



# THE MACDONALD-LAURIER INSTITUTE



## Who licenses the licensors?

Social licence and the future of the natural resource economy

Speaking notes for a talk<sup>1</sup> by Brian Lee Crowley,

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Vancouver, January 15<sup>th</sup> & 16<sup>th</sup> 2015

~ CHECK AGAINST DELIVERY ~

Ladies and gentlemen,

Although I am a proud native British Columbian (born just down the road at St Paul's hospital) I run a public policy think tank focused on national issues falling under Ottawa's jurisdiction, called the Macdonald-Laurier Institute. Put another way, it is our job to think about how federal power can be harnessed for the benefit of all Canadians. We think, not about the local, parochial, provincial or regional interests, however important they may be. We think about the national interest, which also, in my humble opinion, happens to be the interest of BC, Alberta and the west generally. And in that context, two things that I have been thinking about recently were mentioned to me as ones that would be of interest to this audience, namely:

1. The meaning of the social licence movement that increasingly stands as an obstacle to the growth of the natural resource economy;
2. How to fix the approval process so that sensible and responsible resource development can proceed.

The place to start our discussion is to think about why natural resources are **not** our greatest endowment.

It goes without saying that we are exceptionally lucky as Canadians to have our fantastic endowment of natural resources, including water and agricultural land as well as minerals, coal, oil and gas.

But the **real** reason Canada is lucky, and the reason why the world beats a path to our resources, is not chiefly due to the resource endowment. What makes that endowment almost uniquely valuable

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<sup>1</sup> I gave four talks over the course of two days in Vancouver on the theme of social licence. I would particularly like to acknowledge and thank those who made my visit possible: Andy Smith of the BC Maritime Employers Association and Stewart Muir of Resourceworks. I was also hosted by the Liu Institute for Global Issues at UBC for a lecture. Blair Shumlich of the BCMEA made many of the practical arrangements and made sure I got where I needed to go. My thanks to them all.

in the world is that it exists within another vastly more important endowment of rules, institutions and behaviours.

Consider that the world's wealthiest societies, be it Switzerland or Japan or Singapore or Taiwan or Germany or many others I could name have no natural resources to speak of.

On the other hand, economists often talk about the curse of natural resource wealth because many of the societies that are blessed with such wealth do not know how to control it. Like many a lottery winner they are ruined by their good fortune. Just think of Nigeria, Venezuela, Indonesia, Angola, Algeria, Russia or Saudi Arabia and ask yourself if you think life is better there for the average person than it is in Canada. I am pretty sure the answer is no.

What makes the difference? It is all chiefly due to that endowment of institutions and behaviours I talked about. In Canada we have the full set of institutions and behaviours that as a matter of empirical and historical fact confer economic success. Many of these Harvard historian [Niall Ferguson summed up in his book \*Civilization\*](#) as the six killer apps of western democracies.

I will tell you what I think it entails: the rule of law, independent judges and reasonably speedy and reliable resolution of disputes, the enforcement of contract, robust democratic institutions, respect of human rights, the absence of corruption among government officials and the police, respect of private property, moderate, predictable and stable taxation and regulatory burden, a stable currency that keeps its value, responsible public finances, freedom to trade both domestically and internationally, a well-developed work ethic and a refusal to resort to violence to resolve political disagreements. **That** is the greatest endowment that we have.

Now let's think about this idea of the nesting of a rich natural resource endowment inside this endowment of rules, institutions and behaviours that I have just described. When these two endowments co-exist companies can invest billions of dollars to unlock opportunities, such as the oilsands, or natural gas deposits in north-eastern BC, or potash or uranium mines in Saskatchewan, or diamond mines in the North, reasonably secure in the knowledge that they know the fiscal, regulatory and contractual conditions they will face over a period of years sufficient to recoup their investment and make some money. They know they will not be extorted by megalomaniacal presidents or state-sanctioned gangs of thieves. They know their investment will not be nationalized overnight on a change of regime. They know that they are not in competition with favoured state corporations that will take a share of their business with no compensation, or be given access to opportunities on more favourable conditions than foreign investors. They know they can sell their product wherever they can get the best price and they can repatriate their profits in real hard currency.

Contrast this with Venezuela, Russia, Iran or Argentina, to pick only a few examples.

This may all help you to understand why, while it costs about \$20 to extract a barrel of oil in Saudi Arabia and perhaps \$40-\$60 to extract one from the oilsands, oil companies from around the world are vying for the opportunity to invest and develop that resource here. Its institutional context makes it more valuable.

The next concept I want to introduce into our discussion is what I call the perishable nature of opportunity. The natural resource opportunity facing the world is huge and will last decades, regardless of short-term price movements. But I want to be very clear that the opportunities for specific projects are extremely dependent on the circumstances at any given moment.

For example, Japan is about to close down a major part of its nuclear power industry. That opens a window for the suppliers of natural gas who can build the infrastructure and make long-term contractual commitments to get that gas to Japan in time for the opening of the natural gas fired plants that will take nuclear's place. In this race there will be winners and losers. Those who cannot deliver on time and on budget will lose, and that opportunity will be gone for a very, very long time.

Nor is the opportunity limited to those directly in the resource extraction industry, something that people who live in cities all-too-rarely grasp. The vast sums invested in extraction and, just as importantly, the expertise around execution that we have built up, all nested within that endowment of institutions and behaviours confers huge prosperity on our cities far from mines, forests and oilfields. It also supports and enriches other sectors of the economy, like manufacturing.

Raising the huge capital needed to unlock resources has resulted in the creation in Canada of probably the biggest resource extraction finance expertise in the world, and that resides not in Prince George or Saskatoon, but in Vancouver and Toronto. That is accompanied by head office jobs, accountants, banks, lawyers, financial advisors, dealmakers, geologists, technologists, software engineers and a thousand other kinds of jobs. We have built up huge expertise in engineering and other technical domains. It stimulates high tech and R&D: until a few decades ago the oilsands were merely a geological oddity, not a source of oil, a kind of cosmic joke where the single largest deposit of oil in the world was mixed in with sand and other materials, making it unusable. Canadian technical ingenuity unlocked that oil, now estimated at nearly a trillion barrels of recoverable oil.

If you go on the website of the Canadian Manufacturers and Exporters, the industry association of the manufacturing industry, what will you find listed as the greatest opportunity for Canadian manufacturers? Supplying the natural resource industry.

The rail network on which the country depends has as its backbone the transport of major natural resource commodities and the Ports of Vancouver and Prince Rupert disgorge the natural resource wealth of western Canada into the world economy. We invest massively in energy infrastructure,

both to supply natural resource industries with the power to carry out their work, but also to move production of oil and natural gas to processors, distributors and consumers like you and me.

In spite of these many indisputable benefits of the natural resource economy, my view is that its further development is being increasingly obstructed by a movement appealing to the concept of social licence, so it is to that topic that I now turn.

While I would never claim to have been the first to have expressed doubts about the idea of social licence, I think it is right to say that [my Globe and Mail column](#) about it last year was an “ah ha moment” for a lot of people. Before that, people invoking “social licence” were treated with kid gloves, and their every pronouncement treated virtually as gospel. After my column I saw increasing scepticism, and more and more events where the concept is being openly challenged.

As I tried to show in my original argument, the need for “social licence” before major development projects can proceed seems increasingly accepted as self-evident despite the fact that it is either a synonym for cool, calm, intelligent risk and reputation management by government and industry or else a polite term for mob rule. Which kind of social licence we are dealing with matters enormously, and yet much of what I hear about the concept of social licence assumes that we are dealing with the first kind and not the second. I believe, however, that they are now inextricably intertwined, with the illegitimate second kind getting a free ride on the soft innocuous appeal of the first.

Wherever there is organised opposition to new pipelines, mines, railroads, manufacturing plants, container terminals or tree cutting, to mention just a few examples, the opponents repeat the mantra that such projects must obtain social licence or else they must not be allowed.

No one, however, seems to be able to answer a few basic questions about the need for such a licence.

What, for instance, is the address to which you need to write to obtain it? What form must be used? Who are the authorities entitled to decide if your application meets the rules and to whom are they accountable? In fact, what are the rules? What are the procedures followed in determining if you satisfy them? What appeal procedures exist if a project proponent feels their project has not been fairly assessed?

If you're like most people, these questions will bring a smile to your lips, because you and I both know that there are no answers to these questions. Indeed to ask them is to invite ridicule from the social licence advocates, who will say that to ask such questions shows that you just don't get it.

And yet these are not silly questions. On the contrary they go right to the heart of how a democratic society that lives under the rule of law operates.

The very vagueness of the term social licence means we cannot know what the rules are, when you're in compliance or when you've still got work to do. And hardline project opponents like that vagueness just fine because it gives them unilateral authority to claim that the need for social licence has not been met. How can they be proven wrong since no one knows the tests that must be satisfied?

Change always creates winners and losers. That is why we hedge economic development around with many restrictions and requirements, including the need to consult and compensate people whose legitimate interests may be damaged, including, properly, Aboriginal peoples.<sup>2</sup> We must minimize any unavoidable harms to the greatest extent possible. We also must meet the highest environmental standards while seeking to maintain the consent of the population. But we have to balance the harm created against the benefits that development may create in terms of jobs, business, investment and opportunity.

When the benefits are judged to outweigh the costs, every society must have ways to allow a decision to be made to proceed, even in the face of opposition. But we don't just allow those who benefit to ride roughshod over their opponents.

In a civilized society we create numerous institutions that are domiciled at known addresses that are given specific authority to examine impartially the issues that are raised according to known rules, outfits like the National Energy Board (NEB) or various environmental assessment agencies.

And the standard we appeal to when such tribunals make their rulings is not whether we have won over the determined opponents of individual projects. Rather we appeal to the standard of winning over the *average reasonable person* or what Lord Denning, a famous British judge immortalized as the "man on the Clapham omnibus." What Lord Denning meant here is not something obscure, but the standard by which legal decisions are always measured, namely what an average reasonable person would conclude if he or she were in possession of all the relevant facts and arguments, which is what a legal proceeding is designed to elicit.

That is precisely the purpose of the regulatory and administrative proceedings we undertake through the NEB and other similar evaluation processes: to create a fair setting where all relevant information is gathered and independent and disinterested commissioners ask themselves what a

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<sup>2</sup> My criticism of the social licence movement is not directed at the legitimate exercise of lawful requirements that Aboriginal people's interests be consulted and accommodated wherever possible. Indeed my institute's largest project is focused on exactly how that can be made to happen in a way that benefits Aboriginal and non-Aboriginal people together, so that the natural resource economy becomes a platform for reconciliation, not division. That does not mean that there are not occasions when Aboriginal people have appealed to the concept of social licence in attempts to derail certain projects. As my colleague Dwight Newman has effectively argued, this is likely a strategic and tactical mistake and social licence is already being used by Aboriginal minorities to thwart natural resource developments approved and supported by Aboriginal communities.

reasonable person would conclude about the balance between the costs and benefits of the project before them.

Moreover, administrative tribunals such as the NEB, CNSC, environmental assessment panels and others apply laws they have not themselves made, but that are determined by legislators. These boards and commissions are accountable to the governments that appoint them as well as to the courts, to whom aggrieved parties may appeal when they think the rules have been broken. The legislators who pass the laws creating these agencies must submit themselves periodically to the verdict of the voters.

The rules generally require public consultations of some kind and compensation for damaged interests. The NEB recently granted a permit to the Northern Gateway pipeline, subject to 209 conditions designed to respond to rising expectations around the stringency of approvals for such major developments.

Smart developers want local support for their plans. Politicians want development that wins public support rather than alienates voters. These institutions I am describing help to achieve this.

It is under this painstakingly built up institutional edifice that many of the great nation-building decisions of Canada have occurred in the teeth of opposition. The building of canals, the railways, the first pan-Canadian pipelines, the St. Lawrence Seaway, the Trans-Canada and other highways and more. This is our precious endowment of institutions and behaviours at work, an endowment which I applauded earlier in my talk precisely for the opportunity it unlocks as well as for the freedom it creates.

Sometimes mistakes are made and there are consequences, such as the way the great Pipeline Debate sowed the seeds of the defeat of the St. Laurent government in the 1950s. We are always revising the rules as we learn more about public expectations, innovative technologies, risks and opportunities. In other words these are the procedures by which our society has decided such painful but necessary decisions shall be made, both because they make progress possible and they treat all the parties fairly. If this, plus sensible risk-management by proponents and governments, is what is meant by “social licence,” who can object? Ordinary reasonable people want to be reassured that the properly constituted authorities — including companies — are applying reasonable standards in making such momentous decisions.

The proponents of full-blooded “social licence”, however, sneeringly dismiss this as mere legalism. According to them, some abstract and ill-defined entity called “society,” independent of legislatures, regulators and courts, must be satisfied or else it is illegitimate to build the mine or the pipeline or the plant.

But as I hope I have made clear, these claims constitute an attack on the institutions and behaviours which I argued are Canada’s greatest endowment, and the uncertainty thus created is

undermining the value of our natural resources and causing us to forgo opportunities, which undermines our prosperity. These claims do more than constitute an attack on the rule of law thanks to their lack of due process and natural justice, for example. They also constitute an attack on democracy in two ways. First, they attempt to intimidate legitimate political and regulatory institutions, operating within the democratic rules of our society, who are called upon to make such difficult decisions. Second, and even more disturbingly, they refuse to recognize the fundamental legitimacy of those institutions. Unless those institutions come to the same conclusion that the opponents do about individual projects, their work is to be discarded and indeed denigrated as obviously the work of the hand puppets of rapacious capitalism. This kind of social licence, if allowed to spread, is nothing less than the death of that endowment of institutions on which our prosperity depends.

There is nothing undemocratic about saying that you think the processes used to make such decisions ought to be changed, and submitting your ideas to political parties and the voters. It is entirely legitimate to go to court to question whether the law is being correctly, fairly and properly applied. It is equally democratic to voice your displeasure about proposed projects, to oppose them before regulatory bodies, to demonstrate against them, to threaten politicians with a loss of support if they go ahead. That is all fair game and that is part of the process by which politicians get feedback about how the rules should be framed and what is publicly acceptable.

It is wholly undemocratic, however, to say that you simply disregard the decisions of duly-constituted constitutional and democratic authority as without merit or foundation, as if your views are the only ones that deserve to be heard or taken account of.

The recent BC election was a good example of how the process should work, although as you will see shortly I have reservations too about the position of the government that was elected regarding the pipeline approval process.

The Liberal government campaigned on the notion that there were conditions under which pipeline projects should go ahead. The NDP started out with a nuanced position and then the leader of the party, Adrian Dix, decided to go full bore after the anti-development vote by opposing not only Northern Gateway but also the expansion of the Kinder-Morgan pipeline to Burnaby. Most observers see that as the campaign's turning point. The Liberals went on to win re-election with, I think it is fair to say, a reasoned pro-development policy.

But undaunted, the anti-project people in BC still rally under the banner of social licence because, after all, what's the mere rule of law and democracy compared to your sense of your own righteousness? And so you get, to take just one example, the municipal government of Burnaby refusing to co-operate with the efforts to proceed with the legally-constituted Kinder Morgan approval process despite having no jurisdiction in the matter. You get demonstrators throwing

themselves under Kinder Morgan's equipment and trying to blockade their access to Burnaby Mountain to carry out scientific testing required and authorized by the NEB.

When I was interviewed about this by the Vancouver CBC and I had the temerity to suggest that what the demonstrators were doing was totally unacceptable I was challenged by the journalist. She said, "But surely they're just protesting." I replied, well no, they're not just protesting. They are engaging in illegal acts of obstruction against Kinder Morgan and preventing that company and its employees from carrying out their lawful activities. It is exactly the same as if protesters who opposed the CBC showed up on your doorstep and prevented you from leaving for work in the morning by blockading your door and throwing themselves under your car. And because you live in a society under the rule of law, where we are all entitled to the protection of the state in carrying out our ordinary lawful activities, in the face of such an attack on your freedom and rights you would call the police and the police would come and remove the protesters. If the police failed to do so you could get any judge to issue an injunction ordering the police to act, which is what Kinder Morgan properly did.

What the proponents of social licence outside the institutional framework I've described really mean to say is that change must be approved by its opponents who decide whether "social licence" has been achieved, while its absence is allegedly demonstrated by angry media releases or hand-lettered signs waved on the evening news. This is why at the outset of my talk I equated some forms of social licence with mob rule.

Increasingly, therefore, "social licence" ought properly to be called "opponents' permission". And a moment's thought reveals why such open-ended, undefined, biased, undemocratic and unaccountable tests can never be the basis on which civilized societies make such decisions.

So, what is to be done about these issues? How ought we to respond to the extreme forms of the social licence movement? I could of course fall back on the old bromides of being vocal in your community in favour of fairness, justice, democracy, the rule of law, clear rules, job and wealth creation, and against mob rule and self-appointed minorities holding society to ransom. Yes, of course, write to the local paper and speak to MPs and MLAs. Get on social media. Participate in meetings organised to talk about where the interests of your community and of Canada lie. Never legitimise the concept of social licence, because one day it will be turned against you and it undermines the rule of law on which civilised life depends. Support the duly constituted authorities and oppose mob action.

But it is not going to be enough. The reason it won't be enough is that once upon a time we could rely on a wide national consensus that well-thought out and properly regulated natural resource development done to the highest environmental standards is in the national interest. That consensus is breaking down. That's why when we try and intervene in favour of individual projects that are meeting opposition, it is too late. People don't understand the soundness of the

institutions we have created and they are mistrustful of politicians and business who are often portrayed as the chief beneficiaries of development at everyone else's expense. We must have a strategy to rebuild that national consensus in the interest of all Canadians.

Let me explain what I have in mind by way of an example drawn from a different area: free trade with the US.

By the early 1980s the inadequacy of the old protectionist policy was plain. Inefficient domestic industry sheltered behind costly tariff and other barriers. To that inward-looking policy bequeathed us by our greatest founder, Sir John A. Macdonald, the 1970s had added restrictions on foreign investment, aimed chiefly at US multinationals.

Yet Canada was hugely dependent on America being willing to absorb our exports. The old strategy had become a Rube Goldberg confection unworthy of a great nation.

But it was deeply rooted in our politics and our neuroses, and particularly our fear of American domination. No government wanted to seize the nettle and say what experts had long since concluded: that a formal free trade agreement with the United States was the only sensible way to promote Canada's national interest.

Enter Don Macdonald. His Royal Commission on the Economic Union and Development Prospects for Canada launched a truly comprehensive national conversation about what Canada needed to do to prosper. His fellow commissioners came from different parties, regions and language groups. Academic papers were commissioned, experts consulted, and hearings held in every corner of the country.

After this impressive national pulse-taking, Macdonald duly reported, among many other things, that Canada's national interest lay in free trade with the United States. By the next election, in 1988, the deal was done and Canada has never looked back. Macdonald's massive work of careful, thoughtful and non-political national psychotherapy allowed us to let go of old emotions and prejudices.

We need a new Macdonald today to unravel our increasingly schizophrenic attitude to natural resource development.

We see that in the debate over Northern Gateway and Kinder Morgan and Energy East and Quebec's shale gas today, just as America's indecision on Keystone shows that we cannot rely on American markets alone. Aboriginal land and other claims add a further dimension of complexity and uncertainty to project prospects. All this adds up to investors being increasingly skittish about risking their money on projects that may become interminably mired in vexatious and acrimonious approvals processes that are increasingly hijacked by special interests for whom emotion defeats evidence every time.

The consensus can be rescued, but only if Canadians can be convinced that development will go ahead under the most demanding conditions, including responsible environmental standards and fair dealing for Aboriginals. We could then free up technical tribunals like the National Energy Board to return to their original mandate, which is not to be some kind of giant opinion poll dominated by emotive opponents, but to be a place where projects are examined quickly but thoroughly on their objective merits, ensuring they live up to Canada's high standards.

The provinces may control natural resources, but Ottawa controls enough of the jurisdictional, legal, tax, environmental and regulatory levers that it can set the tone and get provincial buy-in for a co-operative national framework equal to the opportunity Canada faces. But where is this generation's Don Macdonald? And where is the prime minister who will put him to work? These are the questions we need to be asking, and not just asking, but we must insist on them being answered by our politicians.

So to recap, Canada's natural resources can and should be a mainstay of Canada's prosperity for many years to come. For that to happen, however, we need not just the natural resource endowment itself, but we need the far more valuable endowment of institutions and behaviours that provide the indispensable context for those resources. If we maintain those institutions, like democracy and the rule of law and open and timely decision-making according to known rules by accountable decision-makers, Canada will be one of the most sought after countries in which to develop those resources and we will be able to respond to perishable opportunities quickly while maintaining the highest standards of environmental and other protections.

Extreme interpretations of the doctrine of social licence, however, represent an undeniable threat to those institutions because its exponents believe that social licence can and does confer on disaffected minorities the unilateral right to derail projects they don't like. At the very least it seems often to grant them delaying and obstructive powers which amount to a veto because of the perishable nature of most opportunities. To drain this part of the social licence movement of the credibility it enjoys we cannot limit ourselves to defending individual projects. Instead we must demand that policy makers seek to rebuild a national consensus on the rules that should underpin responsible resource development.

Thank you.

