Binder has released numerous statements promoting the nuclear industry as a source of low-carbon energy, as well as statements dismissing people and organizations who question the safety of nuclear energy and uranium mining. Binder’s critics also note that he has allowed himself to be quoted in industry news releases, has publicly expressed support for projects that were under the review of the CNSC, and has censored

reports from CNSC scientists detailing the potential impacts of major nuclear accidents on Canadian cities.

During the 2015 federal election campaign, Justin Trudeau’s liberal party committed to significantly reform federal assessment and regulatory frameworks. After assuming office, his government initiated a review of Canada’s environmental assessment process. The Minister of Environment and Climate Change established an expert panel to examine the federal assessment framework. The panel was given a mandate to engage with different levels of government, industry stakeholders, Indigenous communities, and the Canadian public to develop recommendations to improve the process. The panel’s report, issued in 2017, contained recommendations for reform, many of which would doubtless improve existing processes. These recommendations include expanded opportunities for public participation, improved transparency, provisions to implement the principle of Free, Prior, and Informed Consent with respect to Indigenous communities, provisions to use environmental assessment as a planning tool to help Canada meet its international commitments to reduce carbon emissions, and a requirement that project proponents demonstrate that their projects will produce a net contribution to sustainability (Expert Panel on Environmental Assessment, 2017).

The question of the NEB’s and CNSC’s independence was an important theme in the expert panel on environmental assessment reform’s review.

A frequently cited concern was the perceived lack of independence and neutrality because of the close relationship the NEB and CNSC have with the industries they regulate. There were concerns that these Responsible Authorities promote the projects they are tasked with regulating. The apprehension of bias or conflict of interest, whether real or not, was the single most often cited concern by participants with regards to the NEB and CNSC as Responsible Authorities. The term ‘regulatory capture’ was often used when participants described their perception of these two entities. (Expert Panel on Environmental Assessment, 2017: 49)

The panel recommended addressing the problem of regulatory capture by taking the responsibility for environmental assessment away from the NEB and CNSC, and creating a new Impact Assessment Commission to conduct all federal assessments.

The Minister of Natural Resources appointed a parallel expert panel on the modernization of the NEB. This panel was given a mandate to examine the NEB and make recommendations to help “restore public trust” in Canada’s energy regulator. The panel’s report, released in 2017, included recommendations to change the NEB’s governance structure, relationship with Indigenous peoples, and decision-making processes (Expert Panel on Modernization of the National Energy Board, 2017).

As with the panel on environmental assessment reform, the panel on NEB modernization noted regulatory capture as a substantial concern.

We heard that Canadians have serious concerns that the NEB has been ‘captured’ by the oil and gas industry, with many board members who have come from the industry that the NEB regulates, and who – at the very least appear to – have an innate bias towards that industry. (Expert Panel on Modernization of the National Energy Board, 2017: 7)

The NEB modernization panel also reported that many of the people and organizations that participated in its review believed that the NEB’s procedures systematically favored the oil industry.

We heard a broad consensus from non-industry players who feel as though they must fight to have access to usable information about NEB-regulated activities, who must fight to be heard, and who have little assurance that, when they are heard, their input is afforded any weight. From the definition of who has standing to participate in NEB processes, to the very aggressive timelines afforded intervenors for their participation, to the formal settings of NEB hearings which favor well-resourced parties, the project review process of today feels to many as though it is designed to expedite decisions in favor of industry, and not to generate a robust debate to determine the best way forward, nor safeguard the public against the risks of NEB-regulated infrastructure. (Expert Panel on Modernization of the National Energy Board, 2017: 7–8)

To address this problem, the expert panel recommended that the federal government abolish the NEB and replace it with a new Canadian Energy Commission.

Following the release of these reports, Trudeau’s administration introduced Bill C-69 to Parliament in early 2018. Part 1 of the bill establishes a new Impact Assessment Agency of Canada as the sole authority for federal environmental assessment. Part 2 establishes the Canadian Energy Regulator to replace the NEB. After significant debate in parliament, including several rounds of amendments and revisions, the bill became law in August 2019 (Doelle and Sinclair, 2019).

It is not clear that these legislative reforms have substantially addressed the problem of regulatory capture. Most strikingly, Peter Watson—the former Chair and CEO of the NEB, under whose watch the problem of regulatory capture seemingly flourished—was appointed CEO of the new Canadian Energy Regulator. The lead commissioner of the new regulator, Damian Cote, is also a former NEB board member (Natural Resources Canada, 2019).

More broadly, Bill C-69 failed to remove the bias in favor of industry from Canada’s environmental assessment framework. Many of the progressive changes recommended by the expert panel were not included in the initial draft of the bill.

Instead, the proposed law focused on institutional restructuring and reversing the worst of Stephen Harper’s reforms (Cox, 2019; Tollefson, 2018). The proposed changes, weak as they were, attracted an alarmist response from the oil industry and conservative politicians. Alberta Premier Jason Kenny called Bill C-69 the “No More Pipelines Act” and threatened litigation if it became law. After intensive lobbying by the oil industry, the bill was significantly revised by Parliamentary committees and the (unelected) Canadian Senate (Cox, 2019). These revisions further weakened an already insufficient proposal for reforms (Doelle and Sinclair, 2019).

However, even if the legislation had reflected the review panels’ vision for more thorough and unbiased environmental assessment carried out by properly “independent” regulatory authorities, it is not clear that this would have created a strategic advantage in the fight against the expansion of the tar sands. Somewhat ironically, the expert review panel’s rationale for removing environmental assessment from the authority of the NEB and CNSC illustrates the limitations of focusing our analyses on regulatory capture.

Public trust and confidence is crucial to all parties. Without it, an assessment approval will lack the social acceptance necessary to facilitate project development. While some would likely favour the NEB and CNSC for the assessment of projects in their particular industries, the erosion of public trust in the current assessment process has created a belief among many interests that the outcomes are illegitimate. This, in turn, has led some to believe that outcomes are pre-ordained and that there is no use in participating in the review process because views will not be taken into account. The consequence of this is a higher likelihood of protests and court challenges, longer timeframes to get to decisions and less certainty that the decision will actually be realized – in short, the absence of social license. (Expert Panel on Environmental Assessment, 2017)

Given the increasingly dire situation we find ourselves in vis-à-vis the climate crisis, would more protests, court challenges, and other actions that harm the oil industry’s “social license” really be a bad thing?

It is important to note that Harper’s approach to environmental and energy governance—an approach which many critics identified as the primary source of regulatory capture—failed to seriously expand the network of pipelines exporting oil and gas from Alberta. Proposals for the Northern Gateway and Energy East pipelines—which would have transported oil through British Columbia and Eastern Canada, respectively—were abandoned in the face of litigation and various forms of direct action (Luckas, 2014; Veltmeyer and Bowles, 2014). Campaigns by Indigenous communities and environmentalists in the United States also caused significant and ongoing delays for the Keystone XL project—a proposed pipeline expansion that would transport

Alberta oil through the Western United States to the Gulf of Mexico—although these campaigns have not succeeded in definitively stopping the project (Estes, 2019). Even the Trans Mountain expansion in southern and central British Columbia and Alberta, which the Trudeau administration purchased from Kinder Morgan with a promise to complete the project, has an uncertain future due to ongoing legal challenges. Indeed, the climate and Indigenous movements have won major victories even though the oil industry has “captured” regulatory bodies and reformed them to suit its interests. Commenting on the (ultimately successful) campaign against the proposed Northern Gateway Pipeline, McCreary (2014) argues that “government servitude to oil and gas interests” was an important factor driving Indigenous resistance, including litigation and blockades (156). This political reality further shows the problem of limiting our critiques of the regulatory apparatus to the problem of “regulatory capture.”

The concept of regulatory capture does not necessarily imply an instrumentalist conception of the state. The instrumentalist approach Poulantzas was criticizing argued that the state always acts in the direct interests of capitalists. Debates about regulatory capture seek to reform state institutions and restore their neutrality. As such, they do not share the assumption that the state will necessarily always act in the interests of capital.

However, the use of the idea of regulatory capture in public policy debates in Canada falls victim to many of the problems Poulantzas identifies with an instrumentalist approach. By focusing on personal relationships between oil companies and civil servants, it implies that the state’s regulatory apparatus is a tool or instrument wielded directly by the fossil fuel and nuclear industries. As such, it suffers from an inability to account for the role of the relative autonomy of the state in maintaining capitalist hegemony.

Critical analyses of the state which treat it as an “instrument” in the hands of private interests can play a powerful demystifying role (Poulantzas, 1969). Similarly, literature that documents how regulatory processes have been “captured” helps illuminate the powerful and deeply embedded interests we must confront if we are to substantially reduce carbon dioxide emissions and halt the production of nuclear weapons and wastes. However, the concept of regulatory capture is limited in its ability to help us confront the powerful forces it brings to light. Subjecting oil, gas, and uranium projects to more “independent” assessments is unlikely to provide a forum for this type of confrontation to occur. Instead, it is likely to be more effective at defusing and demobilizing resistance to energy extraction. This is because a more autonomous regulator is better suited to impose the compromises necessary to produce popular support for oil extraction. Thus, while the critique of regulatory capture can and does serve an important strategic role by demystifying the power relationships at play, a deeper critique of hegemony is necessary to identify strategies to challenge the

dominance of extractive capital. Accordingly, the idea of regulatory capture needs to be embedded in a broader strategic-relational approach to the state.

Environmental assessment and extractive hegemony

There is a growing body of academic literature that considers how environmental assessment contains and demobilizes resistance to hydrocarbon extraction in Canada. Westman (2013) examines socioeconomic impact assessments of oil extraction in Alberta. Based on an analysis of reports documenting Indigenous land use in the vicinity of proposed tar sands developments, he concludes that environmental assessment is primarily about legitimizing oil extraction. For Westman, environmental assessment serves the function of containing Indigenous resistance, including by “rendering defense of foraging economies into technical, rather than political, channels” (Westman, 2013: 111). He argues that the discourse of expertise on which environmental assessment is premised “takes discussion of the future out of the political arena and places it solidly in the technical arena, rendering debates open to technical interventions, but not to political, legal, or popular challenge” (Westman, 2013: 114). Baker and Westman (2018: 145) similarly find that environmental assessment in Alberta ignores political opposition to tar sands expansion while continuously engaging Indigenous communities in “emotionally draining and ineffectual bureaucratic processes.”

Joly et al. (2018) also examine land use mapping exercises associated with tar sands projects in Alberta. They argue that land use mapping is part of a broader process of “cartographic colonialism” whereby Indigenous knowledge is extracted, distorted, and used in ways that circumscribe Indigenous sovereignty and facilitate processes of dispossession. The authors note that many Indigenous peoples resist the colonial logic of land use mapping by refusing to provide specific details about many land-based activities.

Based on an analysis of the assessment of a proposed expansion to Shell’s Jackpine tar sands project in Northern Alberta, Zalik (2015) argues that the environmental assessments provide a “socio-ecological fix” for extractive capital. According to Zalik, this socio-ecological fix has two components. First, oil companies exploit the assessment process to achieve “firm-specific advantages” by setting precedents that “raise the regulatory bar for subsequent proponents” (Zalik, 2015: 2447). Second, she argues that the formal, quasi-judicial nature of environmental assessment “constrains the affective elements of oppositional claims” (Zalik, 2015). The emotional dimensions of Indigenous territorial claims and public concern with climate change are erased by legalistic hearing transcripts and technical discourses of “mitigation.” Moreover, emotional protests at public hearings were

prevented by the physical removal and direct exclusion of certain individuals and groups.

In her study of the assessment of the Mackenzie Valley Gas Project, a proposed pipeline connecting natural gas fields in the Western Arctic to Canada's pipeline network in Alberta, Dokis (2015) argues that Canada's environmental assessment process is incompatible with Indigenous epistemologies and ontologies. According to Dokis, the Joint Review Panel failed to meaningfully engage with Indigenous metaphysics, leading to a process that not only excluded important aspects of Indigenous knowledge but also further assimilated Indigenous people by forcing them to operate in western/bureaucratic frameworks.

Tyler McCreary and Richard Milligan have published a series of articles examining the environmental assessment of proposed oil and gas pipelines in British Columbia. They argue that the environmental assessment of the Northern Gateway Pipeline—a proposal that would have transported oil from Alberta to Canada's west coast, but was ultimately abandoned due to opposition from Indigenous communities and environmentalists—worked to “sanction development on disputed territories through formal recognition of a constrained Indigeneity” (McCreary and Milligan, 2014: 115). While Indigenous peoples' interests and concerns were recognized in the assessment process, the history of colonial oppression and dispossession was ignored in discussions of cumulative effects. The assessment also ignored Indigenous peoples' claims to unceded territory and challenges to the authority and legitimacy of the environmental assessment process itself (McCreary, 2014).

Elsewhere, they examine the assessment of the Eagle Mountain-Woodfibre natural gas pipeline through the Vancouver area (McCreary and Milligan, 2018). Because the region is already heavily urbanized, the assessment process considered Indigenous peoples' interests to be limited to “the few sites of traditional use surviving in the interstices of development” (McCreary and Milligan, 2018: 13). This approach, they argue, amount to a refusal to “recognize the possibility of a dynamic Indigenous present and future” (McCreary and Milligan, 2018). Importantly, Indigenous peoples' aspirations for the ecological restoration of their traditional territories and the revitalization of their relationships with their lands and resources were completely ignored (see also Joly et al., 2018).

All the authors cited above have produced important contributions to our understanding of the role of environmental assessment in maintaining the dominance of extractive capital over Canada's economy. They all provide useful empirical accounts of critically important events in the history of Canadian capitalism. Their analysis of the discourses involved in environmental assessment has demonstrated how the assessment process works to depoliticize extraction by focusing on technical discussions and thus ignoring political claims from Indigenous peoples and the climate movement.

Nevertheless, engagement with Poulantzas' concepts and categories can help deepen and expand these critiques. Recall that, for Poulantzas, the state plays an important functional role in capitalist society by negotiating and imposing an ‘unstable equilibrium of compromises’ between different classes and fractions. These compromises and concessions are fundamental to the reproduction of capitalist hegemony, insofar as they help persuade subordinate parties to consent to the established order. A critical insight from his work is that the state is in a better position to impose these compromises if it has some autonomy from the capitalist class.

It is important for scholars to grapple with the ways in which the state helps establish consent to hydrocarbon extraction. The fact that energy resource extraction often proceeds with the active consent of at least some fractions of Indigenous communities is an important political dynamic in debates about oil sands expansion and climate justice. There are of course important examples of Indigenous resistance.² However, there are also many examples of communities that have provided formal consent to hydrocarbon projects on their traditional territories (Adkin, 2004; Nuttall, 2010; Slowey, 2008). While the political terrain of resistance and consent to oil and gas extraction is constantly shifting (Haluza-Delay and Carter, 2016), many people living in Canada, both Indigenous and settler and from diverse class backgrounds, understand the ongoing extraction of oil to be fundamental to their economic interests. Moreover, no major political party in Canada has clearly articulated a plan to transition Canada's economy away from hydrocarbon extraction.

Poulantzas' analysis of hegemony provides a useful framework to understand this political reality. For Poulantzas, hegemony is exercised by a “power bloc” consisting of alliances between different fractions of the ruling class, usually under the leadership of a particular fraction of capital. In Canada, an alliance of extractive and financial capital has historically occupied this leadership position (Mahon, 1984; Watkins, 1977). Insofar as many people in Canada understand resource extraction to be synonymous with development, the particular interests of extractive capital are perceived to be the universal interest of all Canadians. I use the term “extractive hegemony” to refer to this political dynamic.

Critical analyses of the assessment of hydrocarbon extraction in Canada say little about the role of environmental assessment in producing consent for extraction. McCreary (2014) characterizes environmental assessment as a game of “balancing interests,” but says little about how these interests are balanced through the environmental assessment process. Zalik notes that Indigenous communities are under a great deal of pressure to negotiate compromises with the oil industry, because environmental assessment in Canada is “typified by almost assured approval” (Zalik, 2015: 2454). However, she does not discuss the ways in which environmental assessment helps to negotiate and impose these compromises. For Dokis

(2015), environmental assessment did not produce Indigenous consent so much as passive acquiesce. Indigenous activists were not persuaded to support the pipeline, she suggests, but were instead frustrated by a processes that excluded Indigenous ontologies and epistemologies.

In some cases, this omission is likely the result of the specific contexts in which these scholars were working. Both the Jackpine tar sands project (examined by Zalik) and the Northern Gateway Pipeline (examined by McCreary and Milligan) were clearly opposed by several Indigenous communities, making a focus on consent inappropriate. In any case, the ways in which environmental assessment helps produce consent to extraction warrants further scholarly attention.

Elsewhere (Bernauer, 2020), I have shown how the environmental assessment process helped create conditions for Indigenous peoples in the Canadian Arctic to actively consent to oil extraction in the early 1980s. A series of assessments of different proposals for hydrocarbon exploration and extraction imposed several important compromises between Inuit communities and the oil industry, including the rejection of especially risky proposals and a reduction in the pace and scale of proposed extraction. These concessions, which were the result of Inuit using the environmental assessment process to resist the destruction of the wildlife resources they depend on, helped persuade some Inuit community leaders to support a proposal for the small-scale extraction and export of oil from the High Arctic. While oil extraction proceeded with Inuit consent, it nonetheless accelerated processes of colonial dispossession by reinforcing the federal government's control over Arctic oil and gas resources.

Environmental assessment, therefore, works to establish the unstable equilibrium of compromises between Indigenous communities and extractive capital in two broad ways. On the one hand, compromises are imposed through the various "terms and conditions" and "mitigation measures" that are attached to projects that are granted approval. Insofar as these conditions can impact the productivity of a mine or oil rig, they constitute real material sacrifices by extractive capital. Because they limit the disturbance and destruction of wildlife resources that form the basis of Indigenous hunting modes of production, they constitute economic concessions to Indigenous hunters. As such, these project conditions help establish a system of compromises between Indigenous communities and specific mining and oil companies.

On the other hand, when an environmental assessment process determines that a proposed project should not proceed, it is imposing a compromise between Indigenous communities and extractive capital as a whole. By denying permits for especially risky and controversial projects, environmental assessment can cause significant economic losses for specific companies. However, these economic sacrifices are in the long-term political interests of extractive. Extractive hegemony is not about persuading specific communities to consent to particular proposals for mining or oil/

gas extraction. Rather, it entails creating the conditions for people in Canada to consent to an economy based on extraction.

These compromises all have clear limits. While mitigation measures and no-go decisions involve short-term sacrifices on the part of specific companies, they generally do not undermine the functioning of the extractive economy as a whole. Moreover, such concessions do not seriously challenge the power relations underlying extractive capitalism, cede political power to Indigenous communities, or displace the dominant role of resource extraction in the Canadian economy. Environmental assessment is thus an important part of a broader state machinery that ensures compliance with extractive capitalism through the limited recognition and accommodation of Indigenous people's rights, interests, cultures, and identities (Coulthard, 2014).

Environmental assessment only serves this function of balancing interests when the branch of the state conducting the assessment has some autonomy from the oil and gas industries. Assessments carried out by captured regulators, like the NEB's assessment of the Northern Gateway Pipeline, tend to be biased in favor of industry and produce the conditions for resistance rather than consent (see McCreary, 2014). As such, whether or not a regulator fulfills the function of helping negotiate an unstable equilibrium of compromises is an empirical question related to the balance of forces in a given conjuncture.

Conclusions

This paper has argued that Nicos Poulantzas' theory of the state has important lessons for debates about the assessment and regulation of hydrocarbon projects in Canada. First, Poulantzas' critique of instrumentalist approaches can help demonstrate the limits of the concept of "regulatory capture." Critical appraisals that expose the reality of instrumental control of state institutions by extractive capital play an important political role by demystifying the state's claim to represent the public/general interest on matters related to energy extraction and climate change. That said, if they are not embedded in a broader strategic-relational understanding of the state, these critiques offer little strategic guidance for confronting extractive capital.

The logical response to regulatory capture is to reform the captured institution and restore its "neutrality." This is precisely the course of action that the expert panels embraced in their recommendations that responsibility for environmental assessment be taken away from the "captured" NEB. A more neutral regulator may help address the direct control extractive capital currently wields over specific branches of the Canadian state. However, a more neutral regulator is ultimately better suited to impose the compromises required to contain and defuse resistance.

I am not arguing that scholarship that exposes regulatory capture or policy proposals to combat it are necessarily unhelpful. Extractive capital's instrumental control over assessment and regulatory processes in Canada is a profoundly serious problem. However, if proposals to restore institutional neutrality are approached as an end in themselves, rather than part of a broader and clearly articulated strategy to transition away from an economy based on capitalist extraction, they are just as likely to hinder as they are to help movements for climate justice and decolonization.

Scholars have provided helpful accounts of how environmental assessment processes work to contain resistance to hydrocarbon extraction in Canada. They have been especially helpful in demonstrating the multiple ways in which assessments depoliticize extraction by excluding political claims and challenges from Indigenous and climate justice movements. These insights are consistent with Poulantzas' understanding of the state's ideological functions, which includes the depoliticization of class struggle. However, recent critical scholarship has paid limited attention to how environmental assessment helps produce consent to extraction. Because many people in Canada believe their economic interests are tied to the ongoing and expanding extraction of oil, the problem of popular consent to extraction warrants further scholarly analysis. Engagement with Poulantzas' work helps draw our attention to the ways in which environmental assessment imposes compromises between extractive capital and Indigenous communities. By imposing mitigation measures on approved projects and denying permits to especially risky proposals for extraction, environmental assessment helps negotiate an "unstable equilibrium of compromises" between extractive capital and other social groups in Canada, thereby creating the conditions for popular consent to an economy based on extraction. However, environmental assessment can only fulfill this function if it has sufficient autonomy from extractive capital.

The failure of the Trudeau and Notley governments to take serious action on climate change, Indigenous rights, and environmental governance—referenced in the introduction to this paper—reflects the current balance of forces in Canadian society. Oil companies have succeeded in building alliances that are much more extensive and powerful than movements for climate and Indigenous justice. Large numbers of workers, small-business owners, and capitalists in Canada, from both Indigenous and settler communities, believe that their interests are tied to the ongoing expansion of hydrocarbon extraction. This paper has shown that environmental assessment plays an important role in reproducing these alliances.

Addressing this political dynamic, which I have called "extractive hegemony," should be a central concern for ecological, decolonial, and anti-capitalist organizing in Canada. It should therefore be of significant interest to political ecologists and Indigenous studies scholars with commitments to social justice. Poulantzas' approach to the state, especially his focus on the state's role in producing the hegemony of the capitalist class, is useful for understanding how environmental

governance and energy regulation work to establish and reproduce extractive hegemony.

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Notes

1. While Poulantzas' approach to the state was significantly influenced by Gramsci, it is important to note that these authors differed in their approach many subjects, including the specific roles of culture, ideology, and history in the reproduction of capitalist social relations. For a helpful discussion of Poulantzas' work and its relationship with Gramsci's, see Jessop (2007a).
2. In addition to the aforementioned resistance to pipelines, communities that are adjacent to tar sands development have resisted expansion in various ways. Important examples include the Lubicon Lake Cree Nation's appeals to the United Nations Human's Rights Committee (Laboucan-Massimo, 2014), Athabasca Chipewyan First Nation's opposition to the expansion of Shell's Jackpine mine (Slowey and Stefanick, 2015), Beaver Lake Cree Nation's legal challenge over cumulative impacts of oil sands expansion (Haluza-Delay and Carter, 2016; Smitten, 2018), and Mikisew Cree First Nation's former chief George Poitras' international tour to raise awareness of the negative impacts of the tar sands on adjacent Indigenous communities (Slowey and Stefanick, 2015).

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