Conceptualizing Natural Resource and Environmental Management as Deliberative Democratic Practice: Land Use Planning on the East Side of Lake Winnipeg, Manitoba, 2000-2013

by
Glen Hostetler

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Natural Resources Institute
Clayton H. Riddell Faculty of Environment, Earth, and Resources
University of Manitoba
Winnipeg, MB Canada

Abstract

This research was motivated by the observed need for natural resource and environmental management (NREM) that, contrary to much of our experience, can reliably serve as democratically legitimate governance directing us towards outcomes that are socially, economically, and ecologically just – i.e. that are sustainable. NREM has become increasingly participatory and deliberative, which is argued to facilitate learning and lead to improved outcomes, and I sought to ground these approaches within a model of democracy. Based on an exploration of literature on deliberative democracy, particularly that of Jurgen Habermas, participatory NREM, and green political theory, I developed a conceptual framework for deliberative democratic NREM.

Following this theoretical work, I conducted a case study of two successive NREM processes on the east side of Lake Winnipeg, Manitoba – the East Side Planning Initiative that ran from 2000-2004, and the Wabanong Nakaygum Okimawin that succeeded it from 2004-2013. Using document reviews and interviews with participants, these processes were described and discussion was structured around four themes. Three represented the primary dimensions of my conceptual framework – NREM internal discourse and organization, relations with political-administrative systems, and relations with public discourses – and the fourth related to Indigenous self-government and title to traditional territories, which emerged strongly in the research. This analysis was then used to refine my conceptual framework.

Three key conclusions were drawn from the research. First, that the nature and means of political systems' steering of NREM processes needs to be made explicit as part of their basic

description. This enables potential participants to make informed choices, facilitates

accountability and public oversight, and encourages governments to minimize political

interference. Second, NREM processes should be mandated to actively provide accessible

feedback from their internal deliberations to public discourses. This supports sound learning

within society and strengthens democratic capacity. And finally, in the interests of justice and

reconciliation, NREM addressed to Indigenous communities and traditional territories ought to

recognize their right to self-government, engage Indigenous governments alongside provincial

and federal ones, and, in the absence of self-government or land claims agreements,

acknowledge jurisdiction over traditional territories as shared or at the least as contested.

Acknowledgements

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Abbreviations and Shortened Forms Used

AMC — Assembly of Manitoba Chiefs – previously Manitoba Indian Brotherhood

ASI — Area of Special Interest – designates lands under consideration for 'protected area' status.

BAP — Broad Area Plan/Planning – also referred to as Wide Area Planning or Large Area Planning.

CBA — Community Benefit Agreement

COSDI — Consultation on Sustainable Development Implementation – multi-stakeholder process to develop recommendations on implementing sustainable development in Manitoba, 1997-1999.

CoC — Council of Chiefs – subset of the WNO Council consisting of the chiefs or their designates of the involved First Nations.

CRD — Churchill River Diversion

EA — Environmental Assessment

East Side — The East Side of Lake Winnipeg – used by many in the province to refer informally to land lying between the lake and Ontario border.

East Side Planning Act — *The East Side Traditional Lands Planning and Special Protected Areas Act* – Manitoba legislation passed and assented to in 2009.

EBM — Ecosystem Based Management – used here in reference to a pilot project for EBM conducted just prior to the ESPI and covering much of the same area, and also referred to as the Ecoregion 90 pilot project.

ECoC — Executive Committee of Chiefs – subset of the WNO CoC, formed to meet with government ministers between WNO meetings.

ESAC — East Side Advisory Committee – multi-stakeholder advisory body in ESPI.

ESFNC — East Side First Nations Council – initial name of body directing planning after ESPI Phase 2, prior to being renamed WNO in 2005.

ESPA — East Side (of Lake Winnipeg) Planning Area – the geographic boundaries of the ESPI and WNO.

ESPI — East Side (of Lake Winnipeg) Planning Initiative – the broad area planning process, 2000-2004.

ESRA — East Side Road Authority

ESRT — East Side Round Table – deliberative body initially charged with leading the ESPI.

FML — Forest Management Licence

FNC — First Nations Council – First Nations advisory/co-leading body in ESPI.

IRP	The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government (Inherent Right Policy) – the federal policy on self-government, introduced in 1995.
IWSA	Integrated Wood Supply Area
MKO	Manitoba Keewatinowi Okimakinak – an Indigenous political advocacy organization serving 30 Northern Manitoba First Nations, including in the northern ESPA.
MRTEE	Manitoba Round Table on the Environment and Economy
NAC	Northern Affairs Community – northern communities not within a municipality, provincial park, or wildlife management area, regulated under the *Northern Affairs Act*.
NACC	Northern Association of Community Councils
NFA	Northern Flood Agreement – signed in 1977, with implementation agreements under it reached with individual communities
NREM	Natural Resource and Environmental Management
NRTA	Natural Resources Transfer Agreement – the 1930 Canada-Manitoba agreement that transferred jurisdiction for Crown land and resources to the province.
PCC	Planning Coordination Committee – part of the WNO process.
PCI	Plan Coordination and Implementation work group – part of the ESPI Phase 2.
PNT	Protocol Negotiating Team – one each from Manitoba and the WNO CoC engaged in protocol negotiations in the WNO.
RMA	Resource Management Agreement
RRMB	Regional Resource Management Board
SD	Sustainable Development.
TALUP	Traditional Area Land Use Plan(ning) – First Nations led planning for use of land and resources in their traditional planning areas (usually defined according to the registered trapline system, and distinct from their traditional territories).
WNO	Wabanong Nakaygum Okimawin – Oji-Cree term meaning "east side of the lake governance." The planning process succeeding the ESPI, 2004-2013.
WNO 5	The five non-First Nations members of the WNO Council
WNO Council	The full deliberative body initially charged with directing overall WNO activities. Also referred to as WNO 21, for the 16 members of WNO CoC plus the WNO 5.
WNO Inc.	WNO Incorporated – non-profit corporation under direction of the WNO CoC, used to manage funding from the province to First Nations for TALUP activities.

Chapter 1: The Promises of Deliberative Democratic Natural Resource Management

> Conflict and uncertainty are an inevitable consequence of attempts to deal with the interlocking complexity of ecosystems and with the no less complex nature of various human interests, values, and agendas. Yet, these issues – and their inherent conflict and uncertainty – must be addressed, both for our own sake and for the sake of future generations. (Mitchell, 2004, p. 15)
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> A case can be made that deliberative democracy is especially suited to making collective decisions about long-range, generalizable interests, such as environmental protection and sustainable development. … It also has the capacity to accommodate the complexities and uncertainties associated with ecological problems. … Above all, deliberative democracy may be defended as the best model for reaching mutual understandings about common norms, and the quest to create an ecologically sustainable society is fundamentally a normative concern and only secondarily a technical matter. (Eckersley, 2004, pp. 118-119)

1.1 Introduction

1.1.1 Our uncertain and shifting, but certainly common aim

Judging by the espoused commitments of nearly every level of government and variety of political party, corporation, and civil society organization, sustainability is an uncontroversial normative goal. Indeed, the concept of sustainability has become commonplace in everyday discourse, but what is considerably less clear is just what is intended by these various articulations of support for sustainability. What is considered in need of being sustained might be our collective prosperity, human health and well-being, ecosystem services, a range of non-human species, or intact ecosystems in their 'natural' state; for whom the sustaining is done might range from humans, present and/or future, to non-human species and/or ecosystems considered as ends in themselves. Nevertheless, what most visions of sustainability have in common is the recognition that human activities, and particularly economic ones, such as

resource development, have implications for the health and functioning of the ecological systems that we depend on for our survival (Paehlke, 2004). Put in this general and anthropocentric way where the continued existence of the human species depends on it, it is hard to imagine any cogent arguments against sustainability.

However, it is the definitional specifics alluded to above that suggest the appropriate indicators of and pathways towards sustainability. Brown *et al.* (1987) describe how from early on the discourse of sustainability has considered economic, social, and ecological factors as fundamental to it – what have come to be called the 'three pillars' of sustainability. As a result, planning and decision making for sustainability has centered around identifying how each factor contributes to and places limitations on the objectives of the others, and seeking outcomes that represent an acceptable balance among them. This has been and continues to be a far from straightforward and uncontroversial task, in large part due to disagreements among stakeholders and in society at large over normative questions of what needs to be sustained and for whom, as well as over practical questions regarding what are the most acceptable and efficacious means for approaching whatever agreed normative vision may have been established. In any case, despite all our claims of concern and visible efforts at sustainable development, sustainable governance, sustainable lifestyles, and so on, we are confronted with a world where the sum of human activity still threatens rather than enhances social-ecological sustainability and where the social sciences are only beginning to come to grips with the individual and collective human behaviour dimension of this problem (Rosa & Dietz, 2010).

1.1.2 The role of natural resource and environmental management

The field of natural resource and environmental management (NREM) is located at the overlapping interface between the study of the human and biophysical domains (Johnston, 1983), and involves research, planning and decision making, policy analysis, assessment, and monitoring regarding human-environmental interactions (Mitchell, 2002), and so would seem well situated to identify and guide us along trajectories towards sustainability. Prior to the late 1960s, NREM in North America was primarily concerned with the efficient extraction of resources to feed the economic machine driving perceived social progress. However, the growing recognition of and concern for the ecological and social consequences of this pursuit gave birth to the first wave of the modern environmental movement, and in response NREM incorporated a focus on end-of-pipe pollution abatement and source-point waste reduction. In line with the general maturation and increasing sophistication of environmental discourses, in recent decades NREM has taken on a more holistic approach and is generally framed as fundamentally supportive of sustainable development, or simply sustainability (Ewert, Baker, & Bissix, 2004). In taking sustainability as a guiding principle, NREM research has become interdisciplinary – drawing on the social and biophysical sciences, economics, and traditional knowledge systems. In addition, management functions have become integrative – involving governance institutions and agencies from central to local; focusing on relationships among ecological components and systems at various scales; incorporating a diversity of interests, perceptions, values, attitudes and knowledge from a wide range of stakeholders and the public at large; and ultimately attempting to simultaneously satisfy social, economic, and environmental objectives (Slocombe & Hanna, 2007).

Concurrent with this increasing focus on sustainability, NREM theory and practice has moved away from its conventional bureaucratic, command-and-control, top-down approach to planning and management, and instead there has been ever increasing attention to and experimentation with a variety of new approaches, especially diverse forms of public participation in NREM functions, devolution of powers to local level governance institutions, and collaborative arrangements among institutions, stakeholders, and communities (Berkes, 2009, 2010; Durant, O'Leary, & Fiorino, 2004). It is argued that these newer approaches have the potential to: lessen conflict and build a shared sense of purpose, even around divisive and complex issues such as defining and plotting a course towards sustainability; facilitate individual and social learning; promote a reflexive, intersubjective rationality better able to cope with the complexity and uncertainty that characterizes many NREM problematics; and to lead to more democratically legitimate outcomes (e.g., Diduck, 2004; Durant, Fiorino, & O'Leary, 2004; Innes & Booher, 1999; Mitchell, 2004; Sinclair, Diduck, & Fitzpatrick, 2008). This is seen as an antidote for failings of earlier NREM approaches that: were pervaded by a reductionist administrative rationality unable to cope effectively with complex, multi-scale problems; favoured top-down, exclusionary methods that often intensified conflict and were corrosive to democratic legitimacy; and served as poor platforms for the sort of collaborative learning considered essential in the move towards sustainability (e.g., Finger & Verlaan, 1995; Healey, 2006; Holling & Meffe, 1996; Torgerson, 2005).

However, implementing new strategies and reconceptualising NREM more holistically has encountered serious legal, political, institutional, technical-scientific, and social obstacles and a suppressing mobilization of bias from those invested in conventional approaches.

Government policy innovations attempting to grapple with the complexity and uncertainty

inherent in applying a sustainability lens to resource and environmental governance have often

amounted to layering new policy goals and instruments atop existing policy systems, leading to

integrated policy frameworks that contain incoherent goals and inconsistent tools (Rayner &

Howlett, 2009). As a result, in many cases when the new approaches to doing NREM described

above have been implemented within existing regulatory and governance structures, they have

left "a rather halting, halfway, and patchworked environmental governance regime that

combines aspects of both the old and the new ... in ways that satisfy no one and that bequeath

additional strategic challenges, choices, and opportunities to [NREM] reformers and

policymakers ..." (Durant, O'Leary, & Fiorino, 2004, p. 7). Indeed, scholarly analyses of attempts

to implement these newer, more integrative, situated, and participatory approaches to NREM

show that their success in fulfilling the promise of facilitating learning, diminishing conflict,

attaining democratic legitimacy, and approaching sustainable outcomes has been, while often

encouraging, frequently ambiguous, partial, and uneven as well (e.g., Duerden, Black, & Kuhn,

1996; Fraser, Dougill, Mabee, Reed, & McAlpine, 2006; Halseth & Booth, 2003; Marschke &

Sinclair, 2009; Petts, 2004; Ribot, 2004; Sinclair, Sims, & Spaling, 2009).

1.1.3 A deliberative democratic approach to NREM

Green political theorists, taking sustainability as a fundamental guiding principle, have

suggested that rather than regarding NREM planning and decision-making processes in isolation

and assessing and working to improve them on a case by case basis, we should consider them

as elements in a broader system of (green) democratic governance (e.g., Dobson, 2007; Dryzek,

2000; Eckersley, 2004; Lidskog & Elander, 2007). While Gooden (1992, p. 168) has suggested a

dichotomy between democratic and sustainability aims – "to advocate democracy is to advocate procedures, to advocate environmentalism is to advocate substantive outcomes" – others have identified fundamental connections between the two. Democratic procedures obviously must produce some substantive outcomes if they are to be relevant as a means of governance, and environmentally sound outcomes that are not secured through democratically legitimate means will, in more or less free societies, ultimately have their effectiveness undercut by resistance and noncompliance among the citizenry. But perhaps the deepest connection between green values and democratic procedure lies in the former's commitment to expanding the moral and political community to draw in traditionally excluded interests, such as those of future generations and at least some nonhuman elements of Aldo Leopold's (1960) "biotic community," and to having these 'voices' inform and influence planning and decision-making processes (Ball, 2006; Dryzek, 1996; Eckersley, 1999). Such a move can be regarded as a deepening and extension of democratic principles along the lines of the environmental justice movement's fight to extend democratic power to disadvantaged and often excluded human communities (Foster, 1998).

The form of democracy most often advocated by green political theorists, and by NREM theorists when they do deal with democratic theory, has been deliberative democracy (e.g., Baber & Bartlett, 2005; Dryzek, 2000; Eckersley, 2004; Meadowcroft, 2004; Parkins & Mitchell, 2005). There are numerous versions of deliberative democracy, but they all converge in insisting on a discursive public use of reason, public justification, and political inclusivity and equality in decision processes. Briefly, and relevant to NREM functions, it is argued that the inclusive and equal participation by those affected in non-coercive, publically accessible

deliberations where interests, arguments, and supporting reasons are presented and critiqued favours generalizable interests and arguments oriented to the general good. Deliberative democrats further argue that this sort of dialogue facilitates reflexive, mutual learning in the formation of legitimate public opinion and will, which can then serve to inform and influence the (deliberative) legislative and policy-making activities of final decision makers (Habermas, 1996a). Cooke (2000) has summarized the most prominent arguments offered in favour of deliberative democracy: it has educative and community-generating power; it improves the fairness and practical rationality of outcomes; and its basic principles articulate normative conceptions of knowledge (e.g., it is non-authoritarian, contextualized, fallibilistic) and the self (e.g., individuals strive for autonomy and freedom, accountable reasoning is vital to agency, all persons are deserving of equal respect) that are most congruent with our modern Western self-understanding.

This basic vision of democracy is attractive to green theorists for a number of reasons. A primary attraction is that the reflexive learning component carries the potential for the perceived interests and expressed positions of individuals and social groups to be transformed through encountering new information and convincing arguments from diverse perspectives, which could provide a foundation for the social transformations necessary for progress towards sustainability (Finger & Verlaan, 1995; Schusler, Decker, & Pfeffer, 2003). As Young (1997) points out, deliberative engagement across difference can provide valuable resources for increasingly rational democratic communication and decision outcomes. With the inclusion of information and perspectives from the natural world articulated as scientific, experiential,

aesthetic, and/or traditional ecological knowledge, this can lead to increased ecological

rationality as well (Dryzek, 1996)[1].

Related to this reflexive learning potential, deliberative policy and decision-making

processes are also argued to be better suited to addressing NREM problems that are often

characterized by complexity, uncertainty, and irreducible webs of interdependent relations

operant at multiple scales. Deliberative democratic institutions are designed to draw in and

account for diverse perspectives, interests, and differently situated knowledge and so can be

structured to mirror the scale of problems, aid in unravelling some of the complex

interrelations in NREM contexts, and deliberative institutions are also capable of being adapted

to include the representation of 'mute' interests such as those of future generations and

(components of) ecological systems (Dryzek, 1996; Eckersley, 1999; Lidskog & Elander, 2007; J.

O'Neill, 2002). Deliberative democratic procedures inherently assume that a lack of full

knowledge and understanding requires a certain humility where outcomes are always revisable,

making them well suited to adaptive management and a precautionary approach, which are

considered key ways of coping with complexity and uncertainty in NREM (Eckersley, 2004;

Noble, 2004). And finally, with its emphasis on publicity and engaging diversity, deliberative

processes favour an other-regarding orientation and arguments that can appeal across social

and cultural differences, which can demobilize conflict and build a sense of common purpose in

the face of divergent and conflicting initial interests, perspectives, and value commitments,

which NREM problematics so often involve (Healey, 2006; Meadowcroft, 2004). Importantly, all

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[1] Reason and rationality are obviously contested concepts, and while this will be dealt with in chapter two, some brief clarification is in order at this point. I am generally following Eckersley (2004) in associating rationality with what is "reflectively acceptable." This draws on Habermas' concept of communicative rationality as an orientation towards explaining and supporting one's positions by offering criticisable supporting reasons that satisfy implicit validity claims to truth, rightness, and authenticity or honesty (Habermas, 1998a, 1998c).

of these features could contribute to a deliberative approach being the best way to clarify and contextualize the contested and value-laden purpose underlying NREM of moving us towards sustainability (Meppem & Bourke, 1999).

There is also a deeper philosophical connection between deliberative democracy and the more recent integrative, participatory approaches to NREM. Both are reflective of a communicative turn in 20th century Western philosophy whose effects have been working throughout the social sciences over the past several decades, resulting in an increased emphasis on the role of communication in constructing individual and social identities, practices, norms, knowledge, and understanding, and in providing a basis for determining what is rational (M. Morris, 2001). Providing an even closer link, communicative approaches to NREM most often make use of concepts drawn from or at least compatible with Jurgen Habermas' (1984, 1989) theory of communicative action, which he subsequently developed into what has become arguably the most influential model of deliberative democracy (Habermas, 1996a).

This apparent fit between NREM and deliberative democratic governance, which has led to experiments in deliberative democracy being particularly well developed in the environmental sphere (J. O'Neill, 2002), contrasts with strong critiques advanced by green political theorists that existing liberal democratic governance institutions and practices are inherently unsuited to dealing effectively and fairly with environmental issues and problems (e.g., Dryzek, 2000, chapter 1; Eckersley, 2004, chapter 4). However, most proponents of deliberative democracy do not consider it anti-liberal, Eckersley (2004) for example prefers post-liberal. In any case, most deliberative theorists maintain that rather than a revolutionary approach, what is needed is to push existing liberal democratic institutions and practices

towards deliberative ideals while also experimenting with new institutions, associations, and deliberative practices – advocated for example by Torgerson (1999) as 'incremental radicalism' and by the generally more radical Dobson (2007) as 'radical reformism.' The general conclusion is that if deliberative democratic theory is to serve as a practical guide for improving democratic behaviour and outcomes in the here and now, then rather than being merely an abstract, counterfactual thought experiment it should facilitate a critique of but also start and build from actually existing democratic institutions and practices (Benhabib, 1996; Dryzek, 2005; Weinstock & Kahane, 2010).

Following the above lines of argument suggests that a deliberative democratic conceptualization of NREM could guide the structure and practice of management processes such that their potential for achieving rational, effective, and democratic governance outcomes that accord with principles of sustainability would be increased. Such a conceptual framework would need to clarify the role and position of NREM functions within a deliberative system, something generally lacking in the NREM literature where even when explicitly investigating deliberative practices there is frequently a failure to ground analyses in deliberative democratic theory (J. O'Neill, 2002; Parkins & Mitchell, 2005). As well, a deliberative democratic conceptualization of NREM would need to suggest how deliberative democratic principles and insights can be applied in NREM processes such that the aforementioned positive governance outcomes are fostered and an 'incrementally radical' movement towards a broader deliberative system of governance is nurtured. However, arriving at a conceptual framework for deliberative democratic NREM is not straightforward.

Perhaps the most significant complicating factor is that deliberative democracy theory, while proclaimed to have 'come of age' some two decades ago (Bohman, 1998) and despite being currently one of the dominant paradigms in political philosophy, is still in early stages of development and is institutionally, or pragmatically, underdescribed (Weinstock & Kahane, 2010). Further, the theory does not seem to directly address the level of political action where NREM typically functions. Deliberative theorists tend to focus on the implications of their ideas for core political institutions (i.e., the legislature, executive, and judiciary) and for constitutional construction, interpretation, and amendment (Meadowcroft, 2004), or at the other end of the spectrum on what Goodin and Dryzek (2006) have called mini-publics (e.g., citizen panels or deliberative polls) where representative and non-partisan citizens deliberate over selected topical issues in an advisory or information gathering role. Deliberative democratic theory also champions the importance of political action in the form of unconstrained discourse in the public sphere and civil society, but it is generally rather vague on how exactly the content of public discourses are to be taken up by governance processes like NREM such that they have a formative influence on decision and policy outcomes (Hendriks, 2006). The focus on these two levels of political action is illustrated in Habermas' (1996a) model of deliberative democracy, which describes two deliberative 'tracks' – one in the organized public of core political institutions and the other in the unorganized public sphere and civil society, as referred to just above. However, participatory NREM generally falls somewhere in between, at what Meadowcroft (2004) has referred to as the 'meso' level of political interaction. NREM processes typically involve actors and organizations drawn from the state, the economy, civil society, and the general public, and the strength of NREM processes in determining final implemented

outcomes generally lies somewhere between that of discourses in the public sphere and decisions made in core political institutions. So, even in explicitly looking to deliberative democratic theory for NREM guidance, there is work to be done in understanding where NREM functions would properly be situated within a deliberative democratic model and exactly what role they ought to play in coming to democratically legitimate management outcomes.

However, despite these observations that there has been a disconnect between NREM and deliberative democratic theory and that the space occupied by NREM within deliberative democracy has been underdetermined, I believe that the philosophical links between the two and the potential identified within deliberative democracy for addressing many of the difficulties that continue to bedevil NREM together make conceptualizing NREM practice as a component of a deliberative democratic governance system a worthwhile endeavour. Such a conceptual understanding can help inform the procedures and structuring of participatory NREM processes so as to improve their performance in guiding us to sustainable outcomes, and can further our understanding of the proper role of such processes within our democracy. A conceptualization of deliberative democratic NREM also provides a critical vantage point from which to analyze particular instances of NREM and make recommendations for improving practice, and these analyses themselves can feed back into and refine the conceptualization. As well, in contrast to the piecemeal, halting, and sometimes contradictory way that new deliberative approaches to NREM have been tacked on to old governance regimes, a democratically contextualized understanding and practice of NREM can contribute to a more coherent 'incrementally radical' movement towards a wider deliberative democratic form of governance.

1.2 Research Purpose and Objectives

With all of the foregoing in mind, the broad purpose of my research was to develop a conceptual understanding of NREM as deliberative democratic practice that carries the potential to foster learning, increase democratic legitimacy, and direct us towards social-ecological sustainability. In accomplishing this I set the following specific objectives, to:

1. Propose a preliminary conceptual understanding of deliberative democratic NREM through the development and description of a conceptual framework.
2. Explore a selected NREM process by describing its relevant context, structure and aims, and the course of its activities.
3. Analyze and discuss the NREM process applying themes and concepts drawn from the initial conceptual framework as well as those that emerge from the empirical research.
4. Reflect on and refine the conceptual framework and understanding of NREM, incorporating insights from the exploration and analysis of the selected process.

1.3 Research Methods

The conceptual development involved in my first objective emerged from an integrative literature review (Torraco, 2005), conducted as a process of creative inquiry (Montuori, 2005). Reframing the literature review as creative inquiry meant that rather than attempting to comprehensively summarize the state of knowledge in a particular field, as is often done, instead the review was pursued as an opportunity to construct new understandings through a critical engagement with selected ideas and concepts drawn from literature apposite to the purpose of meeting my specific research objectives. This is very similar to Torraco's (2005) description of integrative reviews where new knowledge and perspectives on a topic emerge from the critique and synthesis of selected literature on the topic. Indeed, Granello (2001) has argued that graduate level literature reviews should aim for just this sort of evaluative synthesis. Further, as my research was interdisciplinary in nature, such an integration and

synthesis of diverse perspectives was necessarily central to it (Golde & Gallagher, 1999). With this in mind, my literature review, presented in chapter 2, was pragmatically selective to address my first research objective and culminated in a creative synthesis expressed in a conceptual framework for deliberative democratic NREM, which is described in chapter 2, sections 2.5.3 and 2.5.4.

This preliminary conceptual framework was further informed and refined with insights drawn from original empirical research, which consisted of an in-depth, qualitative case study of the East Side Planning Initiative (ESPI) and the Wabanong Nakaygum Okimawin (WNO) that succeeded the ESPI in pursuing integrated land-use planning on Indigenous traditional territories on the east side of Lake Winnipeg, in Manitoba, Canada, from 2000 to 2013. This research was fundamentally interactive and adaptive rather than tightly prefigured (Nelson, 1991). While staying within the broad parameters of the research project's purpose and objectives, the questions explored and understandings sought were responsive to the perspectives and values of participants, which resulted in significant attention also being devoted to understanding the history, nature, and implications of Aboriginal rights in relation to land and resources. The primary data collection tools used were drawn from those Merriam (1988) has suggested are most appropriate for and typically used in case studies, specifically document reviews and interviews. A detailed presentation of my philosophical approach to research, strategy of inquiry, and data collection methods is provided in chapter 3.

1.4 Significance of Research

My research has both theoretical and practical significance. As noted earlier, in the development of deliberative democracy theory the space between relatively unorganized

public discourse and formal political decision making and implementation is relatively undertheorized. By drawing on insights from the theoretical and empirical literature and my case study to develop a conceptual framework that situates and describes NREM within this meso level, I have contributed to our ongoing discourse about deliberative democratic functioning. My case study analysis also adds to the growing literature that interrogates deliberative concepts and ideals with reference to empirical studies of instances of deliberative practice, which is part of the process of theory building and refinement in the social sciences. And finally, my conceptual framework also has practical application in providing guidance to the structuring and operation of deliberative democratic institutions and practice in NREM, and, to the extent that my work can be generalized, beyond the NREM field as well, particularly with reference to the process of building from actually existing democratic practices and institutions and extending them towards deliberative democracy.

My research contributes most directly to NREM theory and practice. My conceptual framework can help fill some of the gap identified between NREM and deliberative democracy theory, and it presents a comprehensive vision of democratic NREM that can provide guidance in moving from the aforementioned 'disconnected patchwork' to a coherent way of practicing and institutionalizing participatory, communicative approaches to NREM. The broad potential of these newer approaches, described earlier, has only been partially borne out in actual practice, and my case study description and analysis adds new material for consideration as we work to better understand how some of these potentials may be realised. In particular, my conceptual framework and case study findings can provide guidance for future deliberative,

participatory NREM processes, particularly when they involve Indigenous territories, rights, and interests, which is an area that has been especially challenging within NREM.

My research was not undertaken to solve a discrete problem or to generate some answers to specific, pressing questions, rather I set out to probe and explore, to increase my understanding by learning from the ongoing academic discourses of deliberative democracy and NREM and from the experience of the ESPI and WNO as revealed in documents and interviews with participating individuals. I have learned a great deal over the course of this research, and in this document I endeavour to describe what I found to be intriguing and significant as part of contributing back to the discourses and individuals I have learned from.

1.5 Organization of Document

In this first chapter I have described our current society and governance processes as ecologically unsustainable. I suggested NREM is in a position to direct us towards sustainability and have further argued that a reconceptualization of NREM along deliberative democratic lines will enhance this potential. In chapter two I provide a literature-based discussion of deliberative democracy and NREM that concludes with a preliminary conceptual framework for deliberative democratic NREM that locates NREM processes within a model of deliberative democracy and describes the democratic tasks that inhere. Integrated into this are relevant insights gleaned from the transformative learning and green political theory literatures that help to critique and inform deliberative democracy and contextualize it for the NREM context. Chapter three provides a detailed account of my research philosophy, strategy of inquiry, and case study research methods.

My case study is described in chapters four through seven. In chapter four I establish the context of the ESPI and WNO in some detail, which includes description of the region's geographic, demographic, and socio-economic characteristics; discussion of the history and evolution of Aboriginal rights and title relevant to land and resources, with a particular focus on Northern Manitoba; and explores the development of resource and land management policy in Manitoba, with attention to relations with Indigenous peoples. Chapter five presents a detailed narrative of the ESPI, and chapter 6 does so for the WNO process that followed it. The chapters describing the ESPI and WNO are necessarily quite detailed as they constitute the presentation of my case study qualitative data and research findings. A discussion of these findings is provided in chapter seven, organized around four themes. The first three themes are taken from my conceptual framework, and the importance of the fourth emerged in the course of the research and relates to implications arising from the context of Indigenous history and rights.

The final chapter reflects back on the purpose and objectives of the research and on the conceptual framework in light of what was found in the case study, and presents my final conclusions.

Chapter 2: From Communicative Action to Deliberative Democratic NREM

2.1 Introduction

As mentioned in chapter 1, deliberative democracy is frequently argued by green political theorists and NREM practitioners to be a form of governance well suited to achieving the integration among social, environmental, and economic factors and goals that constitutes sustainability. In this chapter I: explore the relevance of deliberative democracy for resource and environmental governance; consider some of the ways that Habermasian deliberative democratic and critical social theory, selected green political theorists, and the NREM literature critique and inform one another; and develop a conceptual framework that presents my understanding of how NREM processes could function as exercises of deliberative democracy.

Since this chapter serves the pragmatic purpose of accomplishing my first research objective of developing a conceptual framework for deliberative democratic NREM, I followed an integrative approach to reviewing the literature (Torraco, 2005). Thus, as a process of creative enquiry (see Montuori, 2005), I drew selectively on literature from various disciplines as appropriate to understanding and critiquing theory and concepts necessary for developing, describing, and supporting my conceptual framework. However, there were some limitations to taking this approach as opposed to a more traditional comprehensive review. Given the diversity of literature explored, the depth of engagement with some ideas and concepts was less than could have been achieved in a comprehensive survey focussed on a singular topic. As well, the purposive selection of material from the various disciplines or fields explored that was relevant to Habermasian deliberative democracy meant that other approaches, concepts, and theories relevant to NREM and democratic governance more generally were not explored, and I

recognize that such a broader exploration could have informed alternative conceptual frameworks and generated other valid ideas for improving NREM.[2]

My starting point for considering deliberative democracy, a diverse and evolving field, is the work of Jurgen Habermas. Baber and Bartlett (2005) identify three reasonably well developed points of departure for considering the implications of deliberative democracy for environmental governance – the notion of full liberalism identified with the work of Amy Gutmann, Dennis Thompson, and James Bohman; the justice and democratic theory of John Rawls; and Habermas' discourse theory. As Baber and Bartlett describe, there is value in each approach and I do draw on what they identify as post-Habermasian critiques, most notably the work of Bohman, but a comprehensive comparative analysis is beyond my scope here. Instead I start from a Habermasian foundation and build and critique from there. Below I provide a brief discussion of my rationale for making this choice.

Habermas has developed perhaps the most influential and sophisticated model of deliberative democracy (i.e., Habermas, 1996a); nearly all works on the subject over the past two decades draw from, build on, and/or critique his ideas – he has become a classic within his own lifetime (Outhwaite, 2009). Further, when green political theorists and NREM scholars do refer specifically to deliberative democracy or more generally to discursive, collaborative, or communicative approaches, they most often base their conceptions on Habermas'

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[2] For example, Healey (2006) develops the notion of "collaborative planning" that is relevant to NREM contexts, and she makes use of basic Habermasian communicative concepts together with Gidden's structuration theory, which I have not explored in this research. As well, there has been considerable use of resilience theory within NREM (Berkes, Colding, & Folke, 2003), with some considering building resilience as the preferable normative goal for NREM, whereas, given the context of my case study, I have focussed on sustainability.

communicative philosophy and/or his model of discursive democracy.[3] Much of what could be

called the communicative NREM literature, that which emphasizes a dialogical component in

participatory or collaborative NREM processes, does not explicitly ground conceptual

arguments and understandings in any communicative philosophy (Parkins & Mitchell, 2005);

however, when the communicative ideas in this literature are not clearly reconcilable with

Habermasian understandings, which they often implicitly are, they are at least reflective of the

general communicative turn in the social sciences in which Habermas has played a prominent

role. As such there is an already established resonance between Habermasian concepts and

both green political and NREM theorizing.

In addition, learning is now well established as an essential component of effective

NREM, and it has been argued for some time now within the NREM literature that learning at

multiple scales is necessary if we are to approach the ideal of a sustainable society (e.g., Finger

& Verlaan, 1995; M. Keen, V. Brown, A., & R. Dyball, 2005a; Leeuwis & Pyburn, 2002; Schusler

et al., 2003; Sinclair, Diduck, & Fitzpatrick, 2008; Webler, Kastenholz, & Renn, 1995). As Reed *et*

al. (2010) explain, the notion of social learning that is often referenced in NREM literature can

accommodate a number of different learning theories, and Jha-Thakur *et al.* (2009) observe

that a prominent learning theory so employed is transformative learning theory, which is

explicitly derived from Habermas' communicative philosophy (Mezirow, 1981, 2003). Further,

while learning is implicated in all approaches to deliberative democracy to some extent,

Habermas' notion of discourse is explicitly intended as a learning experience and indeed his

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[3] The terms "deliberative" and "discursive" are both prefixed to democracy by various scholars to reference the
same general idea. Habermas refers to his model as a "discourse theory of law and democracy," but "deliberative"
is the more commonly used term and is what I will use.

entire democratic project can be considered a process of ongoing learning through democratic practice (Brookfield, 2005a; Jarvis, 2008). So again there is a fit between what is argued to be necessary for effective NREM and Habermas' approach to deliberative democracy.

And finally, Habermas develops his model of deliberative democracy rooted in a socio-historical analysis of the evolution of modern Western society and his diagnosis of some of its prominent ills. Through his social theory we are presented an explanation of Modernity from which we can understand the roots and character of social pathologies, including governance processes devoid of sustainability considerations that have enabled environmental crises. And Habermasian democracy, intended to address these social pathologies, can serve as a guide to imagining and implementing governance processes that can respond appropriately to NREM problematics. This complementarity between a comprehensive social analysis and democratic theory is one of the primary strengths of Habermas' approach. As Elling (2008, p. ix) argues, "without a theory enabling a critical analysis of society as a whole, we will not be able to give solid and coherent answers to core issues in environmental regulation and management," and he goes on to identify Habermas as the theorist best situated to inform our social analysis and democratic innovations in pursuit of sustainability.

However, in taking Habermas' social and democratic theory as my starting point I am mindful that his ideas are themselves constantly evolving and he often articulates concepts in slightly revised forms as he responds to critiques or applies them in new contexts relevant to new areas of focus in his work, and in a few cases he has repudiated aspects of his earlier work and suggested new conceptualizations. While certain basic themes have remained throughout his impressive academic career, he sees his work as pointing in particular directions, suggesting

new areas for exploration, and contributing to an ever ongoing discourse that aims to describe the conditions for human freedom and equality (Habermas, 2008b). What I present of Habermas' work is selective and represents my own idiosyncratic understanding and in some cases critique and reconceptualizaton of his theoretical concepts as I build my way towards a vision of deliberative democratic NREM.

2.2 Building Blocks: Communicative Action, Rationality, and Discourse
2.2.1 Background

Habermas wants to hold on to the optimistic promise of the Enlightenment, that humans can make use of their rational capacities to create a qualitatively better world for all (Habermas, 1997). But this promise was never fully achieved, and instead the project of Modernity has resulted in new and more widespread forms of oppression and injustice. The oppressive tendencies of Modernist rationality can be traced, in part, to it being rooted in a 'philosophy of the subject' such that the use of reason immediately implies taking an objectivating position, which in the social realm results in treating others as means for achieving individually defined success (Habermas, 1990). Such an approach results in a monolithic conception of reason that is distinctly instrumental and self-centered, which when critiqued, as Habermas' Frankfurt School predecessors Horkheimer and Adorno famously do in *Dialectic of Enlightenment*, leads to a dead end, an iron cage where rational effort can only ever lead to increasing disenchantment, alienation, and oppression (Thomassen, 2010). As well, Enlightenment reason contained metaphysical projections, appealing to a rationality that transcends the contingencies of socio-historical contexts, that is substantive and foundationalist, and that as a result is well open to repressive authoritarian impulses (Cooke,

1994). For Habermas, post-metaphysical thinking is a crowning achievement of 20th century

philosophy, and post-modern critiques of rationality have sought to excise its metaphysical

content, but Habermas argues that such critiques leave us in a defeatist position of extreme

relativism where reason is destroyed through its abstract negation (Habermas, 2008a). So, if

reason is to provide a means for identifying and critiquing the pathologies of Modernity and for

pointing the way towards a social order where freedom has primacy over domination, we need

an account of rationality that is non-subject-centered, post-metaphysical, and non-defeatist.

Habermas suggests that by moving from a notion of pure reason to a pragmatic,

situated conception of rationality we can conceive of a post-metaphysical rationality; in essence

we can avoid the destructive side of the post-modern critique while retaining the insights that

strip reason of its metaphysical foundations and authoritarian impulses (Habermas, 1990,

2008a). Moving beyond the philosophy of the subject requires shifting to an intersubjectivist

paradigm, and since human subject-to-subject relations are most explicitly created and

maintained linguistically, this moves us into a philosophy of communication (Cooke, 1994;

Habermas, 1990). Habermas suggests that it is apparent that reaching understanding with

another is the inherent *telos* of language use, which while self-evident to him looks more like a

leap of faith to those who follow Aristotle through Machiavelli, Nietzsche, and Foucault and

conclude that human communication is also inherently about divisive identity formation and a

drive to dominate (Flyvbjerg, 1998). Indeed, this latter view is often observably borne out, but,

briefly, it is also the case that language used to deceive, coerce, dominate, etc. would be largely

ineffective were it not for the hearer's implicit presumption that speaker and hearer are

actually striving to reach understanding, which suggests that reaching understanding with

another is the 'default' orientation of everyday language use. On this view, strategic uses of

language, where speakers are guided by calculations of achieving individual success, are

parasitic on speech aimed at mutual understanding and result in a deformation of normative

social relations. So if Habermas' view of language use is a leap of faith, it is not an entirely blind

one and it provides a constructive way out of the impasse that deconstructive critiques of

reason have left us in.

2.2.2 Communicative Action

Communicative action is the name given to this sort of dialogue where speaker and

hearer are each motivated by a desire to reach understanding together about something in the

world. Habermas identifies that in communicative action each utterance raises three criticisable

validity claims, and posits that to understand the meaning of an utterance is to know the

conditions under which these claims could indeed be satisfied for it (Cooke, 1994). The claims

Habermas identifies as raised in speech aimed at reaching understanding are: to its

propositional truth (i.e., that it represents some recognizable state of affairs in the world or

makes correct existential presuppositions); to its normative rightness (i.e., that it is appropriate

in the particular context given prevailing norms and values, that the speaker is 'entitled' to

make it); and to the speaker's authenticity or truthfulness (i.e., that the speaker is open and

honest in expressing his or her actual beliefs, intentions, desires, etc.) (Habermas, 1998d;

Niemi, 2005). In most everyday conversation these claims are implicit and hearers judge their

validity subconsciously – unless we have reason to suspect otherwise, we assume that

speakers, in wanting to make themselves understood, are making warranted claims and that we

can accept this warranty unproblematically. At other times, we may reject one or more of the

speakers claims to validity but leave them unchallenged because we do not really care if we reach mutual understanding, in which case we cease to be engaged in communicative action. But if one or more validity claims are problematic to the hearer and they wish to explore it so that understanding can in fact be reached, then the interlocutors can switch over to a reflexive mode of communication, rational discourse or argumentation, where they explore the reasons the speaker has for holding their validity claims to be warranted. Of course the exploration of validity claims in everyday conversation typically proceeds very informally, such as a simple asking for clarification, but "the internal connection of the meaning, validity and justification of validity claims demonstrates, namely, that naive everyday practice itself refers to the possibility of argumentation" (Habermas, 1991, p. 223).

2.2.3 Communicative Rationality

This exploration and exchange of reasons that could support an utterance's validity claims is what constitutes intersubjective reasoning. Since there are three classes of validity claims that point respectively to the external world (propositional truth), the social world (normative rightness), and the personal or subjective world (truthfulness), communicative reason is inherently a multidimensional concept. This is important because an outcome of the objectivating character of subject-centered Enlightenment thinking is that reason is understood monologically as instrumental, as how the objects of one's rational endeavours can be made to serve one's own ends. This sort of rationality has showed itself powerfully in the burgeoning science and technology that has underwritten the path of modern development from the industrial revolution to the societies of today, but Habermas argues that this one-sided conception of reason has also contributed to various social pathologies of modernity such as

alienation, loss of meaning, anomie, and psychological disorders (Cooke, 1994). It is also true that this narrow and supposedly value-free rationality has supported much of our unquestioned exploitation of the natural world, which has left us now facing many serious ecological crises (Elling, 2008). Habermas' account of the tripartite validity basis of meaning and rationality has itself been criticized for being overly narrow and restrictive, for example in failing to acknowledge world-disclosing usages of language that cannot be easily made to fit into any of his three classes of validity claims (Cooke, 1994; Niemi, 2005; Thomassen, 2010). However, for my purposes this does not pose a problem, in fact it can be seen to reinforce the basic thesis that reason must be considered multidimensionally and that which dimension of validity bears the primary burden of supporting a given utterance will depend on the nature of the statement and the context in which it is given.

Habermas describes communicative rationality as an orientation in dialogue towards satisfying validity claims, and such an orientation triggers learning processes that may result in changes to either or both participants' antecedent understanding of the topic they are dialoguing about (Habermas, 1998a). So rationality is not in the first instance a matter of coming to hold true or correct positions, rather "a person expresses himself rationally insofar as he is oriented performatively toward validity claims: we say that he not only behaves rationally but is himself rational if he can give account for his orientation toward validity claims" (Habermas, 1998c, p. 310). In the negative, a person behaves irrationally when they hold to beliefs or make statements that they are unable or unwilling to justify by offering supporting reasons in discourse with someone who has challenged their stated position's claims to validity. At the same time there is clearly a connection between the truth or correctness of a stated

position and its potential for justification, so the exercise of communicative rationality, in exploring possible bases for affirming the validity of utterances, will tend to affirm positions that are more correct and to discount ones that are less so. But there is no reason to expect that, presented with the same arguments and supporting reasons, participants will come to regard the same claims as valid or invalid in the same ways. As transformative learning theory reminds us, because each individual has unique perspectives, life histories, and social positioning, the learning involved in evaluating validity claims articulated through different perspectives will be unique, although aspects will often be widely shared among participants (Clark & Wilson, 1991; Mezirow & Associates, 2000; Mezirow, 1991a). This serves to highlight the falliblistic and situated nature of communicative rationality. Each communicative context has access to only certain perspectives, arguments, and information, and not all individuals are equally adept or motivated in pursuing argumentative validation, so whenever we are considering the outcomes of actual, situated, communicatively rational processes we must regard them as tentative, temporary, and context dependent. This is also why discursive processes that are more widely inclusive of diversity are argued to have increased potential for rational outcomes.

However, there is also a sense in which validity claims are context transcendent. Claims to normative rightness can be differentiated into moral (or justice) and ethical claims, where the latter pertain only to particular contexts while the former point to universal validity. Claims to truth are similarly tied to a notion of universal acceptance. This is necessary if the concepts of communicative action and reason are to provide a basis for a normative social theory (Cooke, 2001). If truth and justice are only ever defined contextually then we are back in a position of

extreme relativism where normative positions cannot be maintained and critique is defanged, for without the notion of context transcendence we are unable to call into question what has been accepted as true or normatively right in any particular context (Cooke, 1994). But this is not to suggest that we can expect to arrive, by way of actual discourses in which we deal with questions of truth and morality, at positions that are in fact context transcendent. Instead, in argumentatively pursuing questions of truth and morality we inhabit the space between the actual and the ideal, between immanence and transcendence; we act as if our positions are universally valid while simultaneously affirming the fundamental fallibility of our rational capacities.

Habermas argues that in order for communicative action and reason to function as described, we can identify certain necessary but counterfactual idealized conditions, or certain presuppositions that participants in communicative action must unavoidably make if they are to consider themselves engaged in a process of reaching mutual understanding (Habermas, 1998d). This is because the idealizations are interwoven into the very fabric of communication aimed at reaching understanding, and if we accept that communicative action is the normative standard for establishing and maintaining intersubjective relations (the aforementioned leap of faith), then these idealizations can provide a normative basis for developing both a post-metaphysical conception of rationality and a critical social theory.

Habermas articulates these idealized presuppositions differently in different contexts and some are overlapping or imply one another. Opting for a longer list, we can say that in communicative action and/or rational discourse participants will: use the same linguistic expressions in the same way to refer to a common and independently existing world, while the

intended meanings of speakers are unique; exhibit rational accountability in taking positions

and acting on the basis of rationally warranted reasons that they are prepared to present and

defend if challenged; agree that no argument or claim to validity is exempt from critique; be

motivated only by the desire to reach mutual understanding; base their affirmations and

negations only on the force of the better argument; be honest and open in disclosing their

intentions, wishes, desires, etc.; remain open to considering any information or argument

relevant to the topic at hand; invite the participation of any individual desiring to take part; and

be prepared to accept any mutually agreed upon outcomes as provisionally valid (Cooke, 1994;

Habermas, 2008a). Stated in a more condensed fashion, when dealing with problematic validity

claims in some variety of rational discourse, certain idealized pragmatic presuppositions inhere:

publicity and inclusiveness (i.e., no one who could contribute may be excluded); equal

communicative rights (i.e., all are free to take on the various roles of argumentation); absence

of deception or illusion (i.e., all are honest and authentic in their participation); and absence of

coercion (i.e., all contributions are considered equally on their own merits where only the force

of the better argument has influence) (Habermas, 2008a).

Clearly this describes a highly improbable form of communication, and

misunderstandings about how these idealizations are intended is behind numerous critiques of

Habermas' work, yet they arguably form the strongest basis for the critical thrust of his overall

social theory (Cooke, 1994). Communicative rationality is in fact located in these idealizations

that are built into and drawn from communicative action (Habermas, 1991). They are presented

as counterfactual idealizations, meaning they are not intended as a straightforward yardstick

for identifying faults in communicative interactions, for if they were then indeed every factual

instance of communication would be a failure. As well, these idealizations should not be taken as describing the concrete shape of some ideal human or way of living, rather they describe the contours of a procedure for exploring the validity bases of speech acts. The fact that an appeal to validity claims is implicit in everyday conversation and that the above idealizations are derived from an examination of communicatively dealing with validity claims points to their possibility – not the possibility that the idealized conditions can ever be fully achieved but that they can be increasingly approached and that their existence as presupposed ideals has an actual effect on structuring actual instances of communication, so they are always present in communicative action and discourse, just not factually so. This last point stems from the fact that in order for communicating actors to suppose that they are engaging in a process aimed at understanding one another they cannot avoid acting from the premise that these idealized conditions are at least approximately satisfied, at least enough so that reaching understanding is a possible outcome (Habermas, 2008a). As well, it follows that the more closely the idealized conditions are approximated the stronger will be the interaction's claim to rationality. So the idealized presuppositions are useful in a constructive, structuring sense and since they are unavoidable they are always implicitly active in communicative action. But they can also be used explicitly to deliberately structure communicative contexts so as to better approximate their realization and hence strengthen their rationalizing effect, and this is the way that NREM practitioners most often reflect a (usually implicit) use of Habermasian theory.

Yet as counterfactually presumed ideals they do provide a useful basis for the critique of actual discursive instances. While it is certainly less than useful to simply declare that all attempts at discourse fail to meet the ideals, there is a subversive power that resides in the

tension between the idealizations and actual practices of argumentation (Cooke, 1994). While

this does not allow for a substantive critique of discursive outcomes or of the validity claims

they are based on, which is not surprising since communicative rationality is a procedural rather

than substantive concept, it does open space for a critique of discursive procedures. What this

critique enables is the discovery, in actual cases of argumentation, of the context-specific ways

that the communicative idealizations do not obtain, and this in turn can be used to argue for

procedural corrections, to challenge particular discursive outcomes (indirectly via challenging

procedures), or to suggest improved procedural conditions for future iterations of the specific

or similar discursive processes. This is the way that NREM theorists most often reflect the

(often implicit) use of Habermasian theory.

2.2.4 Discourse and Difference

Some have criticized Habermas' concepts of communicative rationality and discourse for

requiring consensual agreement that can only be achieved at the expense of recognizing

difference, which generally results in a disempowering of marginalized groups and the

affirmation of an unequal status quo. Mouffe (1999), for example, argues that in pluralist

societies political consensus will always necessarily represent exclusions and be the result of

power rather than its absence. This is obviously a serious problem for a theory whose stated

aim is to further human equality, freedom, and justice. In response, it is necessary first of all to

distinguish between agreement and mutual understanding. The former implies that discursive

participants come to accept validity claims for the same reasons. Habermas (1998c, pp. 320-

321) describes the latter as being achieved when "one participant sees that the other, in light of

her preferences, has good reasons in the given circumstances for her declared intention – that

is, reasons that are good *for her* – without having to make these reasons his own in light of his preferences." It is mutual understanding that is considered the defining characteristic of communicative action, the most basic goal of discourse, and the fundamental orientation of communicative rationality. Cooke (1994) speaks of validity claims being supported by a potential of reasons, and Habermas (2008a, p. 49) refers to "the revisionary power of free-floating reasons," which clarify that discourse is not about uncovering some singular convincing reason that all must accept. Through discourse I may come to appreciate the validity of another's position or, perhaps more commonly, I may see *some* validity in *some aspect* of their position and arguments, and I may incorporate these insights and modify my own understanding accordingly, but even this does not require agreement as defined above. Simply coming to understand the other on their terms, and they me, provides opportunity for learning through rationalizing our own understandings, signifies a mutual recognition that affirms our social relatedness, and can form a basis for coordinating our plans for action in the public sphere,[4] which begins to describe the function of discourse in the context of democracy.

Further to dealing with difference, communicative rationality and discourse require a decentring of one's consciousness, a movement away from dogmatism and towards the recognition of differently situated forms of life. This direction is implicit in the move from subject-centered to intersubjective modes of knowing. Now it is true that in discourse

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[4] In *Between Facts and Norms*, Habermas (1996a) refers both to 'the' public sphere and to multiple public spheres. As will be seen later, I want to simultaneously hold both (contradictory) notions in critical tension – there are clearly multiple public spheres and discourses operant at local to transnational levels (see Fraser, 1990, 2007), and yet within bounded political spaces (e.g., nations or provinces) there is also the sense of a singular, integrative public sphere as the general public space where public discourses develop, maintain, and reconfigure a collective culture and articulate democratic opinion and will oriented towards conceptions of the general good, but where inevitable failures to adequately include (some) subaltern discourses must always be challenged. In recognition of this, in the text I refer variously to a singular and to multiple public spheres.

participants are also motivated to convince one another of the validity of their positions, and it could be suggested that hidden in discourse theory is the assumption that if given enough time some set of sufficiently convincing reasons will be found or constructed such that a hard consensus is the inevitable outcome of an ideal discourse regardless of the presence or strength of differences among participants. On this view difference is an obstacle to be overcome on the way to harmonious discursive agreement. But this represents a misunderstanding of the communicative idealizations, namely that they describe a desirable concrete reality. Rather than saying that discursive participants strive *to convince* one another it is more helpful to think that they are motivated to *be convinced* on the basis of the better reasons that are exchanged; however, since the factual conditions of any discourse are non-ideal we can never speak of the best reasons or most valid positions with any finality, and since there is always difference among participants we cannot expect that the same non-final reasons will necessarily be convincing for all. Although this is only a theoretical distinction of processes that in fact are intertwined, it is helpful to consider that the first goal of discourse is to understand others by exploring the conditions (if any) under which the claims implicated in their statements could be considered valid, which explicates the meaning of their statements and also represents a "trying on" of their perspective (Mezirow, 1978). Then, having now a variety of perspectives in mind, we pursue the discourse's second goal of revising (or not) what we consider to be the more valid or justified way of understanding the matter under discussion. So the outcome of a discourse may be a more or less shared understanding, or each individual may leave with their own particular understandings, but in either case they should leave with an understanding they feel is more valid and with an increased appreciation for the variety of

ways the matter may be understood by others. In fact, actually achieving a hard consensus in an actual discourse, with no even partial dissenters, should alert us to carefully examine the procedures followed for failings such as coercion, exclusions, misinformation, etc.

Even the act of trying to convince my partners in discourse of the validity of my positions requires that I respect rather than disregard our differences. Given the idealizations of discourse, to be convincing I must articulate reasons that are sensible for others and that are potentially convincing for them, and this requires a certain imaginative placing of myself within their perspective as mentioned above. Of course I can never truly enter another's perspective, their identity, and especially the ways in which they are different from me, always remains at least somewhat opaque, but in discursively exploring what validity conditions look like for the other, their identity and the effective significance of our respective differences for our understanding and construal of meaning becomes increasingly clarified. We learn about and from each other, and in the reflexivity built into discourse we learn about ourselves as well. Thus the existence of difference, in terms of life histories and perspectives, is foundational to the rationality of discursive outcomes. Through engaging with difference in discourse we encounter alternative perspectives and so have the opportunity to transform our own perspectives and views to ones that we find to be more justified (Mezirow, 1991b), and we can begin to order our preferences in light of the interests and experiences of others (Benhabib, 1996). By presenting arguments in public with the aim of convincing others with different social experiences and perspectives, we are forced to universalize our personal views and express ourselves with appeals to justice and the general public interest (Young, 1997). So, far from

discounting difference, communicative rationality and discourse foreground it and require that it be respected as a vital resource for rationalizing our views and enlarging our perspectives.[5]

I would suggest that discourse is not primarily about reaching agreement about what is the most convincing argument, or strongest supporting reason, or most valid position. Rather communicatively rational discourse is about collaboratively identifying or calling forth alternative perspectives, claims, and arguments; struggling to understand their validity bases (i.e., under what conditions they could be considered valid, which also means coming to recognize social identity differences and appreciating their effects on others' and our own values, understandings, and perceived interests); and engaging in a process of critical evaluation of these alternatives based on an exchange and critique of arguments supporting them. It may be that as a result we all agree as to what is the most convincing argument, the most salient interest, or the most valid alternative, or we may reach different conclusions, but in any case we will have had an opportunity for learning and there will have been some rationally-imbued winnowing of alternatives such that irrational alternatives will have some of their flaws exposed while more rational ones will have their profile enhanced.

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[5] It is true that this can all be construed differently and that Habermas does sometimes refer to consensus and agreement as desirable discursive endpoints, but the erasure of difference is not a necessary conclusion and rather flies in the face of the spirit of his entire communicative project. For example, Habermas (1992, p. 140) argues that even the temporary unity generated in a discursive consensus "promotes and accelerates the pluralization of forms of life and the individualization of lifestyles. More discourse means more contradiction and difference." From another angle, drawing on Jungian psychology we can say that the sort of learning promoted through rational discourse is, among other things, a process of individuation, of forming increasingly differentiated and authentic self-identities and gaining greater confidence and autonomy in acting based on our various different self-understandings (Cranton & Roy, 2003; Dirkx, 2006).

2.3 Some Social Theory towards Democracy

2.3.1 Lifeworld and Rationalization

As discussed above, communicative action establishes a social relatedness among individuals and involves learning about and from others, and at the same time it is a process of self-learning and identity formation (Habermas, 1998a). In communicative action we use and renew a socio-cultural tradition, create and reinforce bonds of social solidarity, and internalize value orientations from the social group while individuating ourselves from it – it individuates and socializes in one act – and hence communicative action addresses the three components of the lifeworld, namely culture, society, and personality (Outhwaite, 2009; Thomassen, 2010). The lifeworld exists as a background of implicit knowledge, assumptions, perspectives, and beliefs that are more or less widely shared among members of society and without which reaching mutual understanding would be impossible, and as such it simultaneously delimits the horizons of possible understanding and is a necessary resource for achieving understanding with others (Habermas, 1991). Depending on the aspect of the lifeworld being examined it can grow to embrace the majority of individuals in a society, shrink to being shared within a particular community of like-minded individuals, or narrow to the point where it becomes individual-specific. The more a speaker and hearer inhabit the same or overlapping lifeworlds, the less problematic their communicative action will be, but at the same time their potential for learning and for reforming aspects of the lifeworld will be lessened.[6]

The lifeworld is not some static field, it is drawn on and reproduced in communicative action and, significantly, the potential for rationality inherent in communicative action means

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[6] Although for convenience I refer to "the" lifeworld, this character of it being plural and shifting according to context should be kept in mind.

that through it socio-cultural norms, patterns of social relation, and aspects of individual personalities can be reinvigorated and reconfigured in directions that are considered to be more justified. This notion is strengthened by considering that this rationality extends beyond linguistic interactions to encompass social actions as well, which Habermas (1998c, p. 326) describes as "actions whereby actors, in pursuing their personal plans of action, are guided by the expected action of others." Even the most mundane of social actions rest on certain understandings concerning appropriate social norms and relationships, and in performing the action actors are making a claim for the validity of their perspectives and understandings. But the action, in following or deviating from common understandings present in the lifeworld also serves to respectively reinforce or challenge established norms, and since a social action is by definition intertwined with the social actions of others, this reinforcement or challenge is communicated to others who may respond in their own actions according to their own judgement of the validity of the norms in question. So our communicative (linguistic and social) actions draw from a lifeworld that favours some actions and understandings and forecloses on others, but the medium of the lifeworld is also recreated and can be reconfigured through our actions. As such, a communicatively rationalized lifeworld contains an emancipatory potential.[7]

Habermas describes how this remaking and transformation of the lifeworld in Western societies has become an increasingly rational process since the time of the Enlightenment (Bohman & Rehg, 2009).[8] Whereas previously societies were organized around relatively strict

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[7] It is interesting to note that Patsy Healy (2006) identifies a similar social-transformative potential in communicative action, basing her description on Anthony Giddens' theory of structuration.

[8] It is important to bear in mind that this is not some historical inevitability nor the natural product of human social evolution, rather it is an attempt to describe developmental processes that have occurred in the recent past in what is conventionally termed the West. At the same time these or similar processes are not necessarily restricted to Western societies.

traditions that referenced a metaphysical source with final authority in at least matters of

morality and ethics, following the Enlightenment these traditions began generally to

disintegrate and to be given relevance to an ever narrowing segment of life experience. For

Habermas, an appropriately rationalized lifeworld would depend on a society of post-

conventional thinkers who are fully individuated and autonomous, who act according to their

own reflectively determined principles and view established norms as potentially useful but

ultimately criticizable and revisable guides for action (Outhwaite, 2009). This notion of post-

conventionality is borrowed from Lawrence Kohlberg's influential theory of moral development

and it represents the final of three levels of moral reasoning. Kohlberg argued that in the course

of healthy moral development individuals move from pre-conventional morality (egocentric,

punishment-avoiding, reward-seeking, deference to power) through conventional (social/group

identification and loyalty, norm/social-expectation conformity, respect for power) and, ideally,

on to post-conventional modes of reasoning (moral norms/values validated apart from

authority and individual/group identity, universalistic moral sensibilities, norms and power

require critique) (Kohlberg & Hersh, 1977). Kohlberg presented the levels as structured wholes

such that individuals consistently operate at their current level unless and until they transform

to a higher one, but in his later work he softened this by describing intermediary stages where

individuals display aspects of more than one level of reasoning (Outhwaite, 2009). I would

argue that what we have is a spectrum running from pre- to post-conventionality and that

individuals are not necessarily consistent in applying the same level of reasoning in every

context: one may be very open to critiquing existing norms and challenging power in general

and yet have certain areas where they stubbornly cling to traditional beliefs or are blinded by

ideology. So while Habermas has good grounds for suggesting that post-conventional reasoning is becoming increasingly prevalent in Western societies and that the lifeworld is becoming ever more shaped through rational processes, it is not the case that these are exclusively, or even predominately of the post-conventional communicatively rational variety.[9]

Individuals exhibiting varying degrees of conventional reasoning need not be seen as incapable of communicative action; 'conventional' communicative action would be distinguished by relying to varying degrees on fixed, traditional standards for determining what can count as 'good' reasons to support validity claims and for identifying which norms or sorts of questions can be discursively treated (Cooke, 1994). This is immediately recognizable as counter to the idealized presuppositions of communicative action where no stated position is exempt from critique and all arguments must be evaluated equally, and it is arguable that Habermas does not adequately account for the range of positions individuals may and do occupy along a spectrum from pre- to post-conventional reasoning. However, I regard acknowledging this weaker, more restricted form of communicative action and rationality as simply part of the necessary loosening of their strong idealizations as one moves to apply theoretical insights to real-world circumstances (Rehg & Bohman, 2002).

Returning to the rationalization of the lifeworld, we can now think of this in a more nuanced and limited way. We certainly live today with more plurality, or basic diversity of forms of life, than previously, and we are also arguably more tolerant than in previous times when, for example, differences within Christianity were ample cause for unleashing brutal violence

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[9] While they are not precisely the same concepts, it is useful to compare this movement from conventional to post-conventional reasoning with Charles Taylor's (2007) exhaustive examination of the move from a religious to a secular age in the West. Taylor describes a secular society not as one that has banished religious traditions, but rather as one where a variety of alternatives for experiencing fullness and understanding the world are acknowledged, i.e. one where diversity and difference can flourish.

against fellow citizens of the same faith. Recalling that increased tolerance for difference, or enlarged personal perspectives, was identified as a learning outcome associated with employing communicative rationality, it would seem that the communicative rationalization of the lifeworld has had some effect. However, nativistic responses to diversity are also prominently in evidence in European and North American politics, which serves to remind us that this rationalization is incomplete and uneven, and that there are a significant minority of individuals who resist acknowledging the possibility of alternative-yet-valid worldviews and so are operating at best with conventional thinking. So the lifeworld is appropriately reproduced, refigured, and rationalized through communicative action, but the rationality this carries forward is often conventional and limited, and so often results more or less in lifeworld replication. As well, communicative rationality itself has an ambivalent potential that depends on the quality of information and variety of arguments as well as on contextual conditions that may exclude or discount vital input, so while in communicative action we are reproducing the lifeworld, modifications or transformations contained in the reproduction may in fact render it less rather than more rational.

Even the post-conventional communicative rationalization of the lifeworld has had some negative outcomes. As more and more aspects of the lifeworld are subjected to procedures of argumentative validation, increasingly specialized discourses emerge corresponding to the dimensions of validity and differentiating cultural value spheres – claims to propositional truth are examined in scientific discourses and constitute the value sphere of science; normative rightness is explored in moral and legal discourses in the sphere of morality; and issues of authenticity or beauty are dealt with through aesthetic production and art/literary criticism in

the cultural sphere of art (Cooke, 1994). Thus, expert knowledge cultures have become institutionalized where cognitive-instrumental, moral-practical, and aesthetic-expressive complexes of knowledge and reason flourish, but this increasing specialization and professionalization also means problems tend to be dealt with under only one dimension of validity, and rationality, at a time (more on this just below). Significant in the context of environmental governance, where scientific knowledge is often relevant, this tendency has meant that the normative content of scientific knowledge is masked as scientific experts have worked primarily with the cognitive-instrumental aspect of rationality (Habermas, 1996a). As well, expert cultures become increasingly distanced from the general public and the learning achieved within them does not automatically feed back into everyday contexts of communicative action, and to the extent that this feedback is blocked, vital potentials for understanding the world begin to dry up and the lifeworld is robbed of resources that could enliven and enrich it. The rationalization of the lifeworld has also had negative consequences for traditional knowledge complexes. Habermas (2008c) has more recently explicitly recognized that there are important and valid truths and moral sensibilities that are articulated through sacred traditions, which cannot be easily or always adequately translated into communicative forms that withstand the scrutiny of post-conventional reason. And so that which is valid is lost as the metaphysical matrix it is embedded in dissolves in an increasingly rationalized lifeworld, and in NREM contexts traditional ecological knowledge, including sacred ecology, is often vital for coming to a fuller understanding of the social and ecological systems being managed (Berkes, 2008).

The primary problem that Habermas sees with the rationalization of the lifeworld has to do with his multi-dimensional conception of reason. The entire point of identifying multiple dimensions to reason is to argue that none of them alone exhausts the concept of rationality, and so there is an argument for balance, for a unified voice of reason (Habermas, 1992). However, what is identified in examining the rationalization of the lifeworld is that this historical process has been imbalanced and selective – the cognitive-instrumental dimension has dominated over the moral-practical and aesthetic-expressive. This reflects subject-centered reasoning, which we saw earlier tends to objectify the world outside the individual and reduces reason to an instrumental matter of achieving personal goals. From this basis, actors are encouraged to opt for strategic action in communicative contexts, thus further diluting the rationalizing power of even weak communicative action. As a result, the lifeworld has been consistently reworked with certain deformations that function to normalize the marginalization of certain groups and classes of interests and to privilege others, and in this way unequal patterns of power relation have been woven into the background fabric of the lifeworld.

2.3.2 Systems and the Colonization of the Lifeworld

In addition to the social fact of plurality, Habermas contends that modern societies are increasingly characterized by complexity, by which he means they are polycentric, with a variety of interrelated forms for establishing and maintaining social order and cohesion (Bohman, 2004b). Communicative action serves as the most basic means for social organization, but given the facts of plurality and complexity, this is too great a burden for communicative action to bear alone, and since communicative action draws from the lifeworld, this overburdening risks depleting the lifeworld of communicative resources. This is especially

so as post-conventionality increases, nothing is safe from being re-justified communicatively, and the background consensus is constantly interrupted and worried over, wearing the fabric of the lifeworld threadbare as a result (Habermas, 1991). Some of this pressure is relieved by systems, or more precisely by systemic, or functional forms of social integration, and Habermas focuses especially on the economic market and political-administrative bureaucracy (Habermas, 1991). These systems take some of the burden off of communicative social integration by providing standards for action and regularizing behavioural expectations within their respective domains, thus providing a stabilizing function in society.

Systems generate their own social structures that give meaning to social actions according to their functional role within the system and following a logic of action-consequences built into the systemic structure. But systems exist within society, which we can think of simultaneously as systems and lifeworlds, and thus functional and communicative integration ought to be coupled together such that they recognize and are responsive to one another (Outhwaite, 2009). Systems are also institutionally anchored to the lifeworld, for example in the case of the political system via legal and policy regimes that are subject to communicative steering according to values, interests, and perspectives drawn from the lifeworld, and these regimes also mediate systemic effects in lifeworld contexts. So in the ideal case we would have societies where social integration is directed by communicative action and stabilized systematically.

However, this has not historically proven to be the case. Instead, systems have become uncoupled from lifeworlds and have increasingly replaced communicative action in shaping social integration, which Habermas terms the colonization of the lifeworld. It would appear that

the institutions linking lifeworlds and systems have not been able to subject system

maintenance to normative guidance developed communicatively in the lifeworld. In modern

societies, economic markets and administrative systems tend to operate largely independent of

influences external to themselves, and in one sense the lifeworld shrinks to become merely a

competing subsystem (Outhwaite, 2009). Accordingly, systemic social structures present

themselves as essentially norm free zones of social interaction indifferent to social integration

in the lifeworld (Baxter, 1987). However, this colonization is in fact a rationalization of the

lifeworld according to the functionalist rationality inherent in systems-mediated interactions,

and so the lifeworld itself in fact becomes remade, or deformed, such that following

functionalist, systems rationality becomes normalized in an expanding number of contexts that

should be organized communicatively.

However, functionalist reason is fundamentally consequentialist, it bypasses the

consciousness of actors engaging it and follows only the rules of its own game such that the

system itself acts as the transmitter of system-maintaining imperatives (Cooke, 1994). In

systems-mediated action contexts individuals are assumed to act strategically, and achieving

their goals, formulated according to the system's rules, becomes the means by which the

system is maintained. Interestingly, mapping functionalist reasoning onto Kohlberg's

developmental stages would locate it at the pre-conventional level. In humans this level is most

often recognized in pre-adolescent children whose action choices we expect to be steered by

caregivers exhibiting higher levels of moral development, which highlights the foolishness of

allowing systems rationality free reign in regulating matters that include normative dimensions.

Thus, once systems are uncoupled from the lifeworld and allowed to operate more or less

independently they will generate their own self-reproducing inertia, expand into more and more domains of social interaction, and, absent meaningful communicative steering rooted in the lifeworld, economic and administrative systems will be steered only by the media of money and power.

Marx provided a powerful critique of the capitalist economic system that has been critiqued and refined over the years and whose general outlines are applicable here.[10] The unchecked expansion of capitalist market imperatives serves to create and intensify class divisions and conflict and leads ultimately to alienation and oppression. Further, the normalization of functionalist rationality within lifeworld contexts results in a pacification of society. As the market converts workers into consumers, their attention and energies are directed away from a normative critique of the system (indeed there is often little space to practically do so), and instead individuals internalize functionalist explanations from the colonized lifeworld that, following a logic of consequences, tends to locate blame for any pathological outcomes within the action choices of individuals themselves. As Freire (1970) observed, the victims of oppressive systems, especially systems that are woven into the fabric of society, can tend to internalize the logic and values of the system and hence willingly but unknowingly participating in their own oppression. Where systems integration replaces communicatively generated social integration and imposes a 'false consciousness' on members of society, it constitutes a structural violence that systems can, and do inflict (Outhwaite, 2009).

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[10] To be clear, Habermas is no classical Marxist and undertakes a considerable revision of Marxist theory to integrate it into his own social theory and update it for late capitalist realities. However, that discussion is beyond my scope here.

These arguments apply generally to administrative systems as well, but Torgerson (1999, 2003, 2005) describes administrative rationality specifically in the context of environmental governance through reference to an 'administrative mind' that characterizes administrative behaviour in general. Echoing Habermas' description of functionalist rationality, this administrative mind "suggests an impartial reason, which exercises a supreme, unquestionable authority" and which in its contemporary, technocratic form "gestures to the functional operations of a multifaceted system, monitored and regulated through depersonalized analytic techniques" (Torgerson, 1999, p. 11). Thus all problems must be rendered manageable according to a scientistic perspective, which requires analytic simplification in identifying discretely defined problems, purged of extraneous and complicating variables, such that they can be appropriately controlled and manipulated towards desired ends. The fact that administrative rationality invokes a mobilization of bias regarding both means and ends in favour of economic and established power interests is effaced in its claim to impartial reason, and so, for example, environmental injustice becomes simply the way things naturally are. As environmental problems are typically characterized by uncertainty, complexity, and interrelatedness, to the extent that administrative systems operate as described above they are themselves an environmental problem. But this mind is less stable and monological than is often suggested; Torgerson (2003) identifies dissenting policy professionals working within administrative systems who seek to question the foundational assumptions of typical policy discourse. Thus the system contains within it impulses that may steer policy in unexpected directions, which suggests that in addition to the institutional anchors of legal and policy regimes there are openings where existing connections between the

lifeworld and administrative systems can be strengthened and new ones forged, a notion I will return to later in discussing deliberative democratic NREM processes.

To be clear, systems and systems integration are not inherently problematic, in fact they are necessary given the plurality and complexity of modern societies. It is hard to imagine our modern societies retaining much cohesion at all without the intervention of systemic forms of integration at various levels throughout society – economic systems arrange for the provision of basic needs, political-administrative systems from federal to local provide us with basic infrastructure and welfare provisions, and administrative systems abound that regulate organization and interactions at work and school (Elling, 2008). As well, it is not correct to leave the impression that the functional integration of systems is entirely devoid of communicative, and hence normative content, rather it is masked in claims to impartiality. As Torgerson (2003, 2005) has pointed out, administrative systems operate internally through discourse, however imperfect and constrained, and there are moments of seeking understanding in interactions mediated by both administrative and economic systems. A familiar example of this is the political system, which is largely an administrative system in Habermas' sense of the term but which is anchored in the lifeworld through electoral and legal regimes and incorporates discursive argumentative processes in its regular operations. However, in the final instance, systems integration itself is not based on the potential for social integration and communicative rationality inherent in communicative action in the lifeworld, and so there is a need to ensure critical communicative oversight and, when necessary, steering of systems and their social structures to avoid pathological outcomes (Habermas, 1991).

So, generally speaking we can discern a situation where, in addition to the (largely one-sided) rationalization of the lifeworld discussed earlier, the uncoupling of systems from the lifeworld and the intrusion of forms of systems integration and functionalist rationality into lifeworld domains all contribute to deformations in the lifeworld and pathologies in society. Habermas refers to these 'pathologies of Modernity' very generally as loss of meaning, anomie, and psychological disorders, which are respectively associated with deformities in the cultural knowledge, social integration, and personal identity domains of the lifeworld. These general pathological states are manifested in specific forms depending on contextual factors, but they will often not be immediately perceived as pathologies because of the tendency for pacification built into systems mentioned earlier, and also because over time we have developed various interconnected channels to compensate for systems weaknesses as well as for experienced pathological outcomes (Cooke, 1994). Through these channels, systems enter into exchange relations with one another and compensate for one another's failings, and thus systems become interdependent to varying degrees. An obvious example of a compensatory channel would be welfare provisions that are supplied via the political-administrative system to compensate for structural inequalities unresolved or exacerbated by the economic system. While compensatory channels themselves often attract critique related to the adequacy or rightness of compensations, they have a way of masking the underlying pathology that led to their creation in the first place and thus shield it from normative critique.

Forms of systems thinking, such as in Torgerson's administrative mind, can also become ideological in the sense that as systems integration extends to more and more aspects of the lifeworld, the logic it carries forward creates an ever more totalizing perspective on the world

that, in emanating from the (deformed) lifeworld, insinuates itself into individuals' own worldviews. Habermas suggests that in modern societies the rationalization of the lifeworld means that rational scrutiny is applied to more and more beliefs and that this transparency means that there is no longer anywhere for ideologies to hide (Cooke, 1994), but as should be obvious from my earlier depiction of lifeworld rationalization as uneven and incomplete, this is another counterfactual idealization. It is true that totalizing explanations have taken a beating in the academy, but one need only listen to political rhetoric or watch how the news media report the news to observe the presence and power of grand narratives yet at work. For example, both conservative and neoliberal political visions take the functionalist rationality of markets almost as an article of faith, and so belief in the basic rightness of social integration following economic system imperatives has become ubiquitous, which prepares the way for it to be extended into ever more lifeworld contexts without question. Outhwaite (2009, p. 63) describes this as a process where, by "appealing to the common interest embodied in a system that appears to legitimate itself," systems explanations become universalized. A basic characteristic of ideological functioning is its ability to absorb critique and convert it into support for its vision of the world (Brookfield, 2005b), which we see evidenced, for example, in corporate articulations of commitment to sustainable development that reinterpret sustainability in market-system terms such that ecologically destructive practices are glossed, and in effect unsustainability becomes sustainability.

Habermas suggests an explanation for what, to me, looks like systems ideology that is related to the impoverishment of the lifeworld that has accompanied its rationalization and colonization. Although it is underdeveloped, his argument is that in parallel with the

differentiation of the three value spheres and associated expert cultures that are largely cut off from everyday communicative practices, everyday individual consciousness loses the ability to grasp the complex whole of social reality and becomes fragmented to the point that the intrusion of systemic imperatives goes largely unnoticed (Cooke, 1994). Thus we have a functional equivalent for ideology that, rather than directly presenting a comprehensive perspective on the world, operates behind our backs and beyond our fragmented consciousness to fill in gaps in our understanding with stock systems explanations. Accordingly, systems thinking behaves ideologically, but is all the more sinister as it hides in the background and denies its own existence in an appeal to commonplace understandings inserted into a colonized and deformed lifeworld.

Nevertheless, observed or felt pathological conditions do generate conflict potentials that resist these pacifications and distractions, especially so when they have to do not so much with compensations as with concerns such as quality of life, equal rights, or political participation, in other words with normative issues that can only be properly addressed via communicative action (Cooke, 1994). This leads to the formation of new social movements that organize themselves around normative critiques of particular unresolved problems resonating in the lifeworld, which seek to address these problems in a variety of ways in and outside of established social and systemic institutions. Familiar examples would be social movements such as the American tea party, black lives matter, idle no more, or the variety of anti-globalization and environmental justice incarnations, all of which feel they bring valid critiques against established systems. While such movements have varying degrees of success in addressing the pathological conditions they are responding to, together with discursive openings into the

political system they provide hopeful notes in what can be seen as a rather bleak tale of the developmental trends characterizing modern Western societies.

I would argue that we can regard the ubiquitous environmental problems and ecological crises we face today as manifestations of modern social pathologies. Recalling the discussion in chapter 1, the very definition of sustainability requires the inclusion of social considerations, which could be understood as including the normative rightness/moral-practical and identity/aesthetic-expressive aspects of validity/rationality, and so the one-sided rationalization of the lifeworld along knowledge/cognitive-instrumental lines militates against sustainability. The splitting off of expert knowledge complexes, especially traditional and scientific cultures, from everyday practice that has accompanied the rationalization of the lifeworld can be seen to result in the impoverishment of public environmental discourse and to lead to conflicts and misinformation in environmental governance processes (Baber & Bartlett, 2007; Bocking, 2004). As well, one does not need to look far to find strong critiques that describe the intrusion of economic imperatives into environmental decision making at the expense of both social and ecological ones (e.g., Dobson, 2007; Eckersley, 2004), and above I briefly discussed some ways the administrative mind that has also insinuated itself into the lifeworld background is inherently unsuited for dealing with environmental problematics. The environmental justice movement provides ample examples of how the functionalist explanations of administrative and economic systems function ideologically such that clear instances of the unequal distribution of environmental benefits and harms are glossed as not only acceptable, but as expected and normal (Foster, 1998; Getches & Pellow, 2002).

Indeed, it could be argued that this tendency for systems maintenance imperatives to coalesce into functional ideologies is evident in the most prevalent definitions of sustainability. While redefining sustainability is not my purpose here, I think the fact that (capitalist) economic imperatives are included on a par with social and ecological considerations is worrisome and could be considered an artefact of lifeworld colonization, as more an expression of economic systems ideology than a core component of sustainability. In any case, the two-tiered description of society as systems and lifeworlds and the associated concepts of lifeworld rationalization and colonization can be seen to go some ways in explaining the unsustainable character of our societies. What remains to be seen is how these trends can be recognized and addressed in general, and, for my purposes, how this can be accomplished specifically in the context of NREM. Part of that answer requires looking at how, given this theoretical background, the practice of democratic governance might be reconceived.

2.4 Deliberative Democracy

2.4.1 Introduction

The very notion of democracy implies that citizens have some decisive influence over their own governance, or as Habermas (1996a) terms it, that citizens be able to consider themselves authors of the laws they are subject to as addressees. Habermas' model of democracy is fundamentally concerned with demonstrating an internal connection between deliberative democracy and the rule of law such that the production of legitimate law is possible (Habermas, 1996a, 1998b). However, NREM is not primarily about shaping legislation, but rather its work is most often in the areas of policy development and planning and decision making within already established legal contexts. Further, the NREM literature describes a shift

from government to governance, which recognizes a general move away from regarding

environmental decision making as primarily the preserve of centralized government agencies,

and towards grounding it in new mechanisms that involve non-state actors, ranging from

greater public involvement in decisions to co-management and public-private partnerships

(e.g., Berkes, 2010; Bryant & Wilson, 1998; de Loe, Armitage, Plummer, Davidson, & Moraru,

2009). As discussed in chapter 1, two recurring themes in discussions of these new approaches

are critiques of the traditional dominance of bureaucratic administrative systems in NREM and

strong support for increasing the number and depth of opportunities for discursive engagement

among participants in NREM processes (e.g., Dryzek, 2005; Durant, Fiorino, & O'Leary, 2004;

Eckersley, 2004; Torgerson, 2003, 2005). It is in this context that I see the opportunity for

making promising connections between NREM and Habermas' communicative philosophy,

social theory, and model of democracy. My primary concern is to understand how governance

processes might embody communicative action and rationality in addressing the

developmental trends discussed in the previous section that have been argued to be implicated

in current failures of NREM to direct us towards sustainability. Thus, as with preceding sections,

my discussion of Habermas' wide-ranging and dense theory is critically selective as I try to

identify and outline concepts useful for developing a conceptual understanding of deliberative

democratic NREM.

2.4.2 Discourse Ethics and Discourse in Public Spheres

Earlier I argued that, contrary to how it is often presented, communicative action, even

in its reflexive, discursive form, and the rationality it carries forward do not necessarily imply

the notion of coming to consensual agreement, but are instead about coming to understand

what another means in saying something or, in the case of social actions, in doing something. This was to combat impressions that communicative action, in actual instances, tends towards overriding differences on the way to agreement, which could further imply that communicative action is particularly open to flows of power supportive of the status quo. As I have described it, communicative action, especially in the form of discourse, rather tends towards increasing our awareness of and tolerance for difference and dissensus. But this is emphasizing one face of communicative action, its factual visage, and as with many of Habermas' concepts it also has another face, an idealized one, and the concept itself is best understood as residing in the tension between these two poles.

The idealized face of communicative action and rationality is most obvious when looking at the validity bases of truth and normative rightness, which both point beyond any factual communicative interaction towards the notion of universal agreement (Cooke, 2001). However, this does not signal a theory of truth and morality where they are defined in consensual discursive outcomes, rather the abstract idea of universal agreement helps to explicate the nature of what is true and right. Something is not true or right *because* it is universally agreed to, but we can imagine that that which is in fact true or right *would* meet with universal agreement in a maximally inclusive, free, equal, informed, and open-ended discourse, which is of course a counterfactual idealization. But the abstract idea of truth and rightness validity claims pointing towards context-transcendence is what grants this theory of meaning its critical edge – it means that any concrete, localized understanding of truth or rightness gestures beyond itself towards ever more informed and universalized understandings, and thus is itself always open to critique. When it comes to truth this is not an especially controversial position.

Science, for example, more or less operates with this assumption in mind as scientists seek consensual validation from a variety of perspectives but generally do not confuse any actually achieved consensus with the apprehension of some immutable and eternal Platonic form (Funtowicz & Ravetz, 1993). However, the parallels between truth and morality cannot be taken too far. Whereas we have various investigative tools for reaching towards and testing truth claims, such as natural and social scientific methods, when it comes to understanding what is morally or ethically right, for most of human history we have looked to metaphysical traditions to guide us. But to the extent that our society is post-metaphysical, these guides are considered unreliable, and the social fact of plurality means that following traditional guides will, at least in some instances, inevitably lead to irresolvable conflict over what is right.

It is in this context that Habermas describes discourse ethics as the most appropriate basis for establishing a common understanding of what is right, either by applying it as an investigative tool or as a way to navigate through conflicts rooted in different traditional conceptions of what is right. The discourse principle states that "just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses," where 'action norms' refer to generalized behavioural expectations and 'those affected' includes anyone whose interests are touched by the foreseeable consequences of observing the norm in question (Habermas, 1996a, p. 107).[11] However, it must be borne in mind that it is only in fully post-conventional, post-metaphysical discursive contexts that *all* positions and arguments are actually open to critique. Many participants in discourse will have some beliefs

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[11] Habermas goes on to distinguish various different kinds of discourse that operationalize the discourse principle according to the sort of question being explored, but the basic outline of rational discourse I have described previously is sufficient for my purposes.

that they are unready to rationally examine the validity bases of, in many cases because they

(often unconsciously) perceive such a critique could destabilize their self-identity. As well, in

actual discourses not all aspects of validity will necessarily be examined, or certainly not all to

the same extent. But this need not render discourse ethics a neutered concept, it is still active

for participants in areas where they are open to critique and in the dimensions of validity and

rationality that are activated, and the very nature of discourse has a tendency for unsettling

previously firm beliefs and perspectives, and so the extent of dogmatically held beliefs may well

shrink in the course of discursive practice. In any case, the most basic aspect of discourse ethics

to bear in mind is that in discourse we establish conditions that allow the force of the better

argument to come to the fore, or, framing it negatively, the structures of discourse make it less

likely that ill-founded and poorly supported arguments will be convincing to participants. This is

precisely the rationality that underlies actual instances of applying the discourse principle, and

which grounds claims that moral/ethical questions that are settled discursively tend to identify

that which is more right in correlation with the extent to which the discourse was structured

according to factual conditions derived from the idealizations implicit in communicative action.

There is another dimension to validity in discourse ethics however, that points towards

democratic legitimacy. By tying validity to the abstract idea of securing the agreement of 'all

those affected,' discourse ethics is immediately biased in favour of perspectives that express

and arguments that appeal to increasingly generalized interests. To be clear, this is not to say

that ethics is simply a matter of pandering to that which the majority already perceives as right;

discourse ethics in action cannot be separated from the potential for participants to modify

their beliefs and perspectives based on reflective insights as to more valid perspectives and

ways of believing that are revealed or developed in the course of discourses where alternative

perspectives, interests, and identities are explored (Habermas, 1996a). In other words, this

notion of ethics and morality relies on the potential for transformative learning inherent in

rational discourse in the context of diversity (Mezirow, 2003). Apprehending what is right thus

requires a decentering of one's consciousness, a movement from an egocentric to an

intersubjective moral sensibility, and it encourages us to continually expand our moral

community to make it ever more inclusive of differently situated others. So the rationality

expressed in discourse ethics points towards that which is more valid in two senses – validity as

that which is supported by the more convincing arguments and reasons, and validity as that

which represents more generalized interests and so can draw the assent of a wider population.

Discourse ethics is clearly important in contexts where mutual understanding is not

enough, for where members of a society need to move beyond mutual recognition to come to

some commonly agreed upon, implementable action norm, in other words for participatory

democratic functioning. If discourse is to be the basis for democracy, it must be able to provide

a rational basis for coming to agreement on norms such that behavioural expectations are

stabilized and members of society can coordinate their action plans together (Habermas,

1996a). Here the issue of consensus again raises its head, but again it is as a counterfactual

idealization that discourse ethics point towards consensus, as a principle applied in actual

circumstances I would argue it points towards 'rational acceptability.'

To get at what I mean by rational acceptability I need to pick up some of the threads in

my earlier discussion of discourse and difference. An adequate account of discourse should

acknowledge and be able to cope with the ambivalence of communication in power terms

between strategic and constitutive thinking, struggle and control, conflict and consensus. I

consider apprehending rightness or justice, as well as the practice of democracy itself, as

founded upon ongoing discursive procedures ever open to critique such that dissent and

difference, which I have argued are essential to the potential for learning and rationality

embedded in discourse, are recognized as the pillars of democracy and the best guarantors of

justice (see Flyvbjerg, 1998; Rehg & Bohman, 2002). On this view, injustice and domination are

presumed factually present, and the ideals of democracy and justice, which are always yet to

come, are approached through continuous critique and discursive contestation among

participants with different social positions, life histories, and perspectives (Shabani, 2003).

Speaking of discourse in the context of democracy, Rehg and Bohman (2002, p. 46) have

suggested that participants can rationally accept an outcome that they do not fully agree with if

they can assume that, "given the conditions of deliberation, outcomes and decisions allow an

ongoing cooperation with others of different minds that is at least *not unreasonable*." This

makes sense in actual discursive instances if we are assured that: the structures of the

discourse make it less likely that irrational and unjustified arguments will sway decisions;

arguments, decisions, and the entire decision-making process are open to potential revisions

that may take up currently defeated positions such that they have more impact in the future;

and that decision-making procedures are broadly inclusive such that those with less influence

now may reasonably expect that they will be able to have greater impact in the future (Baber,

2004). Dryzek (2005) echoes this sentiment in suggesting that successful discursive practice

does not require agreement on reasons for action, but rather an agreement on actions coupled

with an understand of others' reasons, as the latter is important to maintaining an ongoing,

constructive dialogue. So if we accept that discursive processes lead to more valid outcomes, then we can acknowledge the 'rational acceptability' of outcomes while disputing their 'correctness' to the extent that we are convinced an honest effort was made to establish and follow discursive procedures informed by the communicative idealizations, that the decisions are regarded as but part of an ongoing process of contestation and hence inviting of future revisions, and that our fellow participants are, for the most part, convinced of the same (Rehg & Bohman, 2002).

This account of discourse is more sensible when thinking of it occurring as part of more or less formalized and organized processes; however, things become considerably less clear when considering more spontaneous instances of discourse in public spheres where assurances of appropriate communicative conditions and procedures and reasonable co-participants cannot always, or often, be had. Habermas' account of the public sphere, and especially his description of the history and evolution of the public sphere in Western societies, has received significant justified critique, yet as a concept it retains a central place in his vision of democracy (Crossley & Roberts, 2004; Goode, 2005). But if the public sphere was rapidly shifting and reconfiguring itself under our feet in the first years of the new millennium, with, for example, the internet beginning to replace the mass media as a driver of change (Bohman, 2004a), then the terrain is even more uncertain today as we witness further effects of globalized communications and newer social media. As a result, I will restrict my comments about discourse in public spheres to outlining the basic contours of how it theoretically functions in democratic societies. To speak of communicatively rational discourse in the public sphere will

require a serious weakening of Habermas' communicative idealizations as discussed above, and so I have in mind a rather expansive definition of what counts as public discourse.

According to my earlier basic description, discourse consists of identifying and describing alternative understandings and perspectives, collaboratively exploring their validity bases, and exercising some form of evaluative judgement based on arguments and supporting reasons as to the better (aspects of) ways of understanding, perceiving, etc. As Habermas (1996a) has pointed out, this may be very rudimentary and not recognizable as the sort of face-to-face, organized argumentation often associated with the concept of discourse. But it is key to bear in mind that in public discourses "the orientation to reaching understanding that is predominant in everyday practice is also preserved for a *communication among strangers* that is conducted over great distances in public spheres whose branches are quite complex" (Habermas, 1996a, p. 366).

From a communicative perspective, the public sphere can be distinguished from the private on the basis that in public space one is expected to provide reasons to support the validity of one's communicative actions if their validity is challenged by another, while in private space one can legitimately refuse to do so. Habermas has described the public sphere as "a network for communicating information and points of view ... [where] the streams of communication are, in the process, filtered and synthesized in such a way that they coalesce into bundles of topically specified *public* opinions" (Habermas, 1996a, p. 360). On this definition, public spheres are sites for communicative action amongst members of society, and so are also prime sites where the lifeworld is reproduced and potentially reconfigured. As I have argued earlier, discourse can lead to transformative learning for participants as they respond to

reflective insights revealed in the discourse (Mezirow, 2003), and discourse in public spheres

carries a similar transformative learning potential at the societal level precisely because it

represents a communicative rationalization of the lifeworld. Of course the learning is only as

good as the discourse, as we saw with the functionalist rationalization of the lifeworld,

rationalization itself has an ambivalent potential, and this points to the vital importance of

looking to the idealizations of communicative action for guidance as to the appropriate

conditions and characteristics of public discourse. Communicatively rational discourse in the

public sphere should proceed from contexts that are ever more: inclusive of and open to the

diversity of interests, perspectives, and forms of life; free of exclusions and coercion such that

all have equal communicative rights; free of distorting illusions and ideologies that *a priori*

privilege some and discount others; and able to access the best and most complete

information. The more these conditions are favoured in the public sphere, the greater will be

the potential for public discourse to embody communicative rationality. And continuing to

describe this idealized face of public discourse, the notion of a maximally inclusive, free, and

open public sphere points to the idea of public discourse within it being able to develop and

articulate general interests – what could be legitimately considered democratically derived

public opinion and will (Habermas, 1996a).

The factual side of discourse in the public sphere is, however, much less optimistic. In

fact, public discourse, in drawing its communicative resources from the lifeworld, reflects its

distortions. As well, the political-administrative system, responding to the steering media of

power, consistently seeks to politicize aspects of the public sphere as a means to extend the

system's domination of the lifeworld (Habermas, 1996a). Meanwhile, power flowing through

the political and economic systems works to privatize other areas of public space that resist

being politicized, and thus shield them from communicative critique. But given the colonization

of the lifeworld by forms of systems integration, individuals' private choices already tend to

reflect a bias for following systems imperatives, and so in assigning public matters to the

private realm the systems secure what Ranciere (2006) has termed a "double domination." So

public space is under assault from both sides, and what is left of the public sphere mirrors the

distortions wrought upon the lifeworld described previously.

This all has serious consequences for the factual conditions of discourse in the public

sphere. Generally speaking, conditions are such that it is challenging to imagine public discourse

leading to more rational outcomes while it is easy to imagine it reproducing the status quo with

its inequities and irrationalities intact. There are many ways this public discourse has been

distorted, but most obviously we can see the effects of: misinformation; media bias; political

system-maintenance imperatives steered by money and power; the disconnection of the

political system from lifeworld reality; the disconnect between expert cultures and everyday

communicative practices; and the exclusion or marginalization of perspectives and interests,

especially from already marginalized and systematically oppressed groups. This last point is

emphasized in counterpublic studies, which direct our attention to the fact that "some arenas

of public engagement are organized directly in tension with the dominant public" (Calhoun,

2013, p. 100), and the oppositionality that is foundational to these counterpublic spheres and

the subaltern discourses[12] within them renders their meaningful inclusion within broader and

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[12] Fraser (1990, p. 67) describes how "subordinated social groups … have repeatedly found it advantageous to constitute alternative publics," and she terms these *subaltern counterpublics* that constitute "parallel discursive

more dominant public discourses problematic. This field of study directs its critique at exposing these exclusions in order to "help inspire us to try to push back those limits," which is also implied in working towards the Habermasian communicative idealization of full inclusion that underwrites claims to the democratic legitimacy of discursively derived public opinion (Fraser, 1997, p. 93).

Nevertheless, a potential for rationality and learning persists in the concept of public discourse, and this persistence is in part because public discourse is fluid and difficult to manipulate in any particular direction. It is difficult to manipulate with precision also because the public sphere it is not some homogenous, unitary entity, but rather describes the public space within which various different yet interrelated public spheres constitute themselves around various problems or topical areas. Bohman (2004b, p. 36) speaks of an "anonymous public conversation" taking place as various public spheres debate issues and "through intermediaries translate across linguistic and cultural boundaries the results of deliberative processes in other publics." Habermas (1996a) has referred to public discourse as "wild," Benhabib (1996) also describes discourse in the public sphere as an "anonymous conversation," and Dryzek (2001) speaks of the public sphere as an arena for the "contestation of discourses." And to the extent that public discourse is communicatively rationalized, even if that is very little indeed, the end result of this wild anonymous conversation and contestation is that more valid and justified arguments and positions become increasingly distributed throughout society and less valid ones fade towards the background (Cranton, 2006) – a process that Habermas (1996a)

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arenas where members of subordinated social groups invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs."

identifies as the filtering that leads to legitimate public opinion and will-formation and that

Brookfield (2005a) describes as learning democratic reason.

These discursively validated positions are not possessed by any one individual, but

rather are an emergent property of engaged public spheres, and Scott (2003) has used the term

"social construction" to refer to this notion of particular understandings and perspectives

created by and through social collectives. Thus discourse in the public sphere can be construed

as a quest for mutual understanding through the presentation and critical exploration of

different socially constructed perspectives on an issue, together with their supporting reasons

and underlying assumptions, and with the end result being that distortions are identified and at

least somewhat ameliorated and more justified arguments are rendered more acceptable – in

essence social constructions can begin to be transformed into more rational social perspectives.

This is all really a restatement of the earlier point that public discourse has a social-

transformative potential because it represents a (somewhat) communicatively rationalized

reproduction of the lifeworld. And again, all of this is possible without the notion of consensual

discursive outcomes – it is enough to imagine that even without agreement each participant in

public discourse has access to the rational learning potential it embodies, and so more valid

arguments can become more prevalent in the public sphere while disagreement and dissent

abound, in fact because of them. Viewing public discourse in this way, as a process of ongoing

contestation nurtured by the existence of difference in our pluralist societies, begins to address

Mouffe's (1999) fundamental criticism of deliberative forms of democracy that she argues

require consensus and thus are ignorant of power relations, disregarding of real difference, and

blind to the exclusions that inevitably obtain.

Outcomes of public discourses that behave with some resemblance to the above

description are said to represent legitimate public opinion and will because of the

communicative rationality they carry with them and because, following the discourse principle,

they are the closest approximation that we have of generally valid action norms that address

the general interest. Apart from this notion of discourse in public spheres we would have to

look to some actually fully inclusive discursive process as a basis for establishing valid norms,

which is an even more unlikely counterfactual idealization. It is, however, difficult to describe

exactly how or where public discursive 'outcomes' are to be found. They are not the mere

aggregate of private personal interests and perspectives, as most liberal democratic theories

suppose, rather they are established through public discursive practices, which lends them their

claim to representativeness and rationality and which in turn roughly constitutes democratic

legitimacy. So legitimate public opinion cannot be ascertained through opinion polls or even

voting. It also cannot be extracted from the sum of individuals' economic choices because such

choices embody a functionalist rationality, and so all such a summing would reveal would be a

more or less accurate mirroring of system imperatives. As well, it is awkward to even speak of

wild, anonymous, and ongoing conversations having discrete outcomes that can be grasped, at

best they would be ephemeral and unstable.

Part of an answer to this is provided by foregrounding the importance of civil society

within the public sphere. Civil society's "institutional core comprises those nongovernmental

and non-economic connections and voluntary associations that anchor the communication

structures of the public sphere in the society component of the lifeworld" (Habermas, 1996a,

pp. 366-367). Thus, the institutions of civil society serve as nodes within the matrix of public

discourses where the outcomes of particular discourses are distilled and further refined, and

this works through feedback loops such that civil society introduces topics and perspectives into

public discourse, works with and further communicatively refines identified public discursive

outcomes, and feeds this refined material back into public discourses (Habermas, 1996a;

Welton, 2001). This sort of work is also performed by the new social movements that organize

around unresolved conflict potentials that build up in systems compensatory channels. Thus the

critical potential of the public sphere is kept alive so long as there is opportunity to raise new

issues or reframe old ones, to push back and contest unjust power relations, and to dissent

from the status quo. Indeed, given what we do know about power, how it is woven into the

very fabric of the lifeworld and hence mediates every communicative context, we should be

very suspicious of silent or over-harmonious public discourse and we should expect and cherish

dissent and disharmony. However, this is only part of an answer, something more convincing

and complete would be nice in a theory of democracy that is largely founded on the notion of

public discourse for its public use of reason in self-governance, but perhaps we have to be

satisfied with promise and potential and recognize that the struggle of democracy is all about

vigilance and critique as we navigate uncertain and difficult terrain.

My discussion has moved back and forth between the idealized and real face of public

discourse in an effort to explicate a concept whose meaning exists in the tension between

facticity and normativity. I have spent more time describing the ideal side because, frankly, it is

the harder to imagine, whereas examples of constrained, limited, and systematically distorted

public discourse are ubiquitous. But there are examples of public discourses achieving some

communicative rationality, developing general interests, and effecting some societal

transformative learning as described above. One can look to recent history to see very real effects of feminist, labour, and civil rights movements and discourses, and one can look to society today to see that further contestation and progress continues to be made in each of these areas. So despite all the distortions and impediments, this more hopeful vision of public discourse is observable, if perhaps not fully understandable or controllable. In any case it is clear that, if discourse in the public sphere is to develop and articulate legitimate public opinion and will as a basis for democracy, then energizing, enlarging the scope of, and communicatively rationalizing public discourse must be a primary task of democratic institutions.

2.4.3 A Two Track Model of Deliberative Democracy

In the simplest of terms, Habermas (1996a) proposes a model of democracy where discourse occurs at two interconnected levels – in the public sphere, and also in the political system, which includes legislative bodies, administrative bureaucracies, and in some instances the judiciary. Discourse in the public sphere, as described above, is a process whereby (relatively) communicatively rationalized and legitimate public opinion is formed and will is expressed. The move from public discourses developing increasingly valid to increasingly democratically legitimate outcomes is reflected in the democratic principle's reworking of the discourse principle. Habermas' democratic principle states that "only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted" (Habermas, 1996a, p. 110). Here we are dealing with enforceable statutes that are expressions of valid action norms, and democratic legitimacy, understood as self-legislation, rests on the expressed norms having been validated in rational public discourses where all concerned citizens have had equal communicative opportunities.

The notion of free, equal, and inclusive public discourse is necessary so that we can have some presumption that a roughly representative diversity of interests and perspectives has contributed to the public discursive outcome, which we can then think of as representing rationally supported legitimate public opinion. Thus, democratic legitimacy depends on public participation, on the exercise of public autonomy being legally protected, but the free, equal, and inclusive participation thus implied further depends on certain basic civil rights, or individual liberties, being respected such that citizens' private autonomy and identity are protected as well (Habermas, 1998b; Maus, 2002). The democratic principle suggests that public political opinion- and will-formation can be institutionalized "through a system of rights that secures for each person an equal participation in a process of legislation whose communicative presuppositions are guaranteed to begin with" (Habermas, 1996a, p. 110). As a result, Habermas responds to the classic-liberal (primacy of inviolable individual rights) vs. civic-republican (primacy of shared ethos and communitarian rights) conceptions of the legitimizing basis of democracy by saying that both visions require and presuppose each other, and so public and private autonomy and rights are also equiprimordial in the context of legitimate democracy (Habermas, 1996c, 2001). Habermas suggests that the basic rights securing democracy are rights: 1) to the greatest possible measure of equal individual liberties; 2) to membership in voluntary associations of equals, to membership in the polity on a free and equal basis; 3) to equal protection under the law; 4) to equal opportunities for political participation in procedures of opinion- and will-formation; and 5) to living conditions that are socially, technologically, and ecologically safeguarded, which is necessary for citizens to have equal opportunity to enjoy the rights outlined in 1-4 above (Habermas, 1996a, pp. 122-123).

This description of the bases of democracy directs our attention back to the idealizing presuppositions of communicative action, because they articulate in an ideal form the sorts of factual conditions that express the communicative rights that in turn support legitimate democratic functioning. As O'Neill (2000) has argued, this implies considering things like class divisions and distributive inequities in society as democratic impairments that democratic practices must deal with. As I pointed out earlier, there is no shortage of observable social realities that militate against factual conditions that could be extracted from the communicative idealizations, and if these conditions are considered necessary to enabling legitimate democracy we are returned to the brink of hopelessness, for how can democracy be relied on to create the conditions of its own legitimacy if those conditions do not already obtain? Here I follow Habermas' (2001) suggestion, given in a slightly different context, that rather than engaging in an infinite regress in search of identifiable bases for democratic legitimacy that will lead eventually to negation, instead we look towards the future and imagine that step by small step, guided by the theoretically specified idealizations, we and future generations will progressively realize ever more legitimate democratic practices. This in fact expresses the basic conception of deliberative democracy that I have been building up, that it is an ongoing struggle, from within non-ideal and often corrosive factual circumstances, to establish conditions that are more ideal and less corrosive. It is fundamentally an iterative process of learning and transforming towards a democratic ideal while remaining firmly rooted in and aware of the factual world of imperfection that we always take with us.

Returning to the two-track model of democracy, the above discussion clarifies somewhat the notion of democratically legitimate opinion- and will-formation developed in

discourses in the public sphere. In terms of Habermasian democracy, what we are interested in

are those discourses that identify and wrestle with problems to be dealt with through the

political system. These discourses originate as unresolved problems are picked up from

individual lifeworlds, recognized first in the private lives of individuals, and as they are

introduced into public discourse, problems that resonate sufficiently with the lived experience

of others become increasingly debated in the public sphere. Recalling the other-regarding bias

built into the discourse and democratic principles, this process will tend towards developing

democratically legitimate outcomes in the sense of giving voice to general interests; democratic

legitimacy is secured as "citizens switch from the role of private legal subjects and take the

perspective of participants who are engaged in the process of reaching understanding about

the rules for their life in common" (Habermas, 1996a, p. 461). In instances where discourse is

widespread and/or intense enough, we can imagine a public sphere emerging around the

problem that draws in perspectives and arguments present in other public discourses in other

public spheres (Bohman, 2004b). Discourse in this emergent public sphere is kept alive and

invigorated as, for example, it draws in civil society participation, is present in the media, or is

championed in social movements and coordinated social actions. The end result is that the

particular problem is highlighted and delineated, alternative responses are identified and

evaluated, and pressure is brought to bear on the political system to recognize and attend to

the discursive outcomes. Imagining that all, or at least most of the problems in need of being

addressed by the political system are picked up and dealt with in public discourses requires a

picture of a network of interconnected discourses extending across the broader public sphere

and depending on a robust civil society so that various levels of formality and focus can be

achieved as appropriate to the context of each problematic situation (Hendriks, 2006). It is this "network of discourses that, aimed at forming opinions and preparing decisions, provides the matrix from which democratic authority emerges" (Habermas, 1996a, p. 5).

This democratic authority is actualized in the political system, the second deliberative track of the democratic model, where public communicative power is converted into political power (Shabani, 2003). Because this level is legally authorized to make final decisions and implement action plans, Habermas refers to it as the strong public, whereas discourse in the public sphere represents the weak public. The basic idea in Habermas' model is that the political system picks up on problems that have been thematized and furnished with alternative solutions in public discourses, subjects these outputs to further critical refinement in its own more focused and formalized discursive processes, and finally presents validated results in the form of legislative and policy outputs. These outputs of the political system have a claim to democratic legitimacy in direct correlation to the extent that the procedures that led to them can be considered to have been legitimate, and so deliberative democracy, like communicative rationality, is a procedural rather than substantive concept.

Enacting legitimate law, and to a lesser extent policy statements, is one of the ways the political system can relieve some of the pressure on communicative action, which we saw earlier is overtaxed. Law facilitates social coordination and regularizes behavioural expectations without burdening citizens with the task of its moral justification each time they encounter each law, for if they can consider the law to be legitimate they can act out of respect for the validated norm it expresses or they can choose to act strategically towards the law, and in either case there is some amount of communicatively rationalized social integration taking

place. However, this does not require citizens to assent to every law out of respect for its claim to some rational or moral content. The effects of legal or policy outputs from the political system are felt in the private lives of citizens, and if and when they lead to new problematic situations or fail to address the problem originally aimed at, this builds up more conflict potential and feeds back into public discourses and the cycle of democracy-as-pragmatic-problem-solving begins anew (Bohman, 2004b).

There are, of course, good reasons to suspect that discourse in the political system is limited and constrained by system-maintenance imperatives and steered by the exercise of political power (Torgerson, 2003, 2005). However, in principle, the discourse of the political system is publicly transparent, which allows for some critical oversight of its procedural quality. To the extent that the system is clearly inattentive to the state of public discourses, that its discourse excludes or indefensibly discounts interests and perspectives, or that it allows political or economic imperatives to over-steer its discursive processes, it is creating new or exacerbating existing problems that become fodder for critical public discourses that can attempt again to influence the political system in desired directions. So clearly much of the responsibility for supporting a healthy deliberative democracy is borne by critical discourse in the public sphere. I have already suggested numerous ways that the communicatively rational quality of this public discourse is always suspect, but even if we can accept the more hopeful and incrementally progressive vision of public discourse that I have argued for, there is still the matter of the transfer of legitimate communicative outcomes from discourses in the public sphere into the political system.

Habermas (1996a) refers to "sluices" and "filters" that regulate this transfer, but he is

vague on how this transfer is itself deliberative, or communicatively rational, as well as on the

actors and roles involved in the transfer, and it remains one of the more underdeveloped

aspects of his model (Hendriks, 2006). Nevertheless, practicing deliberative democracy is really

all about this transfer of public opinion and will from the public sphere into the political system

(Roberts & Crossley, 2004). Recalling that a basic task set for this model was to provide for a

communicatively rational steering of the political system through some public use of reason, it

is not surprising that the model stands or falls on the basis of the quality of public discourses

and on the successful injection of their outcomes into the discursive practices of the political

system.

However, it is far too much to expect that every single action within and emanating

from the political system must be arrived at through this strangled and twisting path from

private lives through public discourses and on into political system discourse before finally

emerging as a legitimate democratic action. Similarly, it is naive to think that the public sphere

and civil society will be able to routinely control and direct the deliberations and actions of the

political system. The democratic process as described so far illustrates the 'official' circulation

of power from the weak periphery of public spheres and discourses to the strong center of the

political system. Habermas (1996a, pp. 379-384) describes two 'unofficial' but much more

common models of the circulation of political power. In the 'inside access' scenario, initiative

comes from political leaders or from the system's bureaucracy, and issues and potential

solutions are debated or otherwise handled all the way to formal outcomes within the system.

Here the public is either excluded or at least has no direct influence over the democratic

process beyond having voted for particular political representatives, although of course

politicians and members of administrative bureaucracies may be sensitive and responsive to

public interests and discourses. In the second unofficial, 'mobilization' model, initiative again

comes from within the political system, but those driving the initiative must mobilize the public

for support, some limited guidance, or to ensure the outcome can be implemented successfully.

Only in the official, and less common circulation of political power can the public

successfully introduce issues and discursively treated alternatives onto the formal agenda and

compel the political system to act on them. Under 'normal' political conditions, when conflict

potentials are low (or have been pacified) and public discourses are relatively acquiescent (or

have been constrained), political power follows the unofficial pattern radiating from the center

to the periphery. In each of the circulation patterns, the aforementioned notion of filters and

sluices that connect public discourses and the political system function to channel influence and

power. While there is doubtless great potential here for ideology and power to manipulate

public opinion into accepting unjustified and invalid political outcomes that do not represent

the general public interest, this also represents the work of systems in helping to stabilize social

organization that Habermas' social theory suggests is necessary to cope with the complexity of

modern societies (Elling, 2008). What is vital though, is that democratic structures and social

institutions ensure the possibility that in crisis situations actors in public spheres, bolstered by

civil society, can take action that reverses the circulation of political power and compels the

system to follow the official model of flow.

Related to this, a common criticism of Habermas' model of democracy is that it is not

radical enough, that it grants too much to existing democratic institutions and practices and

thus robs us of much of our critical freedom to reproach the system and challenge established

norms. The argument has been made that by being only able to *influence* the 'strong public' of

the political-administrative system, 'weak publics' engaged in public discourses lack the political

efficacy necessary to support claims that they are actually engaged in democratic self-rule

(Fraser, 2007; Loehwing & Motter, 2009). It is true that if normative understandings and action

preferences developed and articulated through public discourses, and existing as legitimate

public opinions, are unable to actually have a decisive influence on political-administrative

action, then the notion of deliberative democracy loses its critical edge and political point.

Fraser (1997, p. 92) wants to "envision a greater role for (at least some) public spheres than

mere autonomous opinion formation removed from authoritative decision making." However,

Habermas holds that this reflects an instrumental view of politics and fails to distinguish two

different forms of power – the critical force of public discourses and the administrative power

of political authority – and in so doing situates the various public discourses and spheres as

"contenders in a struggle to achieve the same recognition, legitimation, and allotment of

resources as the rest" (Loehwing & Motter, 2009, p. 229). This notion of public discourses in

conflict with one another, seeking to wrest control of administrative power, does not fit well

with the conception of public discourse developing 'general public' interests and opinion. But

the critique from counterpublic scholars is helpful in reminding us that relations among

subaltern and dominant discourses are necessarily fraught with the former's struggle for

recognition, and to the extent that dominant discourses fail in this recognition and then

dominate in governance processes, the claims emanating from the subaltern will lack political

efficacy.

Earlier I suggested that critiques of the inadequacy of Habermas' consideration of inclusion, especially of counterpublic, subaltern discourses, are not a fatal flaw in the model but rather are helpful in directing our attention to uncovering and striving to ameliorate such exclusions. In a similar fashion, the above critique concerning the political efficacy of these discourses I think misses the point somewhat in attempting to collapse the distinction between public-communicative and systems-administrative power; however, it does convincingly remind us that non-dominant discourses and the perspectives and interests they articulate, even when nominally included in democratic processes, are routinely ignored or downplayed in these processes' conceptions of the 'public good' and hence in the influence they are able to muster to steer the political-administrative system. As such, it is clearly important that governance processes such as NREM be conscious of this and continually strive to meaningfully include and recognize subaltern voices that reveal counter-perspectives and interests such that they do actually have a formative impact on the processes' discourse and outcomes.

In addition, criticisms that Habermas' model of deliberative democracy is not radical enough also often seem to assume that it limits the public's options for legitimate political action to participation in weak public discourses, which is not the case. Habermas (1996a) provides a limited discussion of the place of oppositional political action outside of the usual communication networks of democratic institutions and discourses. Briefly, oppositional politics, including civil disobedience, can, as communicative acts, contribute to the public discourses that are fundamental to deliberative democracy, and, especially when existing democratic channels are distorted or blocked, public actors, counterpublics, and social movements can legitimately refuse to participate in and instead bypass existing democratic

institutions and endeavour to compel the political-administrative systems to respond. In addition, in reference to NREM, Torgerson (1999, 2000) discusses three political action orientations – functional, constitutive, and performative – that can all be appropriately used in the pursuit of pragmatic and normative goals discurisvely developed in critical green public spheres. This range of approaches to political action is explored further in appendix C.

It is certainly true that social movements and subaltern discourses may often find participation in 'official' governance processes, such as NREM, to be unsatisfactory means for achieving recognition of their identities and interests, especially to the extent that they are formed in opposition to dominant perspectives and perceptions of the 'general public' interest. As a result, they may opt to work at the cultural level by clarifying their identities and the legitimacy of their interests and arguments within their own discourses and in conversation with dominant discourses in the broader public sphere, and/or they may mobilize their oppositional communication and action to deliver these messages and exert pressure directly on the political-administrative system to recognize their identities, perspectives, and interests in the system's actions. The civil rights and feminist movements provide successful examples of this. However, as my research is addressed to governance within, rather than bypassing, democratic institutions and processes, my discussion here is kept within that scope. For now it is enough to say that far from constraining options for legitimate political action, I see a deliberative form of democracy as radically increasing them.

In any case, the bulk of the weight of ensuring healthy deliberative democratic functioning rests on the weak and besieged shoulders of public discourses in public spheres and civil society. But the periphery does have some advantages relative to the center. Public

discourses and civil society are more closely connected to the lifeworld and hence are adept at

sensing problems, and despite the ways that the public can be deceived and manipulated,

public spheres and civil society are remarkably plastic and innovative in resisting manipulation

and creating new pathways for mobilizing power against domination.[13] Much more could be

said about Habermas' model – a fair number of monographs, edited collections, and journals

have been dedicated to teasing out the implications and critiquing various aspects of *Between*

Facts and Norms – but this rough outline will suffice for my present purposes.

2.4.4 The Tasks of Deliberative Democracy

Let me put aside for a moment legitimate issues of widespread distorted

communication and the absence or only partial presence of structural conditions in society that

would support a deliberative form of democracy, in order to focus on the potential for such a

system of governance to accomplish democratic outcomes. According to most understandings,

any model of democracy is first of all tasked with arranging for organization and cohesion in

society such that equality and justice are the norm, and this task must be democratically carried

out so that citizens can rightly consider themselves as authors of the organizational and

behavioural rules that bind and direct them collectively towards these goals (Cunningham,

2002). Deliberative democracy as I have described it provides for this more legalistic sense of

democratic practice by providing a procedure for establishing valid and legitimate laws via the

development of legitimate public opinion and will in the public sphere that is forcefully passed

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[13] For example, Keane (2009) describes the most recent stage of Western democratic evolution as "monitory democracy," where a multitude of power-monitoring bodies with varying degrees of formality and permanence and extending from civil society to within the political system embody the potential for taming unchecked power in systems and society. Goodin and Dryzek (2006) describe a range of these sorts of monitory functions taken on by what they term 'mini-publics,' and argue that despite their relative 'official' impotence, they can and do have decisive impacts on the outcomes of political processes, especially in circumstances that are perceived as crises.

on to the political system. It also provides for critical oversight of the political system, including

the policy directions of government, and describes means by which illegitimate laws and

policies can be challenged and communicative rationality, developed through public discourses,

can be injected into political systems functioning. Deliberative democracy also can sense

inequities and injustices masked by systemic incursions into the lifeworld and can develop

rationally informed solutions to pass on to the political system or can challenge the lifeworld

deformities more directly, as I discuss below. This all describes some of the vital 'active

steering' functions of deliberative democracy.

Because Habermas' model of deliberative democracy is intended to describe the bases

for the production of legitimate law, the notion of systems steering is oriented most explicitly

towards the political-administrative system. However, it is also "intended to tame the capitalist

economic system, that is, to 'restructure' it socially and ecologically in such a way that the

deployment of administrative power can be simultaneously brought under control" (Habermas,

1996b, p. 778). He goes on to describe how this can be accomplished through indirect forms of

political-administrative steering of the economic system, which is legitimated via linking

administrative power with communicative power generated through deliberative democratic

practices. So democratic steering of the economic system is primarily accomplished through

political-administrative systems.

However, as I see it, democracy is more about a way of life whose description begins in

the rationalization of the lifeworld. As more and more aspects of the lifeworld are

problematized and alternative ways of understanding are identified and explored in public

discourses, the potential for communicative rationality favours the development of increasingly

valid and generalized understandings that become increasingly distributed throughout public

discourses. Further, by taking place in communicative practices that by their nature reproduce

the lifeworld, these rationalized understandings can become embedded in the relevant culture,

society, and/or personality components of the lifeworld, and so democratically directed socio-

cultural and individual learning and transformation can occur together through democratic

practice that does not even touch the political system. These learning processes occur through

democratic practice that I have characterized as a process of ongoing reasonable contestation,

which suggests it is both critical and reflective on its own practice, and this describes the bases

for transformative learning moved from the individual to the social level, which helps explain

the claim that democracy is fundamentally a learning process. This also makes sense of Scott's

(2003) contention that when critically exploring socially constructed perspectives, which in this

context are recognized as embedded in the lifeworld, individual and social learning and

transformation co-emerge in a dialectical relationship. As such, I have argued that, given

reasonably appropriate conditions, this learning will tend, over time, to lead to the

development of increasingly inclusive and generalized cultural, social, and individual

perspectives, to enlarged ways of understanding and perceiving the world around us. This

aspect of deliberative democracy is primarily about communicatively rationalizing public

discourses and the lifeworld.

This picture of the role of democratic learning processes on the lifeworld describes

another way by which deliberative democracy interacts with the economic system. Recalling

the earlier discussion of how systems imperatives and functionalist rationality have colonized

the lifeworld where they exist as a functional equivalent of ideology in directing social

integration, we can now think of them also as socially constructed meaning perspectives. But to the extent that these social constructions embedded in the lifeworld echo systemic interests and rationality, they will contain distortions. Thus, in the above description of democracy as the communicative rationalization of the lifeworld, this must include the critique of economic systems ideology via public deliberative processes. So again, while this conception of democracy does not connect directly with economic systems as it does with political-administrative ones, it does, by providing for administrative steering and the challenging of economic ideology in the lifeworld, provide some mechanisms for taming illegitimate effects of the economic system on the lifeworld, public discourses, and political operations.

Considering these aspects of deliberative democracy directs our attention again to the vital importance of nurturing robust and healthy public spheres and civil society and towards the conditions that this implies, for example: freedom of expression, media diversity, public access to information, multiple and varied venues for discussion, and the provision of basic social and material security for all. But we must also be mindful that the potential for learning and transformation inherent in discourse is ambivalent regarding the substance and quality of actual learning and transformation (Habermas, 2008a; Torgerson, 2005). In actual discourses vital perspectives, arguments, and interests may be blocked, information is often incorrect, incomplete, or biased, convincing arguments can be unconvincingly presented, or the structural conditions of discourse may not favour the recognition of more sound reasons and better arguments. Any or all of these factual conditions may result in dysfunctional, or communicatively irrational, learning and transformation occurring. Our responsibility as democratic citizens is to work to push this learning and (potential) transformation in directions

that can legitimately be considered communicatively rational, which means being vigilant for and responsive to the sorts of factual conditions that would limit and deform our communicative practice in public discourses.

To avoid communicative overload and to enable the vigilance just referenced, the expansion of communicative rationalization in the lifeworld should occur in parallel with the development and strengthening of our democratic institutions and capacities. This can be achieved as we encourage the vigorous and critical practice of democracy within the public sphere and civil society. Through healthy communicative democratic practices we rationally reconfigure but also nourish and recharge the lifeworld, and since that is the source for the energy and substance of communicative action, a positive feedback is established where democratic practice can lead to expanded and improved democratic practice – a sort of self-reinforcing social-evolutionary learning of democracy (Brookfield, 2005a). As this happens we also improve our capacity for the system steering function of democracy. As citizens we engage in political action not just to accomplish this or that, but because that is what democratic life forms do, it is how we become self-actualized and develop and express our authentic self-identity.

2.5 Deliberative Democratic Resource and Environmental Management

2.5.1 Some Suggestions for Greening Deliberative Democracy

So far I have mostly described and defended my take on deliberative democracy in general terms, as being a democratically legitimate, rational, learning based, and realizable form of self-governance. Before going on to discuss the nature and role of NREM processes within such a democratic arrangement, I want to briefly consider a few issues regarding its

suitability for dealing with environmental problems and concerns. The most usual argument for

the fit of deliberative democracy with environmental governance is presented nicely in the

quote from Eckersley (2004) that I prefaced chapter 1 with. The claim is that existing liberal

democratic governance is characterized by a reductionist administrative approach

fundamentally unsuited to dealing with environmental problems that are typically

characterized by complexity and uncertainty (Dobson, 2007; Torgerson, 2003). A deliberative

approach on the other hand accommodates complexity in its decentered, or polycentric

structure, and deals with uncertainty by maintaining ongoing, critically reflective oversight of

outcomes that are always considered fallible and revisable. Traditional approaches are also

ineffective because they are centralized and confined by ecologically arbitrary jurisdictional

boundaries, whereas deliberative governance is decentralized and plastic as discursive designs

emerge and are adapted to the location and scale of the problem at hand (Dobson, 2007;

Dryzek, 2000, 2005). And finally, liberal democratic governance is guided by the aggregation of

pre-political individual preferences while deliberative democracy is steered by legitimate public

opinion developed through inclusive discursive learning processes, where initial preferences

and understandings may be reordered and/or transformed to become more informed, valid,

and generalized (Eckersley, 2004). These identified aspects of deliberative approaches are also

well supported in the NREM literature as being characteristic of sound environmental

governance practices, as reflected, for example, in support for: adaptive management;

meaningful public participation; collaborative planning and multi-stakeholder approaches; co-

management that incorporates cross-scale linkages; learning centered processes; and for

generally increasing the number and quality of opportunities for discourse (e.g., Berkes, 2007;

de Loe et al., 2009; Diduck, 2010; Durant, Fiorino et al., 2004; Fitzpatrick, Sinclair, & Mitchell, 2008; Healey, 2006; Holling & Meffe, 1996; Jha-Thakur et al., 2009; Mitchell, 2002; Parkins & Mitchell, 2005; Petts, 2003; Sinclair et al., 2008; Sinclair, Sims, & Spaling, 2009; Slocombe & Hanna, 2007; Webler et al., 1995).

However, deliberative democracy has been considered by some as inappropriate to the environmental field because, as with existing democratic forms, it is fundamentally anthropocentric. Eckersley (1990) provided one of the first green critiques of Habermas' communicative philosophy, albeit before the publication of his *Between Facts and Norms* where his ideas were expanded and developed into a sophisticated democratic theory and model, and she concluded that his philosophy is not only anthropocentric but as a result also anti-ecological. It is instructive to see Eckersley's own evolving response to this critique. In the 1990 article she suggests that what we need is to extend discourse ethics according to an ecocentric perspective. While discourse recognizes the networks of relation among humans, an ecocentric perspective extends this to recognize the relations among humans and non-human nature. These relations are not communicative ones, but do signify interrelatedness and interdependency among all members of the natural community, including humans. Once this move is made, then nature, or rather nature's interests, have an opening into human discourse since, as Dryzek (1987) observed, the heart of ecological rationality is connected to ensuring the continuation of ecosystems that all life relies upon, and so that becomes the generalizable interest *par excellence*. To me, this is entirely reasonable, and is in no way precluded in deliberative democracy. Later, Eckersley (1999) explores how these non-human natural interests might best be represented in human discursive practices. Here the fact that it is

necessarily humans doing the representing appears to be acceptable, but she is concerned that

there be a sound basis for arguing that we owe moral duties to the non-human living world,

because otherwise we may well fail to include their interests in our discourses.[14]

More recently in her excellent book *The Green State,* Eckersley (2004) describes what,

to me, is a more sound and thorough approach to ensuring the appropriate consideration of

environmental concerns in democratic processes. Here she returns with greater sophistication

and depth to her earlier focus on developing and nurturing an ecocentric perspective that

embeds humans squarely within the web of nature. As Morito (2002) has suggested, thinking

ecologically means doing away with the human/nature dichotomy, recognizing the insights of

evolutionary and ecological theory that undermine Modernist modes of thought, and becoming

attuned to the complexities of natural processes, systems, and organisms that constitute and

sustain us.[15] From within a relational, or more specifically ecocentric perspective, questions as

to the boundaries of our moral community fade to the background as we recognize ourselves as

part of nature and come to see that nature's interests are intimately bound up with human

ones and so both are entwined together in human discourses, whether participating humans

recognize it or not. And the issue of some humans failing to recognize this is really no different

than when discursive participants fail to recognize that their interests are bound up with those

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[14] Eckersley (1996) had argued for moral considerability on the basis of autopoiesis, or organisms' capacities for self-organization and reproduction, and in the 1999 article she argues it based on a weakened notion of agency recognizable in non-human life forms. In another capacity-based delineation of the moral community, Dryzek (1996) suggests that since we can detect signals emanating from nature we must admit this 'communication' into human discourse. However, I think these are mistaken directions, since any capacity-based delineation of the moral community ends up in contradictions and requires numerous exceptions to include morally considerable beings lacking the chosen capacity (e.g., among humans what about infants, the insane, those with extreme intellectual disabilities, and among non-humans what about rocks, wetlands, forests, insects?).

[15] Parallel to this, Smolin (1997), arguing from theoretical physics, posits that we are in the throes of working out a new sort of meta-paradigm where the impacts of Einstein's theory of relativity are being felt across academic and social fields, and which is leading us towards an understanding of the world as fundamentally constituted in a network of relations, which has obvious implications for both ecology and democracy.

of excluded humans – in either case it is a matter of coming, through practice and convincing arguments, to grasp an enlarged, more inclusive perspective.

Looking briefly at some other accounts of how non-human aspects of the world can inform and contribute to the rationality of governance processes reveals suggestions that I think are also compatible with a deliberative form of democracy. Dobson (1996), speaking about representative forms of democracy, suggests having the interests of non-human nature represented by proxies drawn from the environmental movement, which is controversial in aggregative representative systems since it effectively gives environmentalists a double vote. However, in a deliberative democracy this suggestion can be converted into an appeal for environmentally minded citizens and civil society organizations to be actively involved in public discourses and any available more formalized governance processes, and this could be enabled with the nurturing of a robust green public sphere. Goodin (1996) identifies objective values-cum-interests in non-human nature, and suggests that these will be most adequately represented when environmentally sympathetic humans, who have internalized these natural interests such that they regard them as their own, participate in deliberative democratic processes. In fact he regards discursive practice as a prime means for developing such sympathetic humans. Vogel (1997) comes at this issue from the opposite direction, reminding us that the nature we experience and know is itself a social construction and so our interactions with nature are always already social relations. Thus, the ecological web we are embedded in is also a social web and so it is always implicated in our social practices, such as the practice of democracy. However, each of these theorists' ideas for 'green democracy' rest eventually on humans developing a perspective that acknowledges relatedness and mutual dependencies

among humans and what has traditionally been termed nature, in other words developing

some version of an ecocentric perspective, and then bringing that perspective with them to

inform their democratic participation. Again, the development and spread of such a perspective

could be facilitated through discursive practices in an expanding and active green public sphere.

Torgerson (1999), Dryzek (2000), and Eckersley (2004) have all developed sophisticated

accounts of green democratic governance, and all draw on and affirm at least the general

contours of Habermas' (1996a) model, which reflects that concerns that it is inherently

unsuitable for the environmental realm have been largely put aside. But green deliberative

democracy cannot simply be a matter of layering it over with an ecocentric perspective. Doing

so risks sliding into a form of fundamentalism where at least some alternative perspectives are

a priori excluded, which violates the fundamental communicative basis of deliberative

democracy. As Torgerson (1999) has pointed out, even from within an ecocentric perspective it

is vital to recognize the human-centeredness of our perceptions and our democratic practices.

What Eckersley (1990) initially identified as the weak anthropocentrism inherent in deliberative

decision processes is not, simply because it is inescapable, merely trivial. It is fundamental to

the process, and it is precisely when attention is diverted from the fact that our decisions are

based on partial, fallible human perceptions and understandings that we are at grave risk of

failing to recognize and respect the diversity of perspectives, sources of information, and

interests deserving of inclusion. So while Eckersley's (2004) suggestions that an ecological

democracy be focused on risk and that a green state ought to enshrine the precautionary

principle in law both sound reasonable, they must be arrived at through democratic processes

and not somehow be imposed upon them from the outside.

Eckersley, Torgerson, and Dryzek would all seem to agree that the best way to

encourage a deliberative form of democracy to evolve into a green democracy is to work at the

level of public discourses. Dryzek (2000) describes democracy in terms of a continuous

deliberative contestation against illegitimate economic and political imperatives, which fits well

with my way of thinking, and he has suggested that to 'green' the administrative state our focus

should be on developing 'discursive designs' in the public sphere and civil society. Torgerson

(1999, p. 130) sees the promise of a green politics as largely relying on the development and

nurturing of a green public sphere where the anti-ecological presuppositions of Modern

thought can be challenged "at a cultural level that serves to reconstitute what we take as

reasonable." This echoes the notion I have described of the potential for discourses in public

spheres to reconfigure lifeworld understandings, and Torgerson's point is that if we want this

reconfiguration to embody ecological rationality and encourage ecocentric perspectives it will

require good information and convincing arguments developed in and emanating from vibrant

green discourses. Eckersley (2004) wholeheartedly endorses Torgerson's emphasis on a green

public sphere and that an ecological democracy or green state can only be achieved with the

participation of strong green discourses, and even if such a democracy were to be achieved we

would still need a robust green public sphere to keep it on the right track by providing

constructive input and ongoing critique. All of this converges on the conclusion that green

democratic practice is reliant on strong green discourses injecting somewhat of an ecocentric

perspective into discourses in the public sphere, and these green discourses and ecocentric

perspectives themselves are developed and nurtured in a green public sphere. So it turns out

that arguments for an environmentally sensitive form of democracy end up directing our focus

to the same level of the deliberative democratic model I have been emphasizing – public discourses in the public sphere and civil society.

Finally, regarding the green credentials of deliberative democracy I would like to briefly comment on the concept of ecological rationality. In the context of deliberative democracy, rationality is defined communicatively as an orientation to attending to the validity bases of linguistic or social actions, which involves identifying and evaluating alternatives in light of the best information and the most convincing arguments available. I consider ecological rationality to be approached in the same manner. Accessing high quality ecological information and a diversity of perspectives, interests, and arguments related to ecological aspects of NREM requires finding ways to reconnect with relevant expert scientific and traditional knowledge complexes, tapping into outcomes of green public discourses, and establishing appropriate communicative contexts so that alternatives can be explored and critically evaluated, especially for assumptions and presuppositions hidden in the background that reflect the impact of imbalanced rationalization processes and systems' colonization in the lifeworld. Again, all of these requirements fit well within the account of deliberative democracy that I have presented.

2.5.2 Locating Deliberative Democratic NREM

In a deliberative democratic context, I want to define NREM expansively in recognition of the diverse forms of political action available, the multiple levels within society where governance occurs, and the range of scales that can characterize environmental problems. As described in chapter 1, NREM functions can include research, planning and decision making, policy analysis, assessment, and monitoring regarding human-environmental interactions. These functions can be legally mandated stand-alone processes, part of or feeding into and

advising larger governance processes, initiated by civil society organizations, or be connected to corporate activities. They can be addressed to local, regional, federal, or transnational problems and be related to political institutions at any or all of these levels, or not at all. Before examining some of the criteria by which NREM processes can be differentiated, it is useful to consider where NREM in general fits in the model of deliberative democracy I have described.

NREM functions are more specific and focused than the general concept of discourse in the public sphere, but they are also not part of political or economic systems *per se*. It is true that government administrative agencies and corporations do engage in some of the functions I have described as part of NREM, but to the extent that they are entirely part of the systems' internal operations they are outside of NREM as I am considering it. This does not necessarily exclude processes that are legally mandated or are initiated from within systems: the issue is more one of control and freedom for the management process to constitute itself at a critical distance from the system. While following Torgerson (2003, 2005) it may be true that Dryzek's (2001) fear of co-optation is overstated and assumes more coherent and monological sorts of systems than are actually in place, nevertheless there is some validity in Dryzek's point that when deliberative democratic processes are located too close to the system they risk being reduced to mere extensions of it. When processes are entirely captured by components of political or economic systems, their critical capacities are reduced and their outputs will tend to more or less closely mirror existing systems' perspectives and interests. Instead, NREM as I am conceiving it exists in the space between public spheres and systems, where, broadly speaking, it is part of the underdescribed transfer of discursively developed public opinion and will into the political system. Meadowcroft (2004) has termed this middle zone the 'meso' level of

political interaction. In this position, NREM functions as part of the network of sluices and filters that Habermas (1996a) has described as regulating and directing flows of power and influence between the two tracks of his deliberative model, and NREM can also act as a bulwark against illegitimate systems' incursions into the lifeworld, especially in areas of social and environmental concern.

Specific NREM processes can further be described according to particulars of the context they take place in, beginning with the particular function they are tasked with. This will have implications for the scope and end goals of processes. As well, the structure of the process will be tailored to obtain information and perspectives relevant to the nature and scope of the problem at hand, to clarify the interests of those affected, to address any relevant legal and policy contexts, and to meet whatever time constraints there may be. Some functions, such as environmental assessment, come with their own existing structures and legally defined scope, while others may be mandated but have more freedom to determine their own scope, direction, and procedures, and still others may be free to determine their own course entirely and even change the function performed as deemed appropriate in the course of the process. In some instances, part of the NREM process' mandate is to establish a new legal context, such as in some community-based land-use planning exercises. There is a wide range of NREM functions and a diversity of ways that various functions can be performed, and determining functions and methods is clearly important to the self-understanding, organization, and operation of specific NREM processes.

NREM processes can also be differentiated according to the sector(s) of society involved and the nature of their interaction with relevant segments of the public. In some cases

stakeholders granted input to the process are tightly predetermined, while at the other end of the spectrum some processes may be open to participation by anyone self-identifying as having an interest in the outcome. From a deliberative democratic perspective, participation should be as inclusive as possible, but in some cases this may mean resorting to representative mechanisms such as random selection from a population or deliberate selection aiming for a range of demographic, perspectival, and/or interest representation. Methods for engaging the relevant public are also quite varied, but a deliberative approach would suggest favouring as many and as diverse a set of venues for discourse as possible.

NREM processes can further be distinguished according to which aspect(s) of the environment are the focus of the issue at hand. Various sectors have experimented with particular approaches and methods, and thus have a store of experience that can be drawn on relevant to that specific sector. This can of course lead to better practices or it can tend to hold NREM hostage to stagnated management tools and approaches, but it is sensible that specific processes should look to outcomes and assessments of previous NREM experiences in their sector in order to build on strengths and avoid weaknesses.

While there are other differentiating criteria that could also be discussed, I will end with consideration of the concept of relative strength, which Habermas uses as a measure of the ability or authority to finalize and implement the outcome of a NREM process. Residing as they are in the meso level between weak and strong publics, NREM processes could be considered quasi-strong, with the precise level of strength depending on contextual factors. For example, some NREM functions are from the outset defined as advisory, others are tasked with coming to an outcome that will be legally mandated. In one sense the more closely connected they are

to the political system the stronger processes would be, but this exists in tension with the

above observation that too close a connection risks capture by the system, in which case NREM

cedes its strength.

Arnstein (1969) developed the influential concept of a ladder of citizen participation

that starts with strategic manipulation on the part of established power holders (serving

political or economic interests), and ends with full citizen control (presumably serving the public

interest). While this is a different context than she had in mind, the ladder suggests a useful

way of thinking about the strength of participatory processes, namely that it does not

necessarily remain fixed throughout the process but can be pushed to higher levels from within.

The strength of public discourses in deliberative democracy varies according to their success in

developing and articulating clear public opinion and will; governments or administrative

systems risk undermining their own legitimacy if they ignore the clear outcomes of discourses

that have been conducted publically and are widely regarded as legitimate. The same is true of

NREM processes. A process may start out tasked with simply identifying alternatives or

providing advice, but it may end up developing an outcome that is publically regarded as

rational and legitimate and that hence compels the approval of the 'strong' body. From this

perspective, deliberative democratic NREM processes should be motivated to conduct

themselves ever more publically, to be ever more inclusive, and to tap into and provide for

communicatively sound venues for discourse. Recalling the theory from previous sections, in

doing so they will be able to generate increasingly valid and democratically legitimate

outcomes, and this in turn will enhance their relative strength.

Finally, following how I have construed deliberative democracy, it is important that NREM processes be considered part of an ongoing process of discursive contestation. Usually we think of such processes as delimited in time and space, and of course in one sense they are, but more importantly they also exist in a context of ongoing discourse in public spheres and within systems, as will be discussed below. Identifying how they pick up from and contribute back into these discourse is an important aspect of locating NREM processes within deliberative democracy, and ensuring that this connection to ongoing discursive contestation is publically clear is vital to its potential for developing rationally acceptable outcomes, as well as for fostering the learning within society discussed earlier.

2.5.3 The Tasks of Deliberative Democratic NREM

Given the great diversity of NREM processes, it is not possible or helpful to construct a rigid model of how NREM ought to function in the context of deliberative democracy, rather in the remainder of this chapter I develop a framework that relates the various concepts explored so far in understanding deliberative democratic NREM. In this framework, three general dimensions of democratic responsibility or opportunity can be distinguished – internal to the process, from the process towards systems, and from the process towards the public sphere. Contextual factors will determine which dimensions are the primary focus for particular NREM processes, but even in cases where process tasks are specifically oriented towards one area there are opportunities to fulfill some democratic tasks in the other areas as well. Looking at NREM in relation to these three dimensions provides a way of conceptualizing the roles and potential responsibilities of deliberative democratic NREM processes.

2.5.3.1 Establishing Conditions and Venues for Internal Discourse

In their function as sluices and filters for public opinion and will on their way to the

political system, NREM processes not only detect and pass on, but also rationalize, evaluate,

condense, and suggest action responses to alternatives identified in public discourses. This

should be done communicatively, by which I mean on the basis of good information,

considerations of validity, convincing arguments, and the like. There are many ways that this

work can be done, but the bottom line is that conditions must be established where the force

of better arguments (i.e., those based on more complete information, sounder reasons, and

appealing to a more general interest) can be recognized. This is often accomplished by

establishing venues where a core group of stakeholders or varying ranges of representatives of

those affected can present their positions and arguments, or ones gleaned from public

discourses, for collaborative critical examination. It is true that these sorts of venues, especially

when structured with relatively rigid rules for rational argumentation, can privilege expressions

from some groups and exclude or discount those of others (Young, 1996). However, there is no

reason to restrict discourse to the quasi-legalistic form that is often used in NREM.

Argumentation can be rudimentary, and if conditions are prepared appropriately a wide range

of presentational styles, including, for example, storytelling or artistic expressions, can

contribute to discourse. As much as possible, discourse within NREM processes should be

integrated and mixed – occurring in a variety of sorts of venues, accommodating a range of

styles, and drawing in a range of differently situated participants from across affected segments

of society (Hendriks, 2006). Recalling the description of discourse I have been using, in its most

basic form it is simply about identifying and exploring alternatives, attending to reasons and

arguments that may support their validity, and employing some framework for evaluating

them. Rudimentary forms of discourse in particular NREM processes may only undertake some of these aspects at a time and may be able to do some better than others, but the point is that they should seek to instantiate these components of discourse in their basic operations.

The structural and procedural conditions of discursive opportunities should be informed by the idealizations implicit in communicative action. The argument for why these idealizations are appropriate for democratic processes has already been made, so I will only briefly comment on how they may be applied in NREM contexts.

Inclusivity will depend on contextual conditions, but within whatever bounds are defined for the process it should aim to maximize the interests, perspectives, and arguments included from stakeholders, those affected, and from public discourses. As mentioned above, this often will mean identifying key stakeholders, interests, or perspectives to be included, or processes may have the flexibility to open their discourse to anyone self-identifying as having an interest in the outcome. Inclusivity may also mean being attentive to the experience and outcomes of other NREM processes that have confronted similar topical or sectoral issues, or that have connected with similar public discourses or aspects of the political-administrative system, and in this sense NREM can be thought of as a network of NREM processes that should itself be a platform for learning. Part of inclusivity also means reconnecting with expert cultures and drawing input from traditional knowledge complexes as appropriate, both of which are often especially relevant in environmental contexts, and NREM has long if not always positive experience with both (Baber & Bartlett, 2007). As Fischer (2009) describes in detail, the role of experts in participatory and deliberative democratic processes is often underdeveloped in democratic theory and yet, especially evident in NREM contexts, it is vital to the quality of

deliberative processes and outcomes. I would also suggest that, where appropriate, input should also be sought from relevant policy professionals within the political-administrative system. Their input is not sought because they have some automatic greater authority, but rather because they may have valuable information and insights that could improve the rationality of the process' discourse. As well, if some of the NREM process' output will be directed towards the system for implementation, input from individuals within the system may be helpful in suggesting how best to frame it to enhance the chances it will be properly attended to and implemented by the system.

Publicity is important for achieving democratic legitimacy as well as ensuring inclusivity, and NREM should be conducted as publically and transparently as possible. In many NREM contexts this will mean fighting against corporate and political interests that seek to limit access in order to preserve power and economic advantage.

Communicative equality may require, for example, providing funding to participants or otherwise trying to equalize opportunities for accessing and interpreting information and for constructing arguments and responses. It also means respecting participants' preferred modes of presentation and argument as much as possible, and it may require increasing flexibility regarding timelines to allow for the equal participation of involved citizens and organizations.

Honesty and authenticity relate to individual dispositions and so cannot be prescribed, but discursive conditions should establish mutual trust and respect in a safe environment where participants can more comfortably put themselves in the vulnerable position of truly disclosing their desires, fears, beliefs, and preferences. This includes avoiding, softening, or at

least not relying primarily on the adversarial sort of argumentation that is part of what Young (1996) and others find potentially exclusive in deliberative democracy.

Absence of coercion and recognition of the better argument are controversial conditions for discourse, in large part because they are difficult to approximate in actual practice. The notion of reducing coercion and avoiding social position and power influencing how arguments are evaluated by bracketing out status, affiliation, or experience and expertise prior to entering dialogue is problematic because it is impossible and because it is part of the normative rightness aspect of validity and rationality. For example, in examining a perspective on some arcane aspect of ecology, judgements as to its validity will and should be influenced by the qualifications of the person presenting it. At the same time, arguments ought not be regarded as convincing merely on the basis of identity characteristics of the presenter; experts of all sorts have been heavily implicated in decisions and plans that have led us into environmental crises. This suggests that in the more formalized setting of a NREM process' internal discourse there will need to be mechanisms that can demystify expert and traditional knowledge claims so that they can be understood and their validity can be examined and evaluated by non-experts and those outside the particular knowledge culture. This might take the form of dialogue among experts in the presence of other participants, and this may connect to the above notion of providing funding so those without access to expert cultures can equalize their communicative rights by retaining their own experts. In the case of traditional knowledge complexes, this demystification may take the form of extended ethnographic research in which traditional knowledge holders and other participants are assisted in communicating across cultural boundaries. There are other specific approaches that can be

taken, but the point is to try to bring the supporting bases of alternative perspectives to the fore in a manner that they can be understood by all participants enough to support mutual recognition and facilitate some collaborative evaluation.[16] If the process is more or less inclusive and focus is maintained on understanding the nature, implications, and supports of positions advocated by all who present them, then significant progress will have been made in bypassing some of the effects of power that will be present and towards allowing the better arguments to be more convincing to participants.

Depending on context and aims, not all NREM processes result in the articulation of some specific decision or recommendation. However, the result of their internal discourse should lead to at least the identification of alternatives together with their supporting arguments and foreseeable outcomes. This much is necessary for enriching public discourses and providing advice to decision makers as discussed below. In most cases it is expected that NREM processes will also provide some evaluation of alternatives, either in a ranking of preferred options or in the identification and elaboration of one alternative that has been seen as rationally acceptable to participants. It should also be borne in mind that not all, or even most, of a NREM process is necessarily discursive. Often discursive input is sought for certain aspects of the problem at hand while other aspects may be carried out in an administrative fashion, and this may be the case for preparing final reports and recommendations. However, from the deliberative perspective I have been taking, forms of discursive engagement should be

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[16] Fischer (2009) explores a wide variety of ways the input of experts may be meaningfully included in public deliberation and demonstrates that it is a far from straightforward task; however, the details of this issue are beyond the scope of my discussion here where I am aiming to outline the general nature of the tasks deliberative democratic NREM ought to attend to.

central to informing the rational aspects of identifying perspectives and interests, evaluating

validity, and assessing arguments.

2.5.3.2 Tasks Oriented Towards the Public Sphere

In the usual legitimate-law-generating reading of Habermas' two track model and given

where I have suggested NREM is located in it, the relationship between NREM processes and

the public sphere is primarily about sensing and distilling public opinions that exist as outcomes

of public discourses. This can be accomplished in a variety of ways, but is most commonly done

by seeking input from the public in ways that attempt to be representative. If, being inclusive,

more or less all positions and perspectives relevant to the issue that are present in public

discourses are taken in by the process, it must of course in its internal discourse evaluate them

and identify or construct that which is more valid. However, this can be criticised as being

prohibitively costly in terms of time and energy, and risks giving voice, even if only temporarily,

to the more ridiculous conclusions that circulate in networks of public communication. I have

two responses. First, if the process can afford the time and energy and if its internal discourse is

sufficiently critical, then we would expect that the ridiculous would be revealed for what it is

and everyone would be better off for it. On the other hand, NREM processes do often operate

with serious resource constraints, and in such circumstances they should aim to draw in

content that has been pre-sifted and somewhat rationalized by public discourses – that is in

fact a primary reason for deliberative democracy's emphasis on public discourse in the first

place. Of course there is the risk that in trying to focus on only the already more validated

positions the NREM process will end up cutting itself off from input, especially from subaltern

groups and discourses already marginalized in wider public discourses, that could contribute to

novel and/or more rational outcomes. This highlights the vital importance, as described earlier in sections 2.4.2 and 2.4.3, of NREM processes critically attending to the meaningful inclusion and efficacy of counterpublics and the perspectives and interests articulated in their discourses.

In any case, NREM processes should consider that part of their basic democratic function is to establish mechanisms that tie them into the flow of public discourses in order to pick up problems and alternative solutions that have resonated and circulated through the networks of public discourse. Here civil society can play a role as the organizations that comprise it are already active in public discourses, and they serve as sites where positions and arguments are accumulated such that clusters of public opinions can be identified. Expert and traditional knowledge cultures can also assist in advising as to which positions and perspectives are more likely to be supportable. The traditional media, although becoming increasingly partisan, divisive, and compromised under the dominance of a few mega-corporations, can be used to identify the state of public discourses, as can newer forms of media and public discourses that exist online.

However, an often neglected aspect of the relationship between NREM processes and public spheres is the ability to contribute directly to the rationalization of public discourses. As discussed earlier, public discourses carry an ambivalent potential for individual and social learning and transformation, and NREM processes can play a vital rationalizing role in this. As NREM connects with and demystifies or interprets expert and traditional knowledge cultures it can feed the results directly back into public discourses, thus helping to reconnect these cultures with everyday communicative practice and ameliorating somewhat the impoverishment of the lifeworld. This is true also of the outcomes of the process's own internal

discourse, which can be injected back into public discourses. Thus there is potential for a rich

feedback loop whereby NREM processes pick up pre-filtered content from public discourses,

further communicatively rationalize it in internal discourse that includes input from expert and

traditional knowledge cultures, return the improved content back into the communicative flows

in public spheres where it can increase the rationality of public discourses, and thence be

picked up again into NREM processes where the cycle begins again.

This is especially relevant when recalling the vital importance of a vibrant green public

sphere for directing us towards increasing ecological rationality, or sustainability, in governance

outcomes. Engaging with and contributing to the rationalization of green discourses presents a

powerful opportunity for NREM processes to contribute to the learning and transformation that

is necessary to put us on a sustainable trajectory. Importantly, this view also challenges claims

that when NREM processes fail to arrive at specific (often intended as consensual) outcomes or

are unsuccessful in pushing decision makers to implement their preferred alternatives, that the

process as a whole has failed. Instead I would suggest that such 'product' outcomes are often of

lesser importance in the big picture when compared with the potential for NREM to contribute

to more informed and ecologically rational public discourses, which themselves carry the

potential to remake the lifeworld to contain more valid and legitimate ecological perspectives

and understandings – in other words to contribute to the development and distribution of

increasingly ecocentric perspectives within the lifeworld. In so doing, NREM can help in

identifying areas of the lifeworld that have been deformed due to one-sided cognitive-

instrumental rationalization or the incursion of systems integration guided by systems'

imperatives and the media of money and power. And in providing public discourses with

feedback where these deformed ways of perceiving and understanding have been replaced by more valid understandings supported by sound information and more convincing arguments, the outcomes of NREM processes can contribute to the communicatively rational reforming of distortions in the lifeworld. Of course this potential for social learning and transformation is not realized in one instance or through one process, but NREM can play a part in directing and improving the quality of learning that is an ongoing and contested process in society.

Earlier I mentioned discomfort with the placing of economic considerations on a par with social and ecological ones in definitions of sustainability. Of course we, in a real sense, live off the economic system in that it mediates our access to much of the basic life support provided by ecological services and processes (Elling, 2008). However, reflecting effects of colonization processes whereby systems' imperatives and rationality have become inscribed in the lifeworld, depictions of sustainability are often unduly weighted in favour of economic system considerations to an extent that social and ecological sustainability are in fact threatened. With this in mind, a key task of NREM must be to identify and critique economic ideology in public discourses such that an actually sustainable balance can be described among the three pillars of sustainability. As this is fed back into public discourses it can help to identify and correct distortions in the lifeworld wrought by economic system colonization, such that society's understanding of sustainability is advanced.

This feedback between NREM and public discourses in the public sphere can be maintained in a variety of ways, and I would suggest that NREM processes consider developing and carrying out a fulsome communication strategy as a basic component of their democratic work. Beyond making information and process documents publically available, this may involve,

for example, accessing mainstream and alternative media outlets, holding public meetings or

debates, or establishing direct connections with relevant civil society organizations. Whatever

means are chosen, meaningfully connecting back to the public sphere and public discourses

should always be a prime focus of NREM.

2.5.3.3 Tasks Oriented Towards Political-Administrative Systems

The relationship between NREM processes and systems, most generally some aspect of

political-administrative systems, is primarily about the notion of providing communicatively

rationalized steering. Having picked up content from public discourses and further sifted,

evaluated, and improved it in its own internal discourse where preferred alternatives are

identified and supplied with convincing arguments, NREM processes must then seek ways to

pass this on to the relevant system component such that it will be taken up into the system's

decision-making and implementation processes. This is very straightforward in instances where

the process is part of a legal or regulatory process that ties directly into the political-

administrative system, in which case procedures for reporting outcomes are often already

established. However, some NREM functions, for example research, may have no established or

direct connection to systems and that may not even be part of their aims, yet I would suggest

that they consider this part of their democratic responsibility to the extent possible. As

Torgerson (2003) has described, policy analysis within political-administrative systems contains

a discursive aspect that presents an opening to democratic input. By providing input into

political-administrative discourses, NREM can help to combat the functionalist rationality that

pervades the administrative mind and thus contribute to the communicative rationalization of

administrative discourses, by which NREM processes can manage some system steering even if

in an indirect way. As described earlier, the democratic steering of political-administrative

systems presents an opportunity for some steering of the economic system as well.

Whether the connection is direct or indirect, a constructive feedback can be established

between NREM processes and political-administrative systems. Feedback may also involve

multiple NREM processes where one ends up holding the system to account for its handling of

the outcomes of a previous management process, and this also reminds us that in their internal

operations, NREM processes need to be mindful of the successes and failures of other

processes. Whatever the particular context, considering democracy as a process of ongoing

contestation suggests that maintaining this feedback between NREM processes and system

components is a vital part of a deliberative democratic approach to NREM.

**2.5.4 A Conceptual Framework for NREM through the Lens of Deliberative
Democracy**

The understanding of NREM described above is presented graphically in figure 2.1

below. The first dimension of this framework stretches from the lifeworld to the NREM process.

The two broad arrows connecting the NREM process and the jumbled network of discourses in

public spheres represents the feedback loop whereby public and NREM discourses inform and

contribute to one another's rationalization. The arrow from public spheres to the NREM

process represents the drawing of public opinion and will into the process, while this together

with the return arrow also suggests that legitimate public opinion and will can be developed

through a cyclical dialectic between them. Presenting public spheres embedded in the lifeworld

emphasizes that they draw from it in their communicative practices, and also that learning

achieved in/through public discourses can become inscribed in the lifeworld.
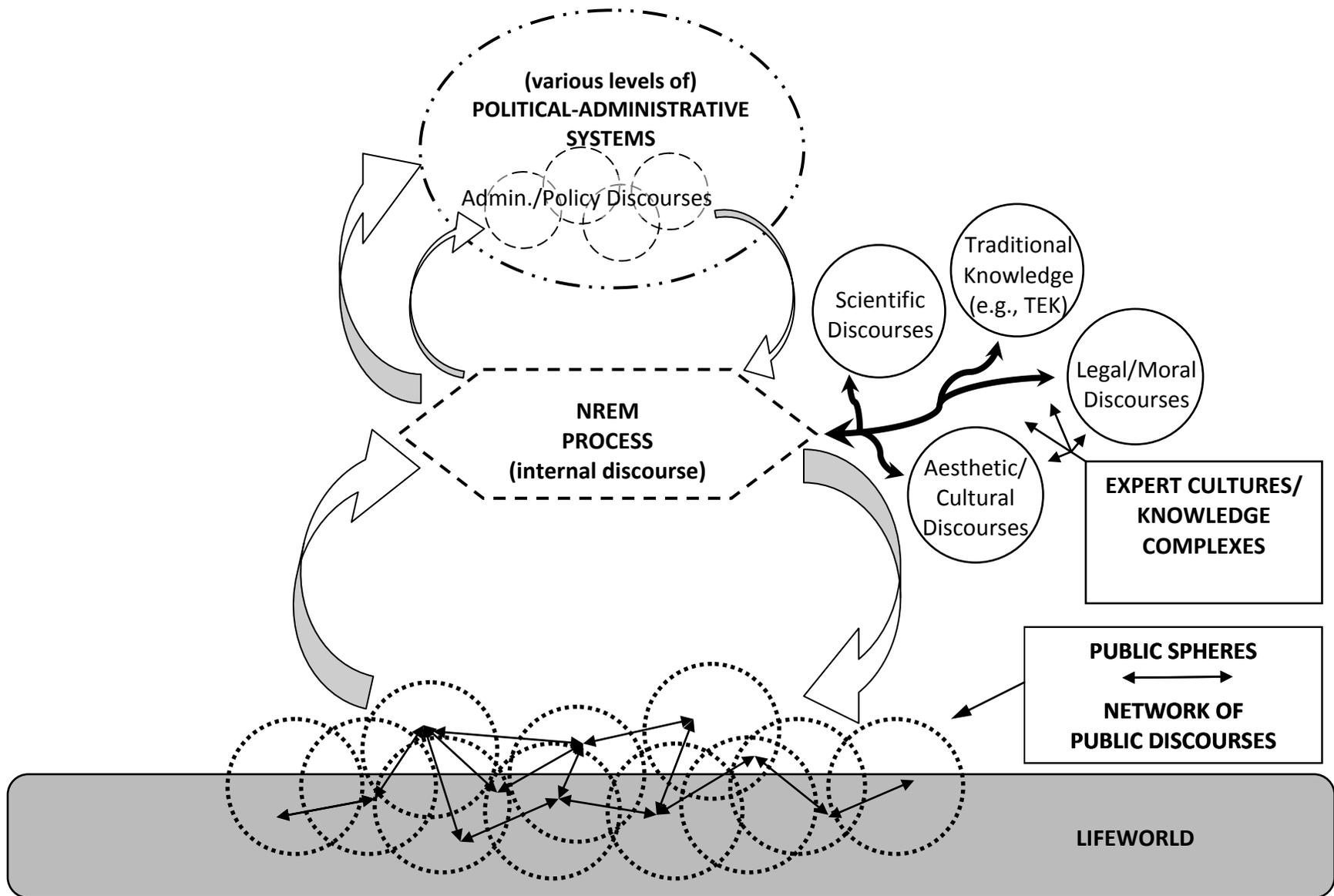
Figure 2.1. Natural Resources and Environmental Management in a Deliberative Democratic Governance Regime.

The second dimension concerns the internal operations of the NREM process and is represented by the middle area of figure 2.1. "Internal discourse" is included in the NREM process hexagon to indicate the import of establishing structural and procedural conditions informed by the communicative idealizations discussed earlier. In this dimension we can see the input drawn from expert and traditional knowledge cultures, which, as it is incorporated into the NREM process, is also connected to the communicative practices of the lifeworld and to discourses within the political system. As above, the process also draws input from public discourses, and, as represented by the arrow from administrative/policy discourses to the NREM process, it can seek input from the political-administrative system. The arrows from expert cultures are double-headed and there are return arrows from the NREM process to public and systemic discourses, and this represents the recursive flows of information, perspectives, and understandings among all of these that occur as part of the operations of the NREM process.

The third dimension in figure 2.1 relates to connections between the NREM process and the political-administrative system. Administrative and policy discourses are identified within the system in recognition of the fact that systems do operate with some discursive components. The arrows connecting these discourses with the NREM process represent a recursive feedback similar to that between the process and public discourses; however, in this case the input from systemic discourses is not democratically legitimate public opinion and will as it (potentially) is in the case of input from public discourses. Nevertheless these discourses do offer potentially valid information and perspectives, and they also represent discursive openings within the system where the NREM process can inject communicatively rationalized

outcomes that have incorporated legitimate public opinion and input from expert cultures. The

larger arrow going from the NREM process to the political-administrative system represents the

communicative steering that the process can exert on the system. Within the model of

deliberative democracy, this steering exists as part of the process of transferring legitimate

public opinion and will from public discourses to the political system. This also makes the point

that this conceptual framework is modeled on the 'official' circulation of power that Habermas

spoke of where power flows from the public to the system, and suggests that NREM presents

an opportunity to reverse the 'unofficial,' and normal, pattern of power flows, and (potentially)

compel the system to respond to democratically legitimated and rationally validated steering.

Such a reversal of power would seem essential in many NREM governance contexts where, as

discussed previously, the usual governance regime has been unsuccessful in directing us along

sustainable trajectories.

2.6 Chapter Summary

Communicative action, rationality, and discourse are the basic concepts that Habermas

uses in explaining his theory of social organization and model of democracy. Communicative

action is the linguistically mediated process of coming to mutual understanding with another

and is argued to describe the normative goal of language use in general. Habermas identifies

three criticisable validity claims (implicitly) raised in every utterance – claims to propositional

truth, to normative rightness, and to subjective truthfulness. Rationality is defined

communicatively as orienting one's speech towards the satisfaction of these validity claims,

including via rational discourse where reasons supporting claims are collaboratively explored.

Rationality is thus multidimensional and necessarily intersubjective. In communicative action,

certain unavoidable-yet-counterfactual idealizations obtain, namely that the encounter is: fully inclusive regarding participants and information; equal in terms of communicative roles and responsibilities; free from deception, illusion, and coercion; motivated only by the desire to reach understanding; and structured such that only the force of the better argument is recognized. Thus, communicative action and rationality are fundamentally learning processes where preferences may be reordered and understandings and perspectives transformed.

Habermas' social theory describes society as lifeworld and systems. Communicative action draws from the lifeworld of broadly shared understandings, beliefs, etc. for communicative resources, and is the means by which the lifeworld is symbolically reproduced or carried forward. In modern times, the lifeworld is increasingly problematized and subjected to rational scrutiny, but this has historically been under a one-sided conception of rationality as cognitive-instrumental, which has resulted in lifeworld deformations. Systems are necessary to maintain social integration and cohesion in modern complex societies, but their functionalist rationality is blind to normative content and so systems' integrative functions require communicatively rational oversight and steering. However, systems have become largely uncoupled from communicative connections with the lifeworld, and forms of systemic integration have colonized areas of the lifeworld and distorted it so as to normalize functionalist rationality in areas that ought to be integrated communicatively and contain normative content. Yet, the potential for rationality inherent in communicative action means that as the lifeworld is reproduced communicatively, it may be recharged, enriched, and distortions can be ameliorated.

Habermas' model of democracy consists of two deliberative tracks. One track is made up of discourses in the public sphere (or spheres). Habermas' discourse ethics suggests that public discourses, insofar as they are communicative, will tend towards identifying or developing perspectives and understandings that are increasingly generalized and appeal to the general public interest, and that thus are capable of articulating what could be considered democratically legitimate public opinion and will. The second deliberative track refers to discourses in the political-administrative system where decisions, policies, and laws are finalized and implemented, and the idea is that the political system's actions can be informed and steered by democratic will generated in public discourses. However, Habermas' model leaves underdeveloped the process of how the outcomes of public discourses are transferred to the political system in such a way as to ensure they will be appropriately taken up.

I have suggested that NREM processes be thought of as residing at the meso-level of political activity between the public sphere and the political system, as sluices and filters facilitating the flow from public discourses into the political system. This leads to a normative conceptualization of NREM that consists of three dimensions. First, NREM processes should establish conditions, informed by the communicative idealizations, conducive to internal critical discourse that can take up and rationally consider outcomes of public discourses and input from expert and traditional cultures in carrying out the process' work. Second, NREM processes should be oriented towards public spheres in order to sense and pick up input from public discourses, and also to return the process' deliberative outputs, sound information, and learning back into pubic discourses. This latter task establishes a vital feedback loop that can contribute to the rationalization of public discourses and the lifeworld, and hence represents a

social-transformative potential. Finally, NREM should be oriented towards political-

administrative systems to facilitate the successful transfer of legitimate public opinion and will

into the political system, thus playing a vital role in the communicative steering of the political

system, and existing as one of the vital anchors that keep it tethered to the lifeworld.

Chapter 3: Research Approach, Plan, and Methods

3.1 Philosophical Approach

My philosophical perspective on social research, or my inquiry paradigm, is a sort of hybrid – critical-social-constructivism. Critical social science and social constructivism are each regularly identified as worldviews applicable to social research, and hence are often contrasted with one another; however, when paradigms are themselves the object of inquiry and differences and commonalities among them are investigated, the boundaries that demarcate particular paradigms begin to shift and blur (Denzin & Lincoln, 2003). As well, the social sciences are still coming to grips with the postmodern critique of the existence of singular truths, and so we are seeing the development of new and the elaboration of existing basic perspectives on the nature of social reality and how valid knowledge can be derived from it (Lincoln & Guba, 2003). So, while Lincoln & Guba provide a table outlining the different ontological, axiological, epistemological, and methodological assumptions of five major qualitative research paradigms – positivism, postpositivism, participatory research, critical theory, and constructivism – my approach to this research reflected various aspects of the last two.

At its base, social constructivism simply acknowledges that the human mind is involved in constructing meanings of our selves, our experiences, and our world, and that this mind-work is shaped and directed by social values, patterns of relation, institutions, and so on (Schwandt, 2003). A strong constructivism is not really interested in ontological matters, but in general constructivism is associated with a relativist notion of reality (Lincoln & Guba, 2003). As such, constructivist research programs are explicitly contextualized, looking to describe meanings

that exist within particular local communities. However, this relativism (or in the strong case

nihilism) can reduce the scope of social inquiry to ever narrower and increasingly fragmented

communities where we hope to find sufficiently shared lifeworlds to imagine that shared

meanings exist to be investigated – the more we appreciate the complexities of identity

formation within society the less we can investigate and say anything meaningful about society

itself (D. Weinberg, 2008). In this postmodern moment that may be fine for some, but this

moment is also characterized by increasing social diversity and differentiation and an ongoing

disintegration of comprehensive worldviews and widely shared, collectively binding ethics, and

yet we are confronted with collectively responding to vexing social and environmental issues

that are complex, pressing, (potentially) conflictual, and that affect wide swaths of society. It

seems to me that social science needs to be able to provide some insight and guidance here

beyond mere descriptions of super-localized understandings that, being relative to the

particular social reality that formed them, cannot be compared or contrasted or elaborated on

in order to suggest broader meanings that might be relevant to society writ large. A pure social

constructivist position is wary of any normative content and so it is difficult to see how it would

be useful as a basis for my research aimed at better understanding and supporting democratic

functioning, which is all about navigating, developing, and enacting norms within society.

For me, this is where the perspective of critical social science is helpful. Drawing on

critical theory's diagnosis of oppressive social realities we are able to take a normative stance in

favour of justice and emancipation. Hosking (2008) develops a "critical relational

constructionism" that collapses the separation of inquiry and intervention by recognizing that

the explication of processes of social construction simultaneously opens space for alternative

constructions, and so she posits that inquiry (is/facts) and intervention (ought/norms) are

intimately intertwined. Eckersley (2004) similarly describes a research paradigm of critical

constructivism that starts with general constructivist premises but is overlaid with a criticality

so that in research socially conditioned constructions of reality are identified and described, but

also critically examined to uncover their rationality and potentials for domination and

emancipation. Criticality here has both normative/transcendent and factual/imminent aspects;

the normative critique of social constructions and their effects involves assessing them relative

to context-transcendent ideals of justice, freedom, and equality, while the process of immanent

critique assesses the factual effects of social constructions according to the presuppositions

they are built on and the ideals they articulate, and so it involves identifying the presence and

effects of deception and illusion. So while recognizing that the meanings described in research

are socially constructed, we can push our analysis further to uncover meanings that may

contribute to or may resist oppressive realities, and even attempt the far from straightforward

task of describing social structures and patterns of (power) relation that contribute to or resist

the construction of meanings linked to experiences of oppressive social realities (Cooke, 2005;

Sayer, 1997). While always locally and temporally bounded and regarded as tentative and

revisable, such analyses can also help guide groups engaging in emancipatory social action,

policy making, and democratic decision making.

There is a potential conflict between critical and constructivist perspectives regarding

criticalists' tendency to generalize and to develop or rely on large theoretical explanations while

constructivists tend to restrict conclusions to the group they were derived from. Here I find

critical theory's emphasis on historical context helpful as it focuses our attention on how

various groups' histories are both unique and shared. While it is true that socially constructed

understandings are valid within the context of their construction, it is also true that vital

aspects of that context may be more or less widely shared and so some generalization may be

valid too.

Bohman (1999, 2002) suggests this tension between comprehensive social theoretical

explanations and insights revealed in particular concrete practices is better understood by

allowing pragmatism and critical social science to inform one another. Comprehensive critical

social theories, such as Habermas', generally aim to link explanation and criticism and so have

both explanatory and normative aspects. As well, they are developed by drawing in a diversity

of social theoretical explanations, which each have their own epistemological assumptions and

methods for social inquiry. Research seeking to validate the normative thrust or explanatory

power of such theories faces the problem of which assumptions to take and which methods to

employ to generate valid knowledge under those assumptions, and it can also place the

researcher in the uncomfortable position of claiming superiority for their theoretical

understanding prior to hearing the voices of those agents engaged in the practices they are

researching. Bohman (1999) offers a pragmatic response – that there are many different

theories and methods that provide critical insight and no one way to engage in social inquiry,

and thus the success of large-scale theoretical explanations can be thought of as supported by

their fruitful integration of diverse sub-theories and by their verification under a wide range of

empirical evidence derived from diverse approaches and methods. Given the commitment of

pragmatism and critical social science to democratic forms of social inquiry, verification of

explanations and critiques must rest with a form of public reflection involving those

participating in the sorts of practices critiqued. To me this does not mean that valid criticism must be seen as correct by the actors the analysis of whose practice it was derived from, rather it means that explanations and critiques are related to practical situations and so enter into ongoing public discourses where the validity of the criticized social norms, structures, and practices is democratically contested. General theories thus should not be thought of as attempting to be comprehensive in the sense of describing the one or the best explanation of complex social realities, rather they provide general interpretative frameworks that, if successful, can open up new social action possibilities that can themselves be validated through processes of ongoing public democratic inquiry.

Bohman (1999, p. 475) concludes that, considered pragmatically, the goal of critical inquiry is thus to initiate and contribute to public processes of self-reflection such that agents can come to perceive their circumstances differently, "especially when mounting problems indicate that some change is practically necessary." In the context of my research, as described in chapter 1, environmental problems are indeed mounting and the failure of existing environmental governance regimes to guide us towards sustainability suggests that some change is indeed necessary. The general theory I have appropriated from Habermas and used as a basis for conceptualizing NREM served as the interpretive framework that guided my research. The empirical case study was not undertaken to confirm or refute the theory, rather it was an investigation into some of the ways of perceiving possibilities for action within NREM practices that my conceptual framework calls attention to. Secondarily, it also provides part of the "wide range of empirical evidence" that general social theories rest on, and part of that was examining the fruitfulness of my conceptual framework for describing and analyzing an actual

NREM process. And finally, this philosophical approach also suggests that insights and criticisms I make should be directed back into discourses related to democratic NREM, which for me consists, for example, in pursuing publications and presentations for appropriate academic and stakeholder audiences as well as providing feedback directly to participants in the case study. In the end, I consider this research to be primarily reflective. I began by developing a theoretical orientation, and with this in mind explored an extended period of land use planning in Manitoba, which involved delving into history for important context and constructing a narrative of the planning. This then allowed me to reflect on the implications of my conceptual framework and the historical context for understanding the case, as well as reflecting on what this understanding might suggest for the underlying democratic theory, the practice of NREM, and the role of Canadian Indigenous peoples and rights in it.

3.2 Research Design and Strategy of Inquiry

This leads to my chosen strategy of inquiry, the qualitative single case study. Given that I was investigating democratic NREM, a complex social phenomenon, a qualitative approach was appropriate (Creswell, 2014). While I started from a large-scale theoretical orientation, I was looking to identify and interpret knowledge and understandings in the context of research where the general questions and areas of investigation were guided by my theoretical orientation, but recognized that some avenues of inquiry and my specific findings would be emergent in the course of the research. This required taking an interactive, adaptive approach, allowing time and space for specific lines of inquiry to be added, abandoned, and modified within the broad parameters of my research purpose in response to contextual factors or unexpected insights encountered in the course of research, which is common in research in

complex and conflictual contexts such as environmental governance (Nelson, 1991). This approach also allowed me to adjust the focus of aspects of my research to attend to specific issues and concerns that participants identified as particularly important, which democratized my research to some extent. As well, the conceptual framework presented in chapter 2, section 2.5.4, is very broad and in its three primary dimensions suggests more relationships, tasks, and nuances than could be investigated in detail in this research. So while I approached the case study with a broad scope in mind and endeavoured to construct a fulsome narrative of its activities, the precise scope and areas of focus were determined in the course of the research and responded primarily to input and emphases from participants in research interviews and details gleaned from reviews of available documents.

My strategy of inquiry within the qualitative approach was the case study, and I have already indicated some of the reasons this fit my topic and philosophical approach. In addition, Yin (2009) presents the case study as particularly suited to understanding complex social phenomena because of its intense and deep focus on a bounded instance and its accommodation of a wide array of data collection and analytic techniques. This is an appropriate strategy for the critical-constructivist perspective I have described since it allows the researcher to identify and describe meanings within the context of their construction while also attending to how these meanings function in terms of promoting or inhibiting freedom, equality, and the like. Constructivism directed my focus to the formative context and interdependent complexities of social relations within the case, and the normative stance of criticality allowed me to simultaneously take a broader view, to consider not just how social reality was understood by participants within the case but also how alternative understandings,

drawing especially on insights from a broader historical context, revealed forms of domination and injustice that were normalized in NREM policy and processes in Canada, and Manitoba in particular.

Case studies may not be fundamentally about generalizing or theory building on their own, yet that is an appropriate, and to some extent inevitable aspect of case study research (Flyvbjerg, 2006). Case study researchers, along with readers of their accounts, all come with particular background understandings that condition their understanding of the case, and knowledge gained through the case in turn shapes and refines these same background positions (Hays, 2004; Stake, 2003). As well, it is worth noting that theories and theoretical concepts generally first emerge inductively from specific observations, or cases, and that further, related case studies are a primary means by which theories and concepts are validated and refined (Flyvbjerg, 2006; Hamel, 1993). Case studies can suggest social complexities in need of further investigation, and can help establish the limits of a theory's generalizability (Stake, 2003). So while a case study approach is first of all about describing contextualized intra-group meaning, it is also able to contribute to the broader goals suggested by a critical perspective of identifying meanings unperceived by some or all of the group and of contributing to our general understanding of how human societies can become more free and equitable (Comstock, 1994). Further to the extension of case study results beyond the case's context, Hamel (1993) suggests that there is generally an 'object of study' distinct from the case itself, Merriam (1988) describes a case as the unit of analysis for a chosen research problem, Stake (2003) distinguishes the 'instrumental' case study where the primary interest is to gain insight into an issue or to refine a theoretical generalization, and Schrank (2006) points out that most often

case selection is based on it being illustrative of a phenomena of interest. As well, Hays (2004) describes how defining and bounding a case can be tied to the research questions being asked and objectives pursued. This line of thinking fit well with my research aims, where at one level my object of study was the democratic potential of NREM processes and my case study was chosen as an illustrative example for analyzing this 'object.'

3.3 Case Selection, Characterization, and Personal Connections

My selected case was thus intended to provide opportunity for exploring the three dimensions of my conceptual framework, and a case that presented a wide range of these dimensions in action was sought to increase the chances that I would be able to find especially fruitful lines of inquiry to follow. Therefore, case selection criteria included a NREM process: with a significant internal discursive component; that represented an attempt at inclusive and egalitarian public participation; that included diverse connections to civil society and public discourses; and that was intended to provide some steering to one or more levels of the political system. It was felt that a process that was relatively large scale and comprehensive would provide the best fit with these criteria, and British Columbia's Commission on Resources and Environment and Ontario's Lands for Life process were scanned as possible cases. However, both were complete by the late 1990s, while Manitoba's first attempt at large scale land use planning was still ongoing.

As a result, the case selected was the East Side Planning Initiative (ESPI), succeeded by the Wabanong Nakaygum Okimawin (WNO), which at the outset of research was an active comprehensive land use planning process on the east side of Lake Winnipeg, Manitoba, that met the above selection criteria reasonably well. In addition, this was a particularly exciting

research opportunity because it: covered a wide area of pristine boreal forest identified as globally important; involved many diverse stakeholders; had provoked some intense and varying views among participants; represented the potential to radically alter the pattern of relations among First Nations, industry, and the province; has been given scant academic attention; and as discussed at the end of this section, was situated in an area I have some personal connection to. The case was further characterized by multiple past and ongoing planning processes in the area that have dealt with issues of resource and environmental management and that have had varying degrees of direct relation to the ESPI and WNO processes. For example, several First Nations communities in the area are founding partners in Pimachiowin Aki, which is seeking to have their traditional territories jointly designated as a UNESCO World Heritage Site, and this process has entailed resource and land use planning activities. As well, Manitoba Hydro was actively engaging communities in the region for part of the period of the ESPI and WNO regarding plans for a transmission line through the area, and the Manitoba government pursued planning for an all-season road network in the mostly remote region off and on throughout the case study period. However, my focus was on the ESPI and WNO, with consideration of some of the other planning included only insofar as they impacted the ESPI and WNO processes or informed the general context of the case.

As suggested in the prior discussion of the interactive and adaptive approach taken, my research evolved considerably after it was begun. Initially it appeared that the WNO was simply the continuation of the ESPI process under another name, but early on it became clear that for many of the participants these were two separate processes that shared the same geographic boundaries, were supported by the province, and were generally about land use planning, but

whose specific objectives, key actors, and activities were significantly different. As a result, I

present them as separate processes within a single case, which itself is characterized and

bounded by the shared characteristics just mentioned.

In addition, it was apparent from the initial case selection process that the planning area

was populated primarily by First Nations peoples, that there was a distinct First Nations

presence among ESPI and especially WNO participants, and that First Nations interests were an

increasing focus as the planning progressed. My theoretical orientation and approach, as seen

in chapter 2, is founded on generalized notions of sound democratic governance that explicitly

seek to account for and build on diversity and differing perspectives. As such, I considered that

First Nations perspectives and interests brought to the planning processes would be

understood and incorporated, poorly or well, along with those of other participants and

stakeholders, within the frame of the processes' structure and operations, and expected I

would explore this in my research and analyze it following my purposively generalized

conceptual framework. In other words, my initial thinking was that good democratic

governance is simply good democratic governance and it should not matter whose particular

interests are involved, what matters is that governance processes deal fairly with all relevant

interests and concerns regardless of, in fact in spite of the particular identities of those who

advocate them.

However, as I conducted initial interviews and began the detailed document review,

described in the following section, it quickly became clear that the processes had been

restructured and their focus altered significantly in direct response to First Nations participation

and interests. In an early research interview I was challenged to seek out and hear the voices

and perspectives of Indigenous participants in the ESPI and WNO, without which it was suggested my account and analysis would be partial and incoherent. As I continued to explore deeper, I came to see that what had transpired in the case was more than a matter of some particular interests competing within the planning processes. At play were differing normative perspectives pertaining to the history of relations between First Nations and Euro-Canadian governments and to the nature and implications of Aboriginal and treaty rights for the conduct of NREM, especially as this history and these rights related to self-government and jurisdiction over land and resources. This realization has been central to my evolving conceptual thinking through the course of the research and is fundamental to how I understand the ESPI and WNO processes.

As mentioned earlier, the case study covered a geographic area that I have some personal connections to, and as the researcher is the primary instrument in qualitative research projects it is important to identify personal connections or characteristics that inevitably shape the data collection and analysis. I have an attachment to the land of the Canadian Shield's boreal forest in this area, having grown up in directly neighbouring territory in Northwestern Ontario, and in my formative years spent considerable time on the land. My hometown was a road-accessible but remote community reliant on resource industries, namely mining, forestry, and tourism, and as such I am aware of some of the challenges associated with this and of the ecological and social consequences of inadequate planning. I also saw firsthand some of the consequences of the poverty and marginalization of neighbouring Indigenous communities, and regularly witnessed racist actions and attitudes towards them. As an undergraduate I completed a B.A. in history with a concentration in Canadian First Nations history, together

with a B.Ed. Following this I lived and worked for six years as a school teacher and principal in one of the First Nations involved in the ESPI and WNO, and this deepened my attachment to the land and appreciation for the local Indigenous population and culture. My time in the First Nation also intimately acquainted me with some of the structural injustices and gross inequities, and the consequences of these, faced by Indigenous people, and convinced me of the need for fundamental changes in the governance structures and economic development of the region. During this time and subsequently I have also spent considerable time travelling through this remote region by canoe, which further convinced me of the importance of caring for the land and of planning carefully for its use. All of this contributed to my case study selection, has influenced how I interpreted and analyzed the data, and conditioned how I related to many of my interview participants and they to me.

3.4 Research Implementation and Data Collection Procedures

Merriam (1988) has suggested that document reviews and interviews are appropriate for and typically used in qualitative case studies, and these were the data collection methods used in my research as outlined below. Interviewing is a well established means for gathering data appropriate for investigating complex social realities from the perspective of participants, and so is a tool particularly relevant to case studies from a constructivist perspective (Holstein & Gubrium, 2008; Koro-Ljungberg, 2008). Document reviews are commonly used to provide detail and information, reveal some of the variety of perspectives at play in a case, and aid in overall contextualization, all of which are important for constructing the 'revisionist' histories of critical research where the historical contingency rather than inevitability of circumstances is revealed such that space is opened up for the creation of new understandings and social or

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political configurations (Comstock, 1994; Kincheloe & McLaren, 2003). As well, from a constructivist perspective documents can be handled similar to interview transcripts in terms of revealing aspects of social construction processes (Linders, 2008). The following two subsections describe the activities and procedures used in the two sequential phases of data collection for my case study research.

3.4.1 Phase 1

I began my data collection with a scan of documents available on the province's WNO website, which included what had been made available from the ESPI. My plan was to start with this scan in order to construct a basic timeline of key events and identify significant issues considered and activities undertaken, and to use this basic background understanding to help focus subsequent interviews and enable deeper investigation in them. I started with reviewing the minutes of meetings of the three ESPI bodies and the WNO Council, as well as the extensive ESPI Phase 1 final and Phase 2 status reports. However, although there were minutes available for 35 meetings in total, some were missing, many of the documents the minutes listed as attached were not included, and the quality and thoroughness of minutes were uneven, with some recording details of discussions and others only conclusions reached and actions taken. As a result it was not possible to trace the path of some seemingly important developments and debates, and much of the ESPI Phase 2 status report, which was lengthy and detailed, seemed unconnected to what was visible in the available minutes. In addition, it was apparent that the WNO represented a significant change of organization and purpose from the ESPI, but the source and impetus for this change was not clear and information about the WNO all but ceased after the first few years despite its continuation for another five or more years.

As a result, I decided to next conduct interviews with a few key participants who had been involved for significant portions of the case to fill these gaps in data and in my understanding, and to gain a sense of the range of experiences and perspectives of participants in the ESPI and WNO. These first interviews were with: a participant throughout the ESPI and WNO who was a member of prominent committees in both; a representative of a civil society organization actively involved in the ESPI and attentive through the WNO; and an individual who had worked with several involved First Nations in the processes. These participants were identified from the initial document review. While there were difficulties with filling some data gaps, especially for some of the earlier periods given that more than a decade had passed, these interviews were instrumental in building my understanding of the nature of the processes' deliberations, the variety of and conflicts among perspectives at play, and the course, or rather courses they had followed.

3.4.2 Phase 2

Following the initial document scan and key informant interviews, I spent time reflecting on what I had learned so far, made some detailed notes and sketched some initial analytical thoughts, and fleshed out my chronological outline of key events, activities, and considerations. I then turned to further participant interviews. Given what I was beginning to understand, it was clear that the planning processes had not followed a linear path, that some aspects would necessarily remain unclear due to missing data and conflicting perspectives on what had transpired and why, and that the case would not yield fruitful data in some areas that my theoretical perspective and conceptual framework had led me to explore. I considered a variety of ways of re-scoping the case, either temporally or geographically, to make it more

straightforward to explore, describe, and analyze and that would be an apparent better fit with my conceptual thinking. However, in the end I came to see that the ESPI-WNO, from 2000 to 2013 and including significant shifts in organization, focus, and activities, was part of an ongoing narrative that was best understood by examining both processes comprehensively.

3.4.2.1 Interviews

I next turned to further interviews with ESPI and WNO participants to continue building my understanding of the processes, and as this had been recommended by one of my phase 1 interview participants, I focussed first on interviewing Indigenous participants, who included Elders, chiefs and community leaders, local community planners, and others who had participated in various capacities. Research participants also included representatives of environmental and industry organizations, academics, and members of the provincial civil service and ESPI and WNO Secretariat.[17] While over the years many different individuals and groups were involved with the ESPI and WNO and different individuals from the same constituent groups had different experiences and hold diverse opinions and perspectives on the processes, my research participants were purposively selected to include representation from across the range of those involved with and engaged by the processes.

Eighteen individuals participated in research interviews, most of which were conducted from fall of 2015 through winter 2016. One lasted less than one hour and the remainder between one and one half and two and one half hours, and in numerous cases conversation continued after the interview was officially over. Some interviews were also conducted over multiple meetings. Five participants declined audio recording and one interview was conducted

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[17] As discussed below, all research participants chose to have their identities kept confidential, and as a result care has been taken here to describe their affiliations and level and timing of participation generally.

by telephone, in which cases detailed notes were taken by hand. The remainder were recorded and transcribed verbatim. All participants were offered the choice to be identified with some or all of their input or to have their identities kept confidential, and all chose to remain unidentified in my research outputs. In respecting this, participants were assigned random initials that are used to reference input and quotes from individual interviews in the text. Due to the relatively small population of the province and limited number of individuals active in Indigenous and NREM issues, chances are increased that interview participants could be identified even when their input is associated with meaningless initials, especially if multiple citations identified as from the same source may together contain enough information for the source's identity to be guessed. Some participants were explicitly concerned about this possibility since they continue to work in the area and interact with other individuals and organizations whose views conflict with their own and in some cases they were expressly critical of the actions and approaches of other groups and/or individuals. As a result, when quoting or citing material from interviews that include any potentially identifying information I have removed that information; however, in some instances this information is pertinent to the context or the meaning being communicated, for example, it may be important to note that the source was a First Nations chief or a government employee, and in such cases I have simply cited the source as "confidential."

Semi-structured interviews were used as they represent a balance between the efficiency of focusing on pre-established thematic areas and the flexibility to allow interview participants to lead within these general boundaries, and this 'directed spontaneity' was vital to the interactive, adaptive approach I took (Bernard, 2006; Dunn, 2005). My interviews were

loosely structured around the dimensions suggested in my conceptual framework, and whenever possible participants were provided a brief document prior to interviews that described the broad themes I hoped to explore with them, while also encouraging them to head outside of these lines and share what they thought was most important for me to know in order to understand their experience with and perspective on the ESPI and WNO. This 'broad themes' document, included in appendix A, was used in place of an interview schedule to provide loose structure to interviews, but, as seen below, the course of interviews did not follow it directly. When possible I also provided participants with the interview consent form prior to meeting with them, attached in appendix B, and this included a paragraph describing my research topic and purpose. By allowing interview participants to lead and to explore and question my purpose and pre-established themes, as well as jointly interrogating some of my emerging understanding from initial document reviews and earlier interviews, interviews were reflexive in that collaborative interpretation accompanied data collection (Roulston, 2010).

While the interviews were semi-structured in design, they all followed a highly conversational, nearly unstructured course. For many it had been some time since they had been actively involved, and those active more recently had been involved for numerous years. This resulted in interviews that were considerably reflective, where memories were sparked in the course of conversation, and participants often had overall impressions and perspectives they wished to share more than details. That said, some participants did recall specific details and were quite helpful in filling gaps and giving a flavour of proceedings. One participant asked as we were getting started if I wanted to proceed by working through the themes I had sent ahead of time, and then laughed and said, "well you can ask your questions, but I'll have my

agenda and tell you what I want to say anyway." Participants were aware that I had or would be interviewing others who would likely present different points and perspectives, in fact this was often expressed directly, such as "but, if you talk to government you'll hear another story," or "First Nations members will take issue with this," or "environmental groups will tell you...," etc. Without exception my research participants were generous with their time and were motivated to help me understand the case, and their perspective on it, better. Many of them challenged my thinking, and this was instrumental in coming to regard the planning processes differently, especially regarding the historical context at play and the role and perspective of Indigenous communities and participants in the ESPI and WNO.

3.4.2.2 Document Review
Following completion of the interviews, I returned to complete the document review. This was now supplemented with a considerable number of documents that I received from several interview participants, who shared with me what they had accumulated during their time participating in the planning processes, and many of these had never been made available to the public. In addition, I was made aware of documents archived on the website of Manitoba Wildlands, a local environmental organization that had been involved in the ESPI, and these included documents from the planning processes, the ESPI in particular, that had been 'leaked' to them by participants who were concerned that the process was not as transparent as they thought it should be. I was also directed to the University of Manitoba archives where a retired faculty member's papers had recently been deposited, which included many documents from his time on the ESPI round table as well as the Manitoba Round Table on the Environment and Economy that had been active in provincial policy development that set the stage for the ESPI.

Research participants and further internet searches also directed me to a number of documents from various civil society groups, particularly from environmental organizations, that reviewed and/or provided input into the planning processes. With all of these added to the documents available on the government's WNO website, which in addition to meeting minutes included some background presentations and reports from the Secretariat, consultants, and ESPI and WNO committees and working groups, I had several hundred documents to review. In general, the ESPI produced more publically available documents than the WNO, and despite the volumes of documents accessed and reviewed, some gaps identified in my initial document scan remained that interview data helped to fill. About midway through my interviews, all of the documents were removed from the government website, and currently none are publically available; however, I had already downloaded the bulk of them and so was still able to work with them. According to a government employee this was a routine event and was due to limited storage space and bandwidth resulting in old documents being removed. Several other interview participants noted that after my initial communication to set up interviews they had begun asking questions of contacts they had in government and suggested that the knowledge of research being done and interest being stirred may have resulted in the removal of the documents.

Considerable time was spent in the review identifying and sorting documents. Many documents, apart from meeting minutes, had no dates and often had titles that differed from how they were referred to in other documents, making it difficult to know how they fit in the process and sometimes what issues they were speaking to. For example, meeting minutes would refer to documents distributed to participants or that served as the basis for

presentations by shorthand titles, and sometimes in order to understand discussion points or the basis for decisions it was vital to locate the document referred to. Presentations were similarly often referenced simply by the person making the presentation, but the same presentations were sometimes used multiple times in different venues and thus what appeared to be two documents were in fact one. In some cases documents from different sources contained parts of what was a larger issue or activity and needed to be combined appropriately to present the full picture. An example of this was the process of developing recommendations for the ESPI Phase 2 status report, for which there was no documentation from government but several tables were obtained showing recommendations from the bodies and working groups involved in various stages of revision, and which I was able to manually combine into a composite document. As a result of all of this, a good deal of sleuthing was required to place the documents I had in order and understand how they were related to one another. As well, during the document review I made notes on the contents of documents, and composed summaries of more lengthy ones as well as of all the meeting minutes, and these notes and summaries also contained emerging analytical insights that I updated throughout the review.

3.5 Data Analysis

I initiated data analysis with the beginning of data collection and, as appropriate for qualitative research, it was an ongoing process throughout my research (Creswell, 2014). As already described, this included working to build a narrative from the initial document review in phase 1, supplementing this with key informant interviews, and then reflecting on the significance of what I had found for continuing my research project. I made analytical notes after each interview, and less often methodological ones as well, and revisited these in

preparation for subsequent interviews, and as mentioned above I followed a similar method in the document review (Bernard, 2006). Periodically I reviewed all of these notes and sketched out an evolving narrative of the ESPI and WNO together with my developing understanding of meaning that could be made of the course they followed.

Once data collection was complete, a review of my analysis to that point convinced me that to appropriately understand and communicate the nature and significance of the case I would need to explore and describe a number of aspects of the context more thoroughly – especially history relevant to Indigenous relations to land, governance, and resource development, and the Manitoban context for resource development relevant to Indigenous peoples and sustainable development policy. To do this I undertook a review of historical and legal literature and analyses, including some court and historical documents, on Aboriginal rights pertaining to land, resource development, and self-government, and this provided background for material presented in chapter 4, section 4.3. What I learned through this was key in helping me better understand Indigenous perspectives and in framing my account and analyses of the ESPI and WNO. Further scholarly literature was explored to provide context for the province's approach to resource development, sustainable development, and Indigenous involvement in these, and this is summarized in section 4.4. I mention this here because it was a significant part of how I came to understand the data I had collected about the ESPI and WNO, and hence was part of my analysis.

The next stage of my analysis consisted of organizing data into chronological narratives of the ESPI and WNO, which included scoping the considerable detail in the data down to what was most significant to explaining a coherent course of events for each. This was also loosely

guided by my theoretical and conceptual thinking. For example, I attended to issues of inclusivity and transparency as I knew these were important aspects of the conduct of NREM processes as described in my conceptual framework. However, my principle focus was to create a basis for telling the stories of the ESPI and WNO as I understood them from my research interviews, document reviews, and contextual reading. This work formed the basis for chapters 5 and 6, where my examination of the ESPI and WNO are respectively described.

I then returned to the data for thematic analysis according to four themes. In developing the first three themes I followed Creswell's (2014) suggestion to relate the data back to relevant theory in the literature, discussed in chapter 2, to both critique the theory and inform interpretation of the data. These three themes reflected the primary dimensions of my conceptual framework – the internal operation and discourse of the processes (described in section 2.5.3.1), relations with public spheres and discourses (described in section 2.5.3.2), and relations with the political-administrative system (described in section 2.5.3.3). The fourth theme, planning in the context of Indigenous-Canadian history and self-government rights, emerged in the ongoing data analysis, especially of research interviews, and was grounded in the data and informed by the contextual exploration of Indigenous history and rights described earlier. Coding software was not used for this analysis due to the fact that a significant portion of the documents and my notes were not in electronic formats. As well, by this point I felt I was very familiar with the data, having returned to it many times, made notes and summaries, related documents to one another and to interviews, and used it to create my descriptive narratives of the ESPI and WNO. Themes were developed sequentially, and each involved

combing through all relevant data and taking note of contents and sources applicable to the theme. This work informed the discussion in chapter 7.

3.6 Limitations and Quality of Research

As Roulston (2010) has pointed out, quality assurance in qualitative research in general, and especially research that relies heavily on interviews, has been described in many different ways and numerous approaches have been suggested for ensuring trustworthy, valid, reliable, etc. qualitative research. Here I will briefly discuss some threats to validity that inhered in my research and steps I took to address them.

I have already discussed the issue of generalizability in case study research, but to clarify, I am not attempting to generalize from this single case study. My research findings do not confirm or refute the conceptualization that has guided my research process; however, my findings did reveal some limitations in my initial conceptual framework and in applying it to analyze a NREM process, and this led to some revision of the framework as presented in chapter 8. The revised framework itself is presented as generally applicable to NREM, and especially in the Canadian and Indigenous context. At the same time, the discussion and analysis of the case according to the dimensions of my framework is directly applicable only to this specific case itself, and generating such a situated and contextualized description met one of my research objectives.

Triangulation is frequently suggested as a means for enhancing the validity of data, and in qualitative research this usually refers to seeking data on the same topic from a variety of sources or bringing multiple perspectives or lines of sight to bear on surveying the same terrain (Berg, 2004). In my research this involved using both document reviews and interviews to

understand the ESPI and WNO, as well as purposively seeking out diverse perspectives on each

in interviews. However, I was also conscious that in qualitative research valuable insights may

emerge from a single source, especially when that source articulates something unexpected or

that challenges more common perceptions. When this did occur in interviews I was careful to

ask follow-up questions to check that I was understanding my research participant correctly,

and in reporting these findings have noted that they were from one individual and/or have

included differing perspectives from other participants.

Creswell & Miller (2000) identify three further procedures for enhancing the validity of

qualitative findings in critical social research – researcher reflexivity, collaboration, and peer

debriefing. Researcher reflexivity involves disclosing one's assumptions, values, and biases

upfront. In this regard, my guiding theory is presented in depth in chapter 2, and my personal

connections to the case study area and topic were discussed above in section 3.3. Reflexivity

also requires researchers to be conscious of how their biases influence the research process as

well as how learning in the course of the research changes these biases and may redirect the

research journey and affect its findings. Such changes were tracked in my ongoing and updated

analytic notes, and some of these shifts and reconsiderations were described in section 3.4

above.

Collaboration refers to the data and interpretations being co-developed by the

researcher and research participants. I described above in sections 3.4.1 and 3.4.2.1 how my

loosely structured interviews resulted in a collaborative construction of meaning, and how

input from participants led to new directions being pursued in the research. While this

collaboration has been vital, I recognize that in the end I am responsible for findings and conclusions that are ill-supported or invalid.

Peer debriefing was not employed in a structured way, but was nonetheless used over the course of my research to enhance the quality and validity of my findings and analysis. Peer debriefing involves the review of data, the research process, and/or emerging analyses by people familiar with the research situation or phenomenon being studied who serve as sounding boards for developing ideas, can help with troubleshooting problems, and can identify researchers' blind spots. Informal conversations with faculty and fellow graduate students at the NRI have been invaluable over the course of this research. Numerous students and faculty have helped me work through methodological and theoretical issues and provided useful general guidance. In particular, several students and a faculty member were familiar with aspects of the case study and/or some of the theory I was working with and, while confidentiality prevented me from sharing data and specific details with them, in numerous conversations they listened patiently to my challenges and developing findings and analysis and were able to provide useful feedback and to point me towards material and research directions I had not considered. My thesis committee also provided excellent feedback on my thinking at the proposal and candidacy stages, along with helpful guidance during annual meetings. And finally, my faculty advisor, Dr. Sinclair, has been an invaluable resource in providing overall guidance that kept me on track, and especially helped in providing an experienced perspective on case study research at key points where I reconsidered my research and struggled to understand how to make meaning out of it.

Chapter 4: Setting the Stage for Planning – Context and History

4.1 Introduction

As outlined in chapter one, the broad purpose of my research is to develop a conceptual understanding of Natural Resource and Environmental Management (NREM) from the perspective of a theory of deliberative democracy. In chapter two I explored, discussed, and critiqued a variety of literatures relevant to this task, and concluded by proposing a conceptual framework that situates NREM within a deliberative governance regime and describes certain structural relationships, procedural ideals, and democratic tasks that would inhere. In order to ground and further refine this understanding of NREM, I now turn to the empirical case study component of my research.

The case explored is land-use planning on the east side of Lake Winnipeg (East Side), in Manitoba, Canada, initially via the East Side of Lake Winnipeg Planning Initiative (ESPI) from 2000-2004, and followed immediately by the Wabanong Nakaygum Okimawin (WNO), which I consider to have effectively ended in 2013. As discussed in chapter three, the purpose of the case study is not to directly test the conceptual framework, nor to critique the case and make evaluative judgements about it against the yardstick of the structural relationships and procedural ideals suggested in the framework, as this would only be appropriate if the ESPI and WNO had been explicitly designed along those lines. Rather, describing and analyzing the case is used to suggest complexities in need of further investigation, to explore the generalizability of the theory used, and to refine and build conceptual and normative understandings that can be applied to NREM contexts, both generally and with specific reference to NREM in Canada and involving Indigenous traditional territories. However, the case also represented an

approach to NREM and to involving Indigenous peoples that was novel in Manitoba and was framed as building on a decade of sustainable development policy work, yet it has received scant academic analysis and a fulsome description of the ESPI and WNO does not exist. As such, my detailed discussion of the case is also intended to address these gaps.

This chapter establishes context for understanding the case study description and analysis that follows in chapters five through seven. First, section 4.2 presents some of the key geographic, demographic, and socio-economic characteristics of the case study area at the beginning of the ESPI. Next, I explore history and discourses that were especially significant in setting the stage for the ESPI and WNO and that had a structuring influence on their scope and organization, mandates, and on the changing direction they took over time. Indigenous history, rights, and title relevant to the governance of land and resources are discussed in section 4.3. Section 4.4 explores the Manitoba context by describing some of the history of natural resource development in Northern Manitoba and the involvement of and impacts on Indigenous peoples, followed by an examination of the evolution of sustainable development policy in the province through the 1990s. Finally, section 4.5 concludes the chapter with a discussion of the social, economic, and political priorities, interests, and influences that converged in the initiation of land use planning on the East Side in 2000.

For clarity, a brief word on some of the terminology I use in this and following chapters. 'First Nations' does not have a legal definition, but I use it, as it is most commonly employed, to refer to status Indians as defined under the *Indian Act* and, unless otherwise stated, I include those who identify as First Nations or Indian due to their ancestry but who do not have official status. 'Métis' is used broadly to refer to people of mixed First Nations and European settler

ancestry who developed a unique culture and, in Manitoba, coalesced into a distinct nation in the late 18th century centred around the Red River area but also spread and regularly travelling across what would become the prairie provinces.[18] 'Aboriginal' is legally defined in Canada as including Indians, the Inuit, and the Métis, and I use it with reference to that definition and to its legal implications regarding Aboriginal rights. I use 'Indigenous' in preference to and as synonymous with Aboriginal as legally defined, and also include anyone who identifies as descending from the original inhabitants of Canada regardless of their legal status. In some instances I use the antiquated term 'Indian' to clarify reference to historical events or legal contexts where that term has a particular historic or legal meaning.

The term 'nation' can be ambiguous in the Canadian Indigenous context. Some apply the term to local communities, as in the case of First Nation reservations who frequently include 'nation' in their name, while others see it as applicable to larger historic, geographic, tribal, ethno-cultural, or linguistic groupings, especially in the context of effective self-determination (see Royal Commission on Aboriginal Peoples, 1996, vol. 2, chap. 3). For the Métis, the Métis Nation is understood as a collective of people who share a history and distinct culture that emerged in the Métis Nation Homeland of the three prairie provinces and parts of Ontario and British Columbia.[19] Unless otherwise identified or obvious from context, I use the term 'nation' loosely, with all the ambiguity and nuances intact. I also refer to Indigenous 'communities' and 'groups' in a similarly general fashion; it is not my intention to suggest how Indigenous populations should be grouped or to distinguish between nations, groups, or communities – this is a matter of Indigenous self-identity and in some instances how such

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[18] See, http://www.mmf.mb.ca/who_are_the_metis.php.
[19] See, http://www.metisnation.ca/index.php/who-are-the-metis.

groupings are conceived may have legal consequences for collective rights and prospects for self-government. What is significant is that nations denote collectives with shared histories and cultures and that were at some point independent and self-governing, whether that be at the community and/or larger collective level, and in the Indigenous context that continue to hold and advance claims to certain unique rights, including to land, resources, and self-government.

Finally, I use 'traditional territory' or 'Indigenous lands' to refer to the land and resource base that Indigenous communities or nations have historically used, which is generally adjacent to their present communities or reservations. This includes lands to which title is legally considered surrendered in treaty or that has been 'taken up' by the government for settlement. These terms may have legal consequences for land claims in areas where Indigenous title is officially unextinguished or when Indigenous nations engage in land use planning beyond their reserve lands, but unless specified I do not intend to comment on the legal status of such lands, instead I mean simply the lands that Indigenous groups have used and continue to use and that in at least an informal sense they think of as *their* land, the land of their ancestors.

4.2 Location, Economic and Social Characteristics of the Case Study Area

4.2.1 Location, Demography, and Physical Geography

The geographic region covered by the ESPI and WNO, the East Side of Lake Winnipeg Planning Area (ESPA), is outlined in Figure 4.1. The ESPA covers some 8.3 million hectares, most of which is boreal forest atop Precambrian, Canadian Shield geology, and includes more than 3100 lakes and thirty major river systems in eleven watersheds (*Promises to Keep*, 2004, appendix 8.1). Most of the boreal forest ecosystem in the ESPA is considered pristine owing to the lack of significant historic or present resource development or population centres in it.

EAST SIDE LAKE WINNIPEG PLANNING AREA

First Nations & Northern Communities

☐	East Side Planning Boundary
🟥	First Nation Community / Reserve Lands
	Community Interest Zone
	Northern Affairs Community
🟪	Northern Flood Agreement

Treaty Land Entitlement Selection

	God's Lake First Nation
	God's River First Nation (Manto Sipi Cree)
	Norway House Cree Nation
	Oxford House First Nation (Bunibonibee Cree)
	Garden Hill First Nation
	Red Sucker Lake
	St.Theresa Point
	Wasagamack First Nation

———	Provincial Road
———	Other Road
- - -	Railway
━━━	Winter Road Corridor
- - -	Transmission Line Corridor

Waterbdy

	Lake
	River

0   25   50km

First Nation Community Census:
First Nations Communtiy Profiles 2001-02)

Northern Community Census:
Northern Community Profiles 1996 Census

Figure 4.1. East Side Planning Area and Communities (*Promises to Keep*, 2004, appendix 8.1).

The ESPA is bordered by Lake Winnipeg to the west and the province of Ontario to the east. The southern boundary runs roughly from the mouth of the Winnipeg River at Lake Winnipeg east to the Ontario border. The northern boundary arcs up from the northeast corner of Lake Winnipeg to Ontario so as to include the Cree First Nations of Bunibonibee, Manto Sipi and God's Lake, and the Oji-Cree First Nations of Red Sucker Lake, Garden Hill, St. Theresa Point, Island Lake, and Wasagamack.

Based on 2001 census data, there were roughly 36,000 people living in 34 communities across the region, and, with nearly 96% of the residents being First Nations, population is concentrated in the 16 First Nations communities (*Promises to Keep*, 2004, p. 15). The remaining communities range in size from a handful of residents to around 200, and are administered under Manitoba's *Northern Affairs Act* and referred to as Northern Affairs Communities (NAC).[20] Apart from the southern ESPA and along the shores of Lake Winnipeg where some fishing villages remain, NACs in the region are generally located adjacent to First Nations communities. The NACs in the ESPA have a high Métis population, but it is important to not regard these communities as proxies for Métis settlements or residence in the region, as the provincial government has been observed to sometimes do (SB interview). There are also Métis people living in the First Nations communities, and historically the Métis lived and moved throughout the ESPA similarly to and generally in harmony with First Nations residents (NP interview).

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[20] The *Northern Affairs Act* applies to northern communities that are not within a municipality, provincial park, or wildlife management area. The *Act* allows communities to incorporate, elect a mayor and council, and act in most respects as a municipality, or to remain unincorporated, potentially forming an advisory council, with the Minister acting as the local authority.

As will be seen later, a criticism of the planning process was that it did not adequately recognize and account for the Métis interests in the ESPA. In part, this was due to a perceived failure to appreciate the nature of the Métis Nation, which, as described above, consists of a people, a shared history and culture, and a very broad historic area of occupation and use, including much of the ESPA, rather than discrete geographic communities as is the case with First Nations reserves. In Manitoba, the Manitoba Métis Federation (MMF) is the official democratic political representative of this Nation, and an MMF representative was included in the ESPI, but the MMF was not engaged as a level of government with rights and unique interests in the region in the same way that the various First Nations were, leaving the Métis feeling essentially left out of the process despite language in planning documents gesturing towards their inclusion (SB interview). In my characterization of the ESPA in this section the Métis are indeed under-described. This is in part due to the general nature of an overview description of an area that is predominately populated by First Nations people and where the largest communities are First Nations. It is also due to the fact that academic and media accounts relevant to this area are also primarily concerned with First Nations, and Statistics Canada socio-economic data are available for First Nations communities and for the general ESPA area but not specifically for the area's Métis population. The issue of Métis inclusion and participation in the ESPI will be returned to in subsequent chapters.

Most of the ESPA is remote and accessible only by canoe, air, or winter roads. At the start of the ESPI the only portions of the area with all-season road access were the southern tip, including the NACs of Aghaming, Manigotagan, Seymourville and Bissett, and the First Nations of Sagkeeng, Black River and Hollow Water, and the extreme northwest corner where Norway
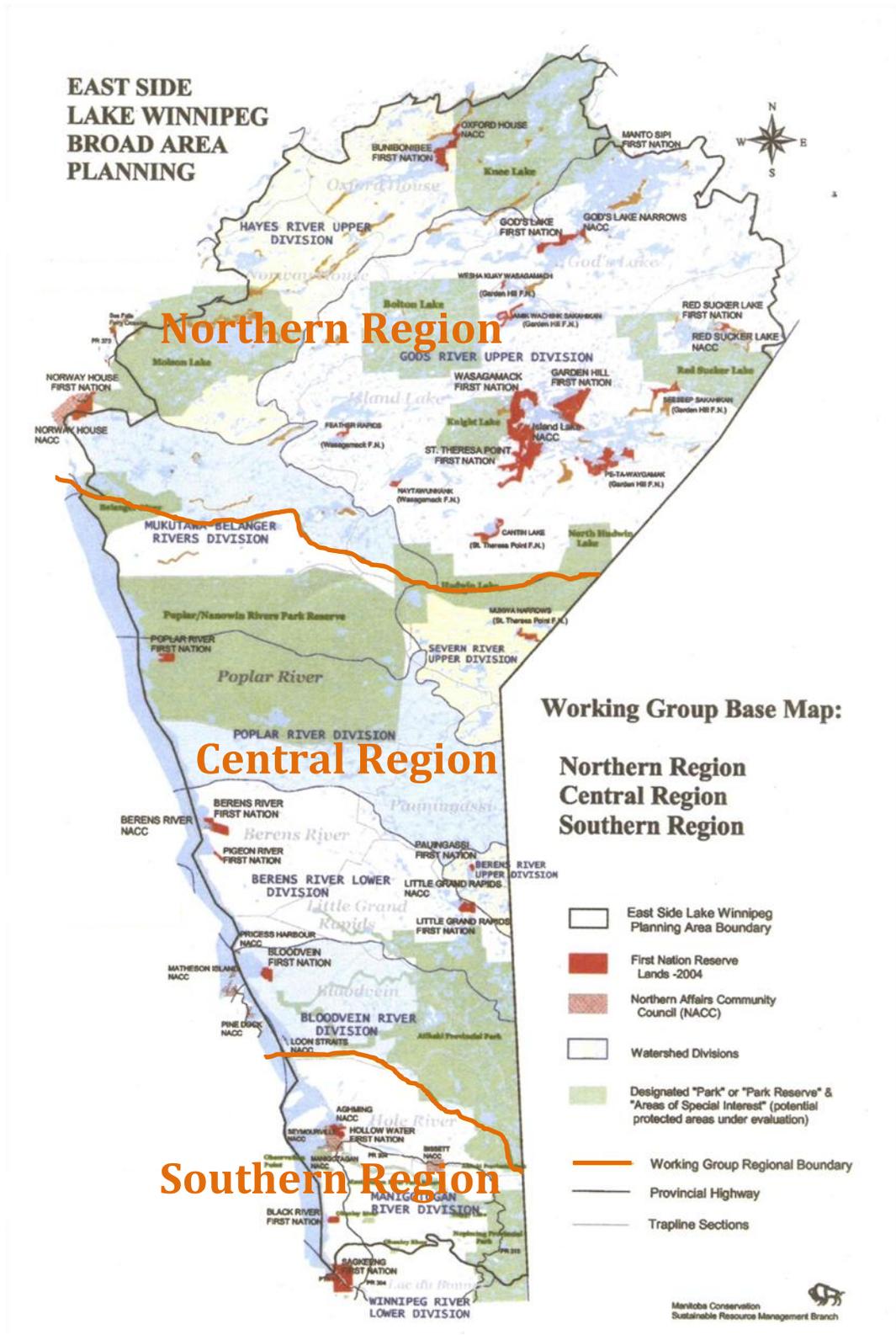
Figure 4.2. East Side Planning Area Regions (*Promises to Keep*, 2004, appendix 8.1).

House First Nation and NAC are connected to the provincial highway system. For some purposes the ESPI divided the ESPA into three regions – northern, central, and southern – which are outlined in figure 4.2. Communities in each region shared certain characteristics that made this division sensible for planning: southern communities were all-season road accessible and had some, albeit relatively limited, history of industrial resource development; central communities were remote, on river systems flowing west into Lake Winnipeg, had little history with resource development, and the First Nations are Ojibwe; and northern communities were remote, on river systems flowing north to Hudson's Bay, had limited experience with resource development beyond mining exploration, and the First Nations are Oji-Cree and Cree.

At the beginning of the ESPI, the area contained several protected areas as well as a number of Areas of Special Interest, which are areas under evaluation as potential protected areas. These can be seen as the light green areas in figure 4.2. The protected areas were two provincial parks, Nopiming at the eastern edge of the southern region and Atakaki in the southeast corner of the central region, and the Poplar/Nanowin Rivers Park Reserve in the northwest corner of the central region. Park Reserves have interim protection while being considered for permanent protection under *The Provincial Parks Act*. The Bloodvein River, running across the central region, is protected as a Heritage River, and the Manigotagan River in the southern region is a Park Reserve. Commercial resource extraction and activities that could have significant adverse effects on natural habitat are prohibited in these protected areas. The northern region contained eight Areas of Special Interest, which were identified by the Province as part of their Protected Areas Initiative that sought to ensure the biological

diversity and geological enduring features of each of the province's eighteen natural regions

and subregions were adequately protected (ESRT Parks Presentation, 2002, May 15).

In Manitoba 'the North' is characterized by distance from southern population centres

and is north of the transition from a prairie landscape to the Canadian Shield and boreal forest.

The start of the North runs roughly in a line from the province's western border at the north

end of Lake Winnipegosis, southeast to the narrows between the north and south basins of

Lake Winnipeg, south along the eastern shore to the mouth of the Winnipeg River at the south

end of the lake, and then east to the Ontario border. The North comprises nearly 70% of the

land area of Manitoba. The North is further characterized by the presence of First Nations

communities distributed across it, and hence the land is at one and the same time both

provincial Crown land and First Nations' traditional territories. Thus, the ESPA is in the North by

virtue of its remoteness, physical geography, and population primarily by First Nations people.

4.2.2 The Economic Situation

Manitobans have tended to regard the Northern economy as primarily resource-based

and export-oriented, and provincial government policies for the North have focussed on

supporting investment in large-scale industrial resource development (Simpson, Storm, &

Sullivan, 2007). From the province's earliest days, both the federal and provincial governments

have played significant roles in the development of the North. In 1930 the *Natural Resources*

Transfer Agreement (NRTA) transferred jurisdiction over Crown lands and natural resources to

Manitoba, and since then the province has been extensively involved in supporting resource

development in the North, especially commercial forestry and mining and extensive

hydroelectric generation infrastructure built by Manitoba Hydro, a provincial Crown

corporation (Northern Manitoba Economic Development Commission, 1992). These developments have historically generated significant economic benefits and continue to do so, which accrue primarily to citizens and shareholders in the south while little, if any, of the wealth generated flows back into local economies (Anderson, 1992; Loxley, 1981, 1992). A 1993 sustainable development action plan for Northern Manitoba identified large-scale resource development as the region's primary existing and projected economic activity, but also described northern residents' frustration with their lack of voice in planning and decision making related to economic development and their perception that they and their communities were not benefiting fairly from these projects (Northern Manitoba Economic Development Commission, 1993). Within the North, the majority of direct economic benefits that are received from resource development are concentrated in industrial towns where forestry and/or mining operations are located and that function as service hubs for the area's more remote communities. Thus, while the bulk of resource extraction takes place on First Nations' traditional lands, First Nations communities have seldom benefitted from any significant long-term employment or revenue streams from these projects (Simpson et al., 2007).

While Northern Manitoba's most visible economic activity is focussed on mining, forestry, and hydro-electric resource development, such development has been scant across the ESPA. Large-scale resource extraction has occurred only in the southern, road accessible region where considerable commercial forestry took place until 2009 and several gold mines existed in the early to mid 1900s and one continues to operate in Bissett. At the outset of the ESPI, the Bissett mine employed approximately 150 people, with about half coming from local area First Nations and NACs (Peckett, 1999). Mineral exploration in the ESPA has been limited:

mining claims and exploration licences are concentrated in the southern region in the Rice Lake

greenstone belt surrounding the Bissett mine, and in the northern region where sporadic

exploration and claiming has occurred around Island Lake, to the north of Red Sucker Lake, and

in the Oxford and God's Lakes area.[21] It is assumed that there is high potential for gold, zinc,

and copper across the ESPA, but it has not been explored nearly to the extent of other

greenstone belts in the province where significant mining finds have been made (WNO

Minutes, Dec. 1/05, 'Mineral Exploration').

At the beginning of the ESPI, forestry provided employment for some residents of the

ESPA's southern and central region, although the bulk of the workforce was located in the

industry town of Pine Falls where the mill was located. In 1999, ESPA community forestry

operations, contracted from the Forest Management Licence (FML) holder,[22] employed 27 full-

time-equivalent persons, and roughly 60 people were employed seasonally for reforestation.

The communities involved were all in the southern region except for Berens River and

Bloodvein First Nations, where it was reported that forestry was marginally profitable at best

due to the cost of equipment and transportation of logs south to the mill (Peckett, 1999). Both

forestry and mining developments in the ESPA have been largely restricted to the southern

region primarily due to the inaccessibility of the central and northern regions (A. Weinberg,

2014).

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[21] See mineral dispositions map from Manitoba Mineral Resources Branch,
http://web33.gov.mb.ca/mapgallery/mgm-md.html, accessed May 26, 2016.
[22] The primary forestry stakeholder in the ESPA held FML #1, which in 1999 included 484,000 hectares of
productive forest in the extreme south of the ESPA, and had first right of refusal for the Integrated Wood Supply
Area immediately to the north of the FML area, which contained an additional 381,000 hectares of productive
forest (Peckett, 1999). FML #1 was held by Abitibi Price until 1994, when it was assigned to Pine Falls Paper
Company after they acquired the mill in Pine Falls. Starting in 1998, Tembec acquired the forestry operations, mill,
and FML, and operated in the region until 2009.

There is no hydro generation in the ESPA, and only Norway House First Nation, on the border of the planning area, has experienced direct effects of flooding from hydro activities. In 1997, Norway House negotiated a Master Implementation Agreement under the Northern Flood Agreement (NFA) that includes provisions for land use planning and establishes a Resource Management Board to carry out joint management between the First Nation and province, and for this reason the community chose not to participate in most of the ESPI and WNO (NE, AG interviews; see appendix E for more on the NFA). Although some of Norway House's traditional territory is included within the ESPA in order to roughly follow watershed boundaries, the government did not want to include the communities covered by the NFA just to the north of the ESPA. There are electrical transmission lines serving each of the First Nations and many of the Northern Affairs communities, but these provide very little local employment apart from occasional brush cutting along the rights of way.

At the beginning of the ESPI, other economic activities in the ESPA included commercial fishing, tourism, trapping, and wild rice harvesting. Business and agriculture were reported as part of the economic base only for the road accessible communities of the southern region, where they were a minor activity (Peckett, 1999).

Commercial fishing is a significant economic activity only for communities along Lake Winnipeg where fish can be transported to market by water or road. In 1996/97 there were 182 fishers on Lake Winnipeg from ESPA communities, earning an average of $10,300 each (Peckett, 1999). Some commercial fishing does occur in the north of the ESPA in the Island Lake communities and Red Sucker Lake, but profitability is difficult as fish must be flown out, unprocessed, to market. Fishing is seasonal and wages earned are inadequate to support an

individual, never mind a family in the region, and the number of those employed, as well as the overall value of the fishery in the ESPA has been declining steadily since the early 1990s (Manitoba Conservation and Water Stewardship, 2012).

Tourism is considered a significant activity across the ESPA, with revenues generated principally from fishing and hunting lodges that are common on major lakes and river systems along with outcamps and/or boat caches that many lodges maintain on smaller lakes. However, the vast majority of these are owned and operated by people from outside the area and at best provide seasonal employment for a limited number of guides and housekeepers. While tourism revenues in the ESPA are a major part of the area's economic output, only a small portion of that remains in the region to benefit local communities, and that small benefit is strongest in the southern, road accessible communities. A study in 1999 found no significant link between economic benefits from tourism and remote communities in the southern and central ESPA, and this is assumed to hold for the northern region as well (Peckett, 1999).

There is also a small amount of trapping and wild rice harvesting within the ESPA. Trapping, once a widespread activity across the region, has been declining in numbers of trappers and value of pelts over the last several decades and no longer represents a significant source of income for area residents (Manitoba Conservation and Water Stewardship, n.d.; Peckett, 1999). However, the Registered Trapline System is important for communities in the ESPA as it has been used to delimit First Nations communities' traditional planning areas. Wild rice harvesting from natural water bodies in the ESPA was also once more widespread, but is now largely restricted to the southern tip of the region where it provides very limited, seasonal employment (Manitoba Trade and Investment, n.d.).

As described in the preceding pages, at the outset of the ESPI the ESPA remained largely cut off from the primary economic opportunities of the North, imperfect as they have been in providing benefits to Northern, and especially First Nations communities. Other economic activities failed to provide significant benefits to local communities, and many of these activities have been declining in both value and participation. As a result, communities in the ESPA were characterized by a dearth of wage-earning and economic development opportunities and were heavily reliant on welfare transfers and employment in social and government services. Accurate employment data for on-reserve First Nations are difficult to obtain because Statistics Canada has never included First Nations reservations in the Labour Force Survey (Friesen, 2015). However, an extensive study in 1999 covering the central and southern portions of the ESPA noted that unemployment for those aged 15-65 ranged from 60% in accessible communities to 90% in remote ones, and it is assumed that this range would also apply to communities in the northern region of the ESPA (Peckett, 1999).

Describing the economy of the region in terms of the above resource-based activities and wage-earning employment does not acknowledge the value of traditional and subsistence activities the largely Indigenous population continues to engage in, as well as failing to account for unpaid work and informal bartering, and as such the above discussion provides an incomplete picture of the livelihood strategies pursued in the area. The 'hidden economy' in ESPA communities included extensive hunting and fishing for food, which is often shared within the community, extended family involvement in child care, labour exchange such as gathering firewood, and cash or goods exchange for things like taxi services (Peckett, 1999). Nevertheless, participation in and benefits from the wage-earning economy for ESPA communities at the

outset of the ESPI were significantly below the national average and poverty was and remains

ubiquitous, and this had significant social and health effects for individuals and families,

curtailed opportunities, and limited choices.

4.2.3 Social Conditions and Community Wellbeing

For a variety of complex historic and present reasons that include the economic

deprivations just described, social and health conditions in First Nations communities are

generally worse than in the rest of the country. The Manitoba Government's Department of

Indigenous and Municipal Relations states that Aboriginal and Northern communities include

"some of the most disadvantaged in the province as illustrated by numerous social and

economic indicators" (Manitoba Indigenous and Municipal Relations, n.d.). Generalizations

regarding poor conditions on First Nations communities are ubiquitous and generally include

descriptions of poverty and welfare dependency, overcrowded and dilapidated housing,

violence, substance abuse, poor health, and so on (e.g., McCaslin & Boyer, 2009), but precise

details for specific regions can be difficult to find. In 2014 the Canadian Press, using access to

information legislation, obtained ten internal regional updates from Aboriginal Affairs and

Northern Development Canada spanning the years 2012-2014. One news report based on these

files concluded that Manitoba is "one of the worst places for First Nations people to live in

Canada," because rates of poverty, school dropout, social assistance dependency, family

violence, and poor housing are the highest in the country (Puxley, 2015a). The article goes on to

quote from the updates, specific to Manitoba First Nations:

> High levels of poverty, unemployment, domestic violence and family dysfunction are prominent adverse social conditions faced by many members of First Nations, particularly those living in remote or isolated communities.
> The housing backlog, overcrowding issues, mould and inadequate condition of many of the on-reserve housing units remains a significant First Nation concern.

One of the government reports explicitly stated that based on the United Nations Human Development Index, the quality of life in Manitoba First Nations communities is lower than anywhere else in Canada. Another report identified house fires on Manitoba First Nations as a "high risk" and estimated that $28 million was needed for proactive measures and planning to reduce deadly fires to an acceptable number; however, it also noted that only $4 million had been budgeted for a short-term plan (Puxley, 2014). Further lowlights gleaned from the internal government reports include that Manitoba First Nations people have: a life expectancy eight years less than other Manitobans; a high school graduation rate of 28%, the lowest in Canada; an average on-reserve welfare rate of 47%, with some as high as 80%; and a child poverty rate of 62%, compared to the Canada-wide First Nations average of 25% (Canadian Press, 2015).

Since roughly 96% of the residents of the ESPA live in First Nations communities, it is fair to assume that the above descriptions of average conditions on Manitoba First Nations would generally apply to these ESPA communities, and as noted in the government reports, conditions are most often worse in isolated communities such as those in the central and north regions of the ESPA. There are no aggregate statistics specific to the ESPA; however, Manitoba's census district #19 consists of the ESPA's south and central regions plus the northern portion of the Interlake region,[23] which is comprised of a dozen road-accessible First Nations communities at the southern edge of Northern Manitoba that have a limited history of resource development,

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[23] The Interlake refers to the area of the province between Lake Winnipeg on the east and Lakes Manitoba and Winnipegosis on the west.

and consequently the census district serves as a reasonable proxy for the ESPA. In fact, given

the district's greater proportion of road-accessible communities it is assumed that conditions in

the census district would be more positive than for the ESPA itself.

For a snapshot of conditions at the start of the ESPI, Table 4.1 provides selected

statistics from the 2001 Canadian census and compares the Aboriginal population of district #19

to Canada-wide figures for all persons. In 2001, employed Aboriginal residents in Manitoba's

census district #19 earned less than half the Canadian average and median household incomes

were also slightly less than half that of the rest of the country, which is the more troubling

given that the cost of living in remote communities is significantly higher than the Canadian

average. Serious housing issues can be seen in the percentage of homes in need of major

repair, which was more than five times higher than the national rate, as well as in the person

per room figures, which indicate significant overcrowding at nearly double the average

Canadian occupancy numbers.

	Manitoba Census District #19, Aboriginal Identity Population	Canada, All Persons
Population aged 0-19	48%	26%
Education: Less than High School	62%	23%
Education: University, Bachelor's Degree or Higher	4%	23%
Average Annual Earnings (employed persons)	$14, 986	$31,757
Median Household Income	$22,806	$46,752
Dwellings in Need of Major Repairs	43%	8%
Persons per Dwelling Room (all rooms counted)	.7	.4

Table 4.1. Selected 2001 Census Statistics (selected from
http://www12.statcan.gc.ca/english/census01/index.cfm, accessed June 10, 2016).

Clearly, the conditions described above constituted significant challenges and barriers in day to day living and in charting a course to a brighter future for communities and residents of the ESPA, and finding solutions was all the more pressing given that 48% of the population was under twenty years old. As seen in Table 4.1, this is nearly twice the proportion of youth as in the Canadian population, and hence education was considered especially vital. However, education programs clearly did not have a positive track record in the district, with a high school graduation rate at 37% of the national average and only a sixth of the country-wide average of university graduates. Part of this is explained by the fact that of the 14 First Nations that actively participated in the ESPI and WNO, only seven had full high school programs in their communities, and it was common for some youth in these communities, along with any youth from the remaining communities who wished to finish high school, to leave their homes to attend high school elsewhere, most often in Winnipeg (*Promises to Keep* Complete Appendix, 2004, 8.16). It is also widely acknowledged within education circles that the quality of education in First Nations schools in Manitoba is generally lower than in the rest of the province, and students often struggle academically, as well as socially, when placed in provincial schools far from their homes and families, contributing to high dropout rates.

Youth suicide is another indicator of community health and wellbeing, and since it is associated with a complex web of social and personal factors, including family violence, personal and cultural identity problems, community dysfunction, substance abuse, poor school performance, and hopelessness or feeling trapped in a dead-end, high youth suicide rates point to pervasive and troubling social and community conditions. While there are issues with different studies using different methodologies to measure rates, it is clear that First Nations

suicide rates have been at least twice the Canadian average, and even higher for youth and for

northern and isolated communities (Kirmayer et al., 2007). One study put the early 1980s

suicide rate for Northern Manitoba First Nations at 5 times the national rate, and another

covering the late 1980s found the First Nations youth suicide rate in Manitoba to be four times

higher than the Canadian average (Kirmayer et al., 2007, p. 16). While statistics specific to the

ESPA are not available, it is assumed that these rates would apply to communities there. The

crisis of youth suicide must be understood in a historical context of colonization and

government policies of forced assimilation, including the imposition of residential schools and

effects of the child welfare system that removed many children from their families, most

infamously during the 'Sixties scoop' (Alfred, 2009). The chairperson of the Truth and

Reconciliation Commission, after six years spent investigating and compiling stories and

information about the residential school system, described it as a government-led policy of

cultural genocide, the effects of which include systemic discrimination, poverty, and the loss of

Indigenous languages (Smith, 2015). This history, together with the interruption of traditional

economies and ongoing economic deprivation, has led to a disruption of cultural transmission

and to intrafamilial and intergenerational cycles of suffering and dysfunction continuing into

the present that have led to the very social conditions enumerated above (Kirmayer et al.,

2007).

The dire socio-economic conditions described in this section are not intended to suggest

that ESPA communities are devoid of positive attributes or lack all agency to act to sustain and

improve their situation. Indeed the fact that they continue to exist and grow despite their

colonial history and current conditions is a testament to a certain resilience and the presence of

some social capital (Tousignant & Sioui, 2009). People continue to engage in many traditional practices, extended family networks retain significant importance, Indigenous languages remain strong across the region, and numerous communities and/or tribal council organizations are taking on increasing roles in administering local health, education, child welfare, and policing services. However, federal laws and policies regarding First Nations have historically been paternalistic, restrictive and culturally destructive, and to a large extent continue to be so, and this has left many communities in a position of dependency and without meaningful opportunity and capacity to effectively challenge the laws and policies that disadvantage them while also making it difficult to initiate and sustain their own plans and programs (Alfred, 2009). First Nations have often had to fight to even participate in planning and decision making affecting them, never mind achieving the jurisdiction and authority to initiate and lead such endeavours.

It is within this local socio-economic context that the ESPI was undertaken. There was a rapidly growing population in communities replete with social problems and with few economic prospects. While the determinants of community health and wellbeing are complex and intertwine social, economic, cultural, and governance factors, economic development that reduces entrenched poverty is widely considered an important foundation that enables addressing many of the other factors affecting individual and community wellbeing (Reading, Kmetic, & Gideon, 2007). Additionally, good governance, especially insofar as it approaches First Nations' self-determination and is informed by Indigenous values in contrast to the legacy of colonialist and paternalistic systems, is regarded as necessary for economic development to actually achieve this aim of improving communities' social conditions (Ladner, 2009; Simpson et

al., 2007; W. Wuttunee, 2004). And finally, given the geography of the ESPA, natural resources were seen as the most viable base for economic development. Thus, at its best, the ESPI and WNO were seen as having the potential to have the vision and values of ESPA residents guide planning and decision making regarding the nature of development on their traditional lands such that, contrary to the general Manitoba experience, their communities would benefit economically and socially (Simpson, 2002).

4.3 What Can We Learn from History? – Aboriginal Rights, Title, & Self-Government

This section explores some of the historical context for Indigenous, and First Nations in particular, participation in the ESPI and WNO. My focus is primarily on First Nations because they constitute the vast majority of the ESPA's population and the Métis were effectively marginalized in the ESPI and WNO processes. Section 4.3.1 explores the history of relations between Indigenous peoples and Euro-Canadian governments, attending specifically to land and natural resources and Aboriginal and treaty rights relevant to their management and governance. Pre-contact Indigenous history is largely unexplored in this section because of my interest in understanding the nature and evolution of Indigenous-Euro-Canadian relations that have led directly to current legal, political, and economic realities that condition and must be confronted by NREM on Indigenous traditional lands. Within the broader narrative, focus is brought to the Northern Manitoba region when possible. This provides context for understanding First Nations perspectives brought to the ESPI and WNO and communicated to me in research interviews, and for thinking about the application of Aboriginal and treaty rights in NREM contexts. In section 4.3.2 I then explore some implications of this narrative using

concepts drawn from Habermasian social theory that was presented in chapter 2, and conclude with the identification of a number of areas where the ESPI and WNO, as democratic governance processes, had opportunity to navigate between unjust realities and historically and legally informed ideals, between facts and norms.

This material is important for a number of reasons. This history has included repeated economic and social disruptions and political and policy incursions that together stripped Indigenous nations of much of their lands, resources, economic opportunities, and governance capacities, and have caused significant inter-generational harms (Royal Commission on Aboriginal Peoples, 1996, vol. 1, chaps. 3-13). In the face of this, prospects for increased prosperity, cultural revitalization, and social health and wellbeing for Indigenous communities are frequently regarded as involving appropriate connections to and management of adjacent land and resource bases (e.g., Simpson et al., 2007; Slowey, 2009; W. Wuttunee, 2004). As such, NREM involving Indigenous communities invokes issues of justice and basic rights, including title to land and the application of self-government.

However, in NREM contexts there continues to be considerable uncertainty and debate about the application of Aboriginal and treaty rights (Newman, 2014, 2015). While these rights are frequently referenced in NREM processes in Canada, especially in the context of the Métis and treaty First Nations issues of self-government and title to land and resources have more often been avoided. Instead, the Crown's dominance has simply been assumed and Aboriginal rights and claims regarded as facts, or obstacles, to be gotten past as NREM has routinely underwritten flows of wealth from Indigenous lands to external industries and communities, serving to entrench inequity and fuel conflict (Bland, 2013). Yet, there is the potential that

NREM that is conscious of history, informed by Indigenous perspectives, and that appropriately respects and facilitates the exercise of Aboriginal and treaty rights can advance Indigenous self-determination and facilitate reconciliation (Ladner, 2009; Morellato, 2008; Simpson et al., 2007). As such, normative guidance can be derived from an understanding of history and Aboriginal rights and perspectives that can direct NREM practice towards more just and equitable outcomes, and section 4.3 is intended to provide background and context for this.

4.3.1 Historical Overview

4.3.1.1 The Early Days

Indigenous residents of Northern Manitoba first encountered European people and society in the context of the fur trade. The exclusive resource rights to the entire Hudson's Bay drainage basin, termed Rupert's Land and including most of the prairies and all of present-day Manitoba, were granted to the Hudson's Bay Company (HBC) by the British Crown in 1670, which was theirs to grant because the land was "not now actually possessed by any … Christian Prince or State" (*Royal Charter of the Hudson's Bay Company*, 1670). The HBC charter was thus based on the racist European concept of *terra nullus* and associated Doctrine of Discovery that have, from the 15th century on, led to "State claims to and the mass appropriation of the lands, territories and resources of indigenous peoples … [and] centuries of virtually unlimited resource extraction from the traditional territories of indigenous peoples" (Frichner, 2010, p. 1). The conduct of the fur trade, over time, resulted in significant alteration of traditional livelihoods and patterns of movement on the landscape, and introduced technologies and economic structures that undermined the traditional subsistence economy.

While traditional management systems were adapted to regulating domestic modes of production and a subsistence economy, they were unsuited to the mercantile-capitalist hybrid economy of the fur trade, and it placed unsustainable pressures on what became essentially open-access resources. As Indigenous people became enmeshed in a fur-based staple economy, their livelihoods became dependant on external market forces, they were unable to accumulate capital beyond the tools of the fur trade, and a paternalistic relationship was developed where the HBC took on a 'social overhead' in providing credit and aid as necessary to keep the fur producers producing in order to ensure company profits (see Tough, 1996). While Indigenous traders and wage labourers were active agents in the process, their economic power never approached that of the company (Pannekoek, 1987; Payne, 2001). Thus, from the time of earliest contact in Northern Manitoba, certain patterns were established that have resonated through the subsequent history of Indigenous-white relations – racist policy structures meant Indigenous rights to land and resources were denied in favour of corporate profits, new economic developments undermined traditional Indigenous economic practices and institutions and disrupted their social organization, and Indigenous people found themselves increasingly dependent on forms of 'welfare' in order to survive in the new reality that confronted them.

Meanwhile, upon the defeat of the French in the French and Indian War (i.e. the North American theatre of the Seven Years War), the British Crown issued the Royal Proclamation of 1763, which, among other things, outlined principles for relations with the Indigenous population. It recognized a form of Indigenous title to the lands they occupied and used, and stated that these lands could only be acquired by the Crown, and that only by purchase or negotiated agreements to cede land. As such the Proclamation, along with prior military

alliances, implicitly recognized Indigenous sovereign nationhood, established a nation-to-nation relationship between the British and the First Nations, and is regarded by some as the legal basis for Indigenous self-government rights and land claims (Mulrennan, 2015). However, the Proclamation noted that the Indians "live under our Protection" and were in possession of "Parts of Our Dominions and Territories," thus also undermining Indigenous sovereignty and implying an underlying Crown title to their lands (Miller, 2000; *Royal Proclamation*, 1763).

With the surrender of the HBC charter in 1869, the Canadian government explicitly took up responsibility for protecting the interests of Indigenous people in Rupert's Land, essentially converting the existing paternalism and social overhead from the economic to the political system. Referring to the anticipated transfer of Rupert's Land from the HBC to the Dominion, in the 1867 Parliamentary address to the Queen the government promised to "make adequate provision for the protection of the Indian tribes" and that "the claims of the Indian tribes to compensation for lands required for the purposes of settlement will be considered and settled," and the British secretary of state for the colonies enjoined the governor general to "not forget the care which is due to those who must soon be exposed to new dangers, and ... dispossessed of the lands which they are used to enjoy as their own," and to act so as to "preserve them from the danger of the approaching change" (quoted in Tough, 1996, pp. 10-11). Tough (1996) argues that these obligations assumed by the Crown were in consequence of the HBC's prior social overhead, itself needed to compensate for the disruptions the fur trade had wreaked on Indigenous socio-economic life, and on this reading this represents the colonial government again intervening on behalf of corporate interests and activities. So, on the eve of treaty-making in Northern Manitoba, the dependency and paternalism that has typified the

history of relations between the Crown and Indigenous peoples was already established, borne out of colonial economic practices and policies that supported corporate resource extraction at the expense of Indigenous rights and well-being.

4.3.1.2 Treaty Days

The numbered treaties, begun in 1871, and the *Indian Act*, passed in 1876, were respectively deployed as tools for clearing Indigenous title to land and resources in the north (Canada, n.d.) and for controlling and encouraging the assimilation of Indigenous people into the dominant Euro-Canadian society and culture, and both explicitly undermined and replaced existing Indigenous legal and political institutions (Ladner, 2009). While the *Indian Act* and associated assimilationist policies and the introduction of missionaries, residential schools, and social and child welfare agencies certainly have had severe negative effects on Indigenous culture and society, Tough (2005) argues that in the history of Indigenous-white relations it is the market that has been the dominant institution, and his analysis suggests that economic forces did much to prepare the way for and enable these aforementioned legal/administrative, socio-cultural, and religious intrusions, and changing economic realities set the stage for the numbered treaties. The treaties, in the eyes of the Canadian government, finalized the dispossession of Indigenous land and resources, while from an Indigenous perspective they were agreements to peaceably share *their* land and resources in return for promises of assistance in adapting to continued social, economic, and political changes (see Royal Commission on Aboriginal Peoples, 1996, vol. 2, chap. 2). The treaties also established a Janus-faced fiduciary relationship, with one face turned hopefully towards promises of respect, rights,

and protection while the other envisioned a childlike, inferior race incapable of determining or pursuing their own best interests.

Details of the negotiation of Treaty 5, which covers all but one of the First Nations in the ESPA, reveal that the government was uninterested in attending to the needs or supporting the interests of the Indigenous population, but rather was motivated primarily by calculations of the potential for economic growth and development to benefit non-Indigenous settlers, private industry, and government coffers (see Coates & Morrison, 1987; A. Morris, 2000 [1880]). While the lands on the east side of Lake Winnipeg were not wanted for white settlers due to their unsuitability for agriculture, they were wanted to secure transportation routes on the lake and north to Hudson's Bay, and for their recognized timber and mineral potential.

Treaty 5 First Nations were motivated to treat with the government in large part due to dire economic circumstances brought on by the dependency on and subsequent decline of the fur trade and the encroachment of non-Indigenous resource users. They were also well aware of the expansion of Canadian settlement and its increasing assertion of administrative authority. Treaties were seen as a way of partnering with the government to assist them with adapting to the inevitable changes on the horizon and to guaranteeing their right to continue their way of life on their lands and on their terms (see Tough, 1996, chap. 4). Thus, the most important treaty provision for the First Nations was the establishment of a solemn nation-to-nation relationship with the Crown.

From the government's perspective, this was a land surrender treaty, but the Royal Commission on Aboriginal Peoples (RCAP) report, based on extensive research and Indigenous oral history, argues that the concepts of title and ownership as understood by the government

were foreign to Indigenous peoples and that they never intended to give up rights or title to land and resources (Royal Commission on Aboriginal Peoples, 1996, vol. 2, chap. 2). Ovide Mercredi, former National Chief of the Assembly of First Nations, and Mary Ellen Turpel, an Indigenous justice, say of the historic treaties: "First Nations see the treaties as calling for a sharing of the land … Our Elders teach us that the treaties did not extinguish Indian title. … First Nations peoples had no concept of individual ownership of land, so the idea that land could be ceded by a treaty was a shocking and alien concept" (1993, pp. 61-63). A First Nations Elder from the ESPA echoed this and added, "There's no such thing as surrender in our mind. We can't give up the land, we are part of the land, we can't give up ourselves" (NP interview). Further, an Indigenous leader from the ESPA explained, "We didn't own the land, our people never owned land. … But the minute that somebody else wants to use it, they wanna *own* it, and you're like, 'you can't own it, it's ours,' … realistically, like Crown land, the government owns it? Why does the government own it when it's our traditional territory?" (BN interview). So while not owned in the Western sense, the First Nations certainly did think of the territories covered by the treaty as their land.

Nonetheless, under Canadian law, Treaty 5 has amounted to a massive acquisition of land and resources at an absurdly low cost and contrary to the understanding and wishes of the Indigenous signatories. This was accomplished while the First Nations were at a substantial power disadvantage – they were in economic straits, the treaty was in a foreign and legalistic language and was not adequately translated or explained, the government set the parameters of what could be agreed to, and oral negotiations and promises made at the time of signing were not recorded as part of the official treaty record. "In the end, Treaty Five was essentially

the government's treaty, drafted to suit federal priorities and offering the bare minimum to the Native signatories" (Coates & Morrison, 1987).

The terms of the treaty were effectively changed by the federal government in an agreement with Manitoba, the 1930 Natural Resources Transfer Agreement (NRTA), that transferred jurisdiction for public lands and natural resources from the federal to the provincial government (Mochoruk, 2007). As a result, when the First Nations of the province exercised their treaty rights to hunting and fishing this would now bring them into direct contact with provincial authority, as would their involvement in NREM on their traditional territories in future processes such as the ESPI and WNO. The federal government was still bound to ensure treaty rights were maintained, which the NRTA claimed to do, but it inexplicably stipulated that the hunting and fishing rights of the "Indians of the province" were for subsistence purposes only, whereas the original treaties were understood as including commercial harvesting rights as well (Tough, 2004). In 1990 in *R. v. Horseman*, the Supreme Court held that the NRTA, reached with no Indigenous consultation or participation, had in fact extinguished treaty harvesting rights and replaced them with a new livelihood right, thus holding that treaties can be unilaterally modified by the federal government, which is an odd way for the legal system to regard supposedly solemn, nation-to-nation agreements (Wilkins, 2007). The NRTA's extinguishment of the commercial component of treaty rights would be highly significant if treaty provisions regarding title and resource rights were to be interpreted more expansively as I argue they ought to be, for example to encompass rights to resources not contemplated at the time of the treaties but economically valuable today.

The treaty-making process and the subsequent interpretation and application of treaty

provisions by Canadian governments introduced, or perhaps further cemented, a deep-seated

distrust of governmental actions and intentions, especially as Indigenous peoples experienced

the cultural and socio-economic effects of their loss of land and resources. As Simpson et al.

(2007) describe, significant among these effects has been a consistent pattern characterizing

economic development across Northern Manitoba where significant wealth has been derived

from resource extraction on Indigenous traditional territories, made possible by the treaties

and supported by provincial resource and economic development policies, while Indigenous

communities have most often received short-term and low-level employment opportunities at

best, leaving them barely surviving on the economic margins.

4.3.1.3 From the White Paper to Section 35 of the Constitution Act, 1982
Throughout Canada's colonial history, Indigenous peoples have struggled to maintain

their distinctive cultural identities while adapting to changing social and economic

circumstances they had little power to influence. Frustration with generations of

marginalization, poverty, and what they saw as inappropriately understood treaties and broken

promises, led to political organization and activism, especially post-world war II, that was

galvanized by the federal government's White Paper on Indian policy in 1969. This policy

proposal, as part of Prime Minister Pierre Trudeau's 'just society,' recommended ending special

status and rights for Indigenous peoples, negotiating away treaty provisions, and was seen by

many as an attempt to finally complete the government's program of assimilation. Indigenous

condemnation was swift and incisive, notably including Harold Cardinal's popular *Unjust Society*

and the Indian Association of Alberta's influential *Citizens Plus*, termed the *Red Paper*. Cardinal

(1999 [1969], pp. 1-2), with biting sarcasm, observed that the White Paper essentially held that

"the only good Indian is a non-Indian" and that "Indians are to become brown white men,"

adding "Indians have aspirations, hopes and dreams, but becoming white men is not one of

them." By the spring of 1970 Trudeau and his Indian Affairs Minister, the future Prime Minister

Jean Chretien, were rapidly backing away from the White Paper, but the episode deepened

distrust as once again it appeared the government was merely biding its time to break its

promises, absolve itself of responsibility for past and continuing harms, and deny as many rights

to Indigenous peoples as it could get away with.

The Manitoba Indian Brotherhood (now Assembly of Manitoba Chiefs) responded with a

forward-thinking policy paper in 1971 – *Wahbung: Our Tomorrows*. They argued that in

negotiating the treaties the Crown had recognized Indigenous title, but then simultaneously

usurped it and left them with a land base inadequate to self-sufficiency, which amounted to "an

unconscionable and deceitful ruse played upon a people who neither understood your

language nor your motives" (Manitoba Indian Brotherhood, 1971, p. 21). They held that

opportunities for economic development and improving social conditions were interrelated and

both directly connected to self-government, and demanded communities be given jurisdiction

to manage an expanded land and resource base as necessary for the economic self-support that

would underwrite self-government. In recognition of the historic reality of natural resource

wealth on Indigenous lands being exploited by external corporations, *Wahbung* proposed that

there be a "right-of-first-priority to those closest to the resources to ensure an equitable

distribution of economic opportunity and benefit" (Manitoba Indian Brotherhood, 1971, p.

152). In essence, *Wahbung* held it was time for Canada to live up to the spirit of the treaties

and acknowledge that the First Nations were not a conquered people but sovereign partners who had agreed to share land and resources while retaining self-government rights.

"The existing aboriginal and treaty rights" were finally recognized and protected in Section 35(1) of the *Constitution Act, 1982*, which stands as the most significant determinant of the course of the legal and political discourse on Aboriginal rights since (McNeil, 2007). A subsequent series of conferences among Indigenous representatives and the provincial and federal governments was held from 1983-1987 to reach agreement as to what these rights were – treaty rights clearly emanated from the various treaties, although there was debate regarding their interpretation, but the Aboriginal rights held by the Indians, Inuit, and Métis were undefined. The consensus Indigenous position was that social, cultural, and political rights be defined broadly, and that among these "the notion of a land base within a separate political jurisdiction is most fundamental" (Asch, 1994, p. 566). Indigenous leaders explicitly identified self-government as the necessary foundation from which to meaningfully exercise their suite of rights, and jurisdiction over a land and resource base was described as necessary to meaningful self-government. However, the conferences met with failure, largely due to resistance from the western provinces to acknowledge rights whose precise nature and consequences were as yet unknown (Miller, 2000).

The 1992 Charlottetown Accord, crafted with significant Indigenous consultation and participation, Included a First Peoples section that recommended amending the constitution "to recognize that the Aboriginal people of Canada have the inherent right to self-government within Canada," where they would form "one of three orders of government," but the Accord failed in a national referendum (Canada, 1992, sec. IV). Charlottetown marked a decade of

mostly futile constitutional debate and negotiation following the 1982 patriation of the

constitution from Britain to Canada, and there was no public nor political appetite for more.

With the constitutional-reform route off the table, the nature, extent, and implications of

Aboriginal and treaty rights, including self-government and title to land and resources, were

subsequently defined and delimited in federal policy and court decisions.

4.3.1.4 Self-Government Policy

As the federal government asserted its policy-making power to determine how self-

government may be implemented, the practical discourse on self-government was effectively

taken away from the Indigenous community that had been pushing it forward since before the

White Paper (Belanger & Newhouse, 2004). The Policy on Community-Based Self-Government

Negotiations was introduced in 1986, under which agreements to delegate select jurisdictions

and powers to First Nations governments could be negotiated outside of the *Indian Act* with

individual communities. This was followed in 1995 with The Government of Canada's Approach

to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government,

known as the Inherent Right Policy (IRP), that explicitly recognized self-government as a Section

35 Aboriginal right and continued the prior policy's practice of negotiating it on a case-by-case

basis. Recognition of self-government as an Aboriginal right was a significant advance, and the

IRP held that this right extended to "matters that are internal to their communities, integral to

their unique cultures, identities, traditions, languages and institutions, and with respect to their

special relationship to their land and their resources," which seemed potentially quite

expansive (Canada, 1995). However, it would be the actual implementation negotiations that

would determine if this was in fact the sort of self-government that Indigenous groups had been fighting for.

Both policy approaches resulted in high initial participation rates, but were characterized by bureaucratic complexity and lengthy and costly negotiations that resulted in few successful agreements, and both were poorly suited and practically inaccessible to treaty First Nations and the Métis, i.e. the Indigenous residents of the ESPA (Canada, 2011). As well, both policies were criticized by Indigenous leaders for articulating at best a municipal-style vision of self-government with select, delegated powers, which was most obvious in the IRP's specification that where jurisdiction would "tend to have impacts that go beyond individual communities," primary authority "will remain with the federal or provincial governments, as the case may be" (Canada, 1995). The IRP was also clear that no additional funding would be available for capacity building or the development of Indigenous governance institutions, and for First Nations with 'land surrender' treaties there would be no jurisdiction over land or resources outside of their tiny reservations, making a mockery of the policy's claim to extend to their 'special relationship' with their land and resources.

This contrasts with the most prevalent Indigenous perspectives, articulated, for example, in responses to the 1969 White Paper, at the mid-1980s conferences to define Section 35 rights, and in critiques of federal self-government policy. These perspectives envisioned Indigenous governments operating as independent Crowns within the Canadian federation alongside the federal and provincial governments, and considered title and at least shared jurisdiction over their traditional lands and resources as both a right and necessary to progress to the level of self-sufficiency needed to support local economies and governments (see

Belanger & Newhouse, 2004; Canada, 2011). Further, many Indigenous groups maintain that any form of delegated jurisdiction is incompatible with an inherent right to self-government (Library of Parliament, 1999), and Abele and Prince (2006, p. 573) report that they "have encountered no Aboriginal nations, no matter how small, that have identified the mini-municipality model as their ultimate goal." However, there are many varying ideas of how self-government could best be implemented, and of what levels of Indigenous governments would be appropriate for taking on different jurisdictions, especially since some powers important to meaningful self-government would be difficult to exercise at the individual community level. The RCAP report, for example, argued the right to self-government is vested at the level of the nation – defined by them as "a sizeable body of Aboriginal people with a shared sense of national identity, that constitutes the predominant population of a certain territory or collection of territories" – that would have to be (re)constituted for self-government to be effectively and fully implemented (Royal Commission on Aboriginal Peoples, 1996, vol. 2, chap. 3, p. 173). As will be seen later in chapter 6, section 6.4, numerous ESPA First Nations argued for what they termed co-jurisdiction over their traditional territories between individual communities and the province, in line with their understanding of the treaties as agreements to share the land and power on the land, and in such an arrangement decisions regarding land use and resource development would be made collaboratively and require First Nations approval.

While the IRP represents a continued failure to act "courageously and imaginatively" in facilitating Indigenous self-government, as *Wahbung* observed of the government nearly a half century ago, it does constitute substantial progress from Canada's history of Indigenous policy explicitly seeking the termination of their rights on the way to what Harold Cardinal termed

"extermination through assimilation" (Cardinal, 1999 [1969], p. 1; Manitoba Indian Brotherhood, 1971, p. 162). As well, it should be emphasized that Indigenous communities across Canada are not monolithic, and some have been more willing than others to work within imperfect government parameters to further their interests and goals, and it is important to recognize these varying approaches as part of respecting the underlying and universal right to self-determination. The struggle for meaningful self-government is necessarily a process of decolonization that invokes daunting philosophical, legal, policy, and pragmatic challenges, and that requires building trust and healing a long broken relationship between Indigenous peoples and Canadian governments. While the federal government continues to lag, Indigenous communities and leaders have proven resilient and committed to the struggle in the belief that the dignity and rights that are justly theirs will one day also be theirs to fully enjoy.

4.3.1.5 Aboriginal Rights and the Courts

While the possibilities for and approach to self-government primarily followed a path set out in federal government policy and practice, the nature and some important consequences of the Aboriginal rights protected in section 35 of the *Constitution Act, 1982*, as well as guidelines for interpreting treaties, were developed through the courts, especially by the Supreme Court of Canada. There were numerous cases that set the legal foundations and directions for interpreting Aboriginal rights and treaties, especially from the mid 1980s and into the 2000s, with rulings frequently explicitly elaborating on and qualifying earlier ones, and the implications of many of these are still vigorously contested and evolving in practice and as further cases work their way through the courts. Judicial decisions most pertinent to the

circumstances of ESPA Indigenous communities and NREM are briefly discussed below, with emphasis on where things stood as the ESPI process got underway in the early 2000s.

R. v. Sparrow, decided in 1990, was the first Supreme Court case to directly apply section 35's provisions, and in their landmark ruling the Court found that the exercise of governmental legislative and regulatory power is informed and curtailed by Aboriginal and treaty rights. In an earlier decision, *Guerin* in 1985, the Court had affirmed that Aboriginal title existed owing to their historic occupation of traditional territories, and that the existence of this title prior to the establishment of Canadian governments imposed a fiduciary duty on the government, thus confirming the government's trustee-like relationship with Indigenous peoples. In *Sparrow*, the Court reasoned that this fiduciary duty meant that the government could not take actions that may infringe on a protected Aboriginal right unless it was justified according to criteria that have become known as the *Sparrow* test. Under this test, infringement may be justified so long as: it constitutes a valid legislative objective, such as conservation of natural resources; the infringement is as minimal as possible to achieve the valid objective; fair compensation is provided where appropriate to the infringement; and the affected Indigenous group is consulted, or at a minimum fully informed. Further, the Court upheld a principle of priority for constitutionally protected Aboriginal rights, in this case finding that in an infringing-but-justified regulatory regime the Crown would have to allocate priority of use to the infringed Indigenous group "to guarantee that those plans treat aboriginal peoples in a way ensuring that their rights are taken seriously" (*R. v. Sparrow*, 1990). In *R. v. Badger* in 1996, the Court clarified that infringements of treaty rights must also pass the *Sparrow* test (Bell, 1997). *Sparrow* thus forms the foundation of one of the most significant legal doctrines

relevant to Indigenous peoples and the development and management of their lands and resources – the Crown's Duty to Consult and Accommodate Aboriginal and Treaty[24] Rights (Morellato, 2008).

Sparrow did not establish criteria for determining what was an Aboriginal right, but it did note that reference to "existing rights" in section 35 meant these would be rights that were "unextinguished" as of the passing of the *Constitution Act, 1982*, and that identifying rights should be "sensitive to the Aboriginal perspective itself on the meaning of the rights at stake" (*R. v. Sparrow*, 1990). A means for establishing the existence of an Aboriginal right was developed in the *Van der Peet* decision in 1996. Under the *Van der Peet* test, "in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right," and it must "have continuity with the practices, customs and traditions that existed prior to contact" (*R. v. Van der Peet*, 1996, paras. 46, 60).[25] The Court further directed that in deciding rights claims, courts must take the Indigenous claimants' perspective, culture, and relationship to the land into account. And significantly, because of its fiduciary duty, the honour of the Crown is at stake in its dealings with Indigenous peoples and consequently provisions protecting Aboriginal rights and interests, including treaties and section 35 rights, must be given a "generous and liberal interpretation," and "where there is any doubt or ambiguity" regarding the scope of section 35's protections it "must be resolved in the favour of aboriginal peoples," (*R. v. Van der Peet*, 1996, paras. 24-25).

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[24] While the application of the *Sparrow* test to treaty rights was confirmed in *Badger*, the application of the Crown's Duty to Consult to instances of the infringement of treaty rights was made explicit in *Mikisew Cree First Nation v. Canada* in 2005 (Morellato, 2008).

[25] Later, in *R. v. Powley* in 2003, the Court modified the *Van der Peet* test to apply to Métis rights by stipulating protected rights would have to have been integral to their distinctive culture at the time of the Crown's effective assertion of control, and that the area where the right was being claimed would have to be a Métis community with a connection to a Métis community from this historic time (McNeil, 2007).

The Court was clear in *Van der Peet* that the underlying purpose of section 35's

protection of Aboriginal rights was to reconcile the fact of pre-existing, sovereign, distinct

Aboriginal societies on the land, with the later assertion of sovereignty to that territory by the

Crown (Morellato, 2008). Essentially the reasoning is that this reconciliation can be

accomplished by identifying and then protecting that which made those cultures distinct before

the influence of the colonizers, so that the Indigenous societies can retain their distinctive

identities alongside the newcomers, although it is odd that it is the original occupants who

must prove their rights rather than the colonial Crown proving the primacy of its sovereignty

and title. In any case, tying Aboriginal rights to practices maintained as culturally integral since

before European contact seems to regard Indigenous cultures as museum pieces, as frozen in

time, "where only the manner or method of exercise of the activity is permitted to evolve while

the activities themselves are not" (Belanger & Newhouse, 2004, p. 177). As John Borrows

(2017, pp. 120-121) observes, this originalism has "entrenched a view that Aboriginal nations

were past-tense peoples," and has tended to result in section 35 Aboriginal rights being

interpreted in ways that have "further embedded Aboriginal peoples in colonial relationships."

To me, this notion of 'permafrost rights' has a quasi-assimilationist effect – if an Indigenous

culture evolves over time in response to changing circumstances, as cultures naturally do and

Indigenous societies have certainly faced radical changes since contact, then their 'distinctive

culture' risks divesting itself of rights, of becoming somehow less Indigenous under the law.

Later in 1996, the Court considered a self-government claim in *R. v. Pamajewon*, and,

while assuming that self-government is a section 35 Aboriginal right, ruled that it cannot be

claimed in a general way but rather that claims must be made in relation to specific activities or

jurisdictions over which the right is being asserted, and these must also pass the *Van der Peet*

test (McNeil, 2007). Thus, the Court further circumscribed the already limited view of self-

government articulated in the federal government's IRP – the IRP held that Indigenous self-

government was appropriate to "matters that are … integral to their unique cultures … and

with respect to their special relationship to their land and their resources," but to survive the

Van der Peet test Indigenous groups would have to prove that the activities they wished to

govern were culturally integral since before European contact, and the test makes no specific

reference to a relationship to land or resources as a basis for rights (Canada, 1995).

Treaty rights obviously arise from the various treaties, but as discussed earlier, there are

varying perspectives on the meaning of the treaties, and multiple Court decisions have provided

guidance on treaty interpretation. As mentioned above in relation to *Sparrow* and *Van der Peet*,

the treaty rights protected in section 35 of the constitution are to be given a generous and

liberal interpretation that is sensitive to the Indigenous culture and perspective on their

meaning, and instances of ambiguity or doubtful expressions resolved in favour of Indigenous

peoples' understandings. In *R. v. Badger* in 1996, the Court stated "it is well settled that the

words in the treaty must not be interpreted in their strict technical sense nor subjected to rigid

modern rules of construction. Rather, they must be interpreted in the sense that they would

naturally have been understood by the Indians at the time of the signing" (*R. v. Badger*, 1996,

para. 52). As observed by Justice McLachlin in her dissenting opinion in *Marshall 1* in 1999,

Badger thus means that "in determining the signatories' respective understanding and

intentions, the court must be sensitive to the unique cultural and linguistic differences between

the parties" (*R. v. Marshall*, 1999, para. 78). In their majority ruling in *Marshall 1*, the Court held

that treaty agreements may go beyond what is specified in the written treaty document, and their broader terms can be revealed through careful analysis of the treaty's wording and extrinsic historical evidence, including oral history and any oral negotiations accompanying signing, and of the historical and cultural context at the time of the treaty's signing (Jamal, 2006). And in *Mikisew Cree First Nation v. Canada*, the Court described the relevant historic treaty not as a blueprint for land use but as a vehicle to explain and manage ongoing and future relations between the Crown and Indigenous signatories, which it recognized had from the beginning involved conflicting interests in the difficult transition to the colonial reality Indigenous peoples faced (Morellato, 2008). The ruling specified that treaty implementation and interpretation must be done in a way that upholds the honour of the Crown and that serves the "overall objective of the modern law of treaty and aboriginal rights, namely reconciliation" (*Mikisew Cree First Nation v. Canada*, 2005, para. 63).

The guidance cited above seems quite generous and expansive, which has raised some concerns that treaty interpretation could become difficult to manage. Commenting on the ruling in *Marshall 1*, the legal scholar Patrick Monahan said that by implying a right into the treaty that was not explicitly mentioned in the written document, the Court's ruling "invites litigants to argue that the "real Treaty" is the understanding of the parties, as reflected in the context underlying the negotiations, as opposed to the written Treaty document itself ... the written document merely becomes one more piece of evidence of the real agreement of the parties," a position that he found problematic but that many Indigenous people would no doubt find appropriate for agreements with oral societies (quoted in Jamal, 2006, p. 454). However, as far back as the *Sioui* ruling in 1990, the Court had instructed that even generous

treaty interpretation must "be realistic and reflect the intention of both parties ... the Court

must choose from among the various possible interpretations of the common intention the one

which best reconciles the [Indigenous signatories'] interests and those of the [Crown]" (*R. v.*

Sioui, 1990). In *R. v. Marshall; R. v. Bernard* in 2005, the Court clarified some limits to treaty

interpretation, reiterating that a crucial part of interpreting a treaty is determining the intent of

each party, as well as what they understood of the other's intention, at the time of the signing

(Jamal, 2006). The ruling went on to specify that regarding activities claimed as rights:

> Of course, treaty rights are not frozen in time. Modern people do traditional things in modern ways. The question is whether the modern ... activity in question represents a logical evolution from the traditional ... activity at the time the treaty was made. ... This prevents aboriginal rights from being unfairly confined simply by changes in the economy and technology. **But the activity must remain essentially the same.** (*R. v. Marshall; R. v. Bernard*, 2005, para. 25, emphasis added)

Thus, the Court reinforced a somewhat more nuanced version of permafrost Aboriginal and

treaty rights, as modern in form but necessarily historically traditional in their core nature. As

stated in the *Badger* ruling, Aboriginal rights "flow from the customs and traditions of the

native peoples" and "embody the right of native people to continue living as their forefathers

lived," and treaty rights are "contained in official agreements between the Crown and the

native peoples," which, even if understood as including more than the written document as per

Marshall 1, are yet bound to their historic realities (*R. v. Badger*, 1996, para. 76).

Thus, contrary to how it is often perceived, the courts have been quite restrictive in

defining the nature and scope of Aboriginal and treaty rights, arguably more so than policy

approaches taken by the federal government (Dalton, 2006; Newman, 2015). In essence,

Aboriginal rights and treaties protect the possibility of continuing to live as their ancestors did,

hundreds of years ago, in rather strict terms, and this is supposed to serve the purpose of

reconciliation of Indigenous peoples with the settler society. It seems to me rather to serve a

modernized project of assimilation by protecting historic cultural and economic practices but

not modern ones relevant to the actual needs and opportunities of present day Indigenous

communities, thus encouraging them to leave aside their rights and enter the modern world on

the same footing as non-Indigenous, non-rights-holding Canadians. This also affects the scope

and nature of the Crown's Duty to Consult, as it is only invoked in relation infringements of

these narrowly construed rights. So, for example, the Crown is bound to consult regarding how

a road connecting a previously remote ESPA community may affect that community's ability to

continue hunting and fishing on their traditional lands, but not regarding their opportunity to

manage the forestry or mining developments on that land that predictably will follow the road,

despite managing such resource development being undoubtedly more significant to their

potential for present-day economic development and social and community health and

wellbeing. Instead, once a proposed development is in the approval stages they will be left to

once again fight for their interests in any accompanying consultation based on impacts to

history-bound practices protected as rights, which while significant in themselves for cultural

and subsistence reasons, are most often relatively insignificant in the modern economy.

 Peter Kulchyski (2015, p. 69) asserts that "Canada has learned nothing from its history

with indigenous peoples," making the point that an historically established pattern continues to

be repeated whereby colonialist economic imperatives dominate the discourse of Indigenous-

government relations and undergird law and policy approaches whose ultimate effect for

Indigenous communities is social, political, and economic marginalization, the dispossession of

land and resources, and endemic poverty and associated social and cultural disruptions. Clearly,

NREM has been and continues to be implicated in this, but if it is seen as a democratic exercise as I have argued it ought to be, then NREM is an appropriate venue for revealing, describing, and applying norms in the interest of increasing justice. Basic norms derived from the above legal discussion would include that Aboriginal rights and treaties are to serve the fundamental purpose of facilitating reconciliation, that Aboriginal rights should be construed liberally and generously, and that treaty interpretation must be attentive to the understandings and intentions that obtained at the time of signing.

I fail to understand how reconciliation is fostered by the conception of permafrost Aboriginal rights described earlier. It seems to me that this goal is better served by adopting what Justice L'Heureux-Dubé, in her dissenting opinion in *Van der Peet*, described as a "dynamic rights" approach whereby Aboriginal rights would be "permitted to maintain contemporary relevance in relation to the needs of the natives as their practices, customs and traditions change and evolve with the overall society in which they live" (*R. v. Van der Peet*, 1996). Borrows (2017) similarly points out that the Court's approach to interpreting Section 35 stands in stark contrast to the long history of regarding all other of Canada's constitutional provisions as a 'living tree,' where original intentions and meanings form the floor, and not the ceiling, for interpretation, and the meaning and consequences of rights are continually reassessed in light of modern social understandings. Taking a dynamic rights or living tree approach and the Supreme Court's admonition that Aboriginal rights are to reconcile the fact of sovereign Indigenous nations living and sustaining themselves on the land prior to colonization with the later assertion of sovereignty by the Crown, would it not make sense for these rights to include the right of Indigenous peoples to continue to live and sustain themselves on their

lands, including in ways made possible today via knowledge and technologies Indigenous peoples did not have access to in pre-contact times? Otherwise the reconciliation served is to have Indigenous peoples living according to the subsistence practices of their historic ancestors alongside non-Indigenous peoples allowed to partake of the full fruits of modern resource economies. Harold Cardinal said Indians did not want to become brown white men, and I suspect neither do they wish to become museum exhibits.

Taking a similar normative approach to interpreting the historic treaties requires taking account of the historical context, the cultural and linguistic differences, and understandings and intentions of the signing parties. Applying this to the land-surrender component of the treaties, one finds that the historical context was one where the Crown exploited its dominating power to achieve its aims at the expense of Indigenous interests, where linguistic and cultural differences meant that land use and ownership were not understood by both parties in the same way, and consequently that the Indigenous signatories did not understand nor intend their agreement to cede the land while the Crown did. Above we saw that treaty interpretation is to choose from among possible interpretations of the common intention that which best reconciles the interests of the Crown and Indigenous peoples, but there clearly was no common intention regarding surrendering the land, and the Court has also instructed to resolve doubt or ambiguity on the side of Indigenous claims and to interpret treaty terms in the sense they would have been naturally understood by the Indians, which in this case would appear to render the land-surrender treaty provision to be in fact a land-sharing one.

These are not intended as legal arguments, but rather as ethical ones following norms articulated in the Canadian constitution, law, and courts, and so while it may not be what we

are required to follow, I would suggest it is what we ought to if we want to take these norms

and the project of reconciliation seriously. The implications for NREM insofar as it affects

Aboriginal rights and traditional territories would include regarding the land as unceded, i.e.

taking the notion of 'traditional territory' seriously, considering relevant Indigenous

communities as having rights to manage and benefit from the full suite of resources on their

lands, and taken together this would recognize NREM on Indigenous lands as an opportunity for

them to establish or extend their inherent right to self-government following their Indigenous

values and norms.

4.3.2 Navigating between Facts and Norms

Habermas developed his theoretical descriptions of the lifeworld and its one-sided

rationalization, deformation and colonization by systemic forms of integration, and the

resultant 'pathologies of modernity,' with reference to Western social evolution through the

Enlightenment and into the modern era (see chapter 2, sec. 2.3). Indigenous Canadians were

subjected to much of this developmental trajectory in a compressed time-frame through the

process of colonization (see appendix D for further reflections on Habermas' social theory

applied in the context of Indigenous-Canadian colonial history). As such, I would argue that

these pathologies, generally described as loss of meaning, anomie, and psychological

dysfunction, have obtained to a large extent in Indigenous communities as well. However, the

history of colonialism that has wreaked so much destruction on Indigenous cultures and

identities and rendered Indigenous nations politically disempowered, dispossessed of their

lands and resources, and economically and socially marginalized, has intensified and

contributed to further personal, social, and cultural pathologies, some of the effects of which

are witnessed in the social dysfunction, cultural disorientation, and poverty in too many

Indigenous communities as described earlier. In addition, a result of the imbalanced

rationalization of and incursions by systems into lifeworlds of Indigenous and settler societies

alike, is that Canadian lifeworlds in general have been consistently reworked to entrench

certain deformations that function to normalize the marginalization of Indigenous identities,

values, rights, and interests. Thus, unequal patterns of power relation have been woven into

the background fabric of Canadian political, economic, and social perspectives and institutions.

So, given these social facts, what can be done to begin to address their pathological

effects and to chart a course towards the healthy, self-determining communities Indigenous

peoples desire and deserve? As Alfred (2009, p. 45) points out, approaches based on healing,

reconciliation, and capacity-building all too often amount to "problematizing the people and

not the state's behaviour" and in so doing leave intact the "underlying, colonial, causes of

unhealthy and destructive behaviours in First Nations communities." He concludes that "the

solution to the problem of First Nations psychological and financial dependency on the state

caused by colonialism is the return of land to First Nations and the re-establishment of First

Nations presences on and connections to their homelands" (p. 54).[26] Indigenous responses to

the 1969 White Paper emphasized the vital importance of land and resources to prospects for

self-determination, itself seen as necessary for meaningful socio-economic progress and

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[26] It should be noted that Alfred (2009, p. 53) is critical of "large-scale statist solutions like self-government and land claims" because they "are irrelevant to the root problem," which he sees as spiritual and cultural impoverishment and loss due to the experience of colonialism. Instead, he recommends approaches rooted in reconnecting with traditional culture, spirituality, teachings, and practices, and that focus on rebuilding healthy communities on this basis first rather than the usual focus on economic development as the solution. However, because "the elements of a meaningful indigenous existence are land, culture and community," and Indigenous people are "separated by law and policy from their lands by the colonial regime," he concludes, as quoted in the text above, that the return of traditional lands for economic, cultural, and spiritual purposes is fundamental to just and effective solutions (p. 54).

increasing wellbeing, and this position was forcefully articulated again in the 1996 RCAP report.

Newhouse (2000) and Wuttunee (2004) further argue that for economic development to

deliver on the oft stated but too seldom seen promise of underwriting self-government and

improving Indigenous community wellbeing and cultural vitality, it must be guided by local

cultural and social institutions informed by Indigenous values. This suggests that efforts aimed

at truly addressing the pressing needs Indigenous communities face must grapple with the

colonial legacy, both past trauma and present injustices ingrained into attitudes, everyday

practices, and law and policy. And this means dealing with land and the spiritual-cultural and

economic resources it constitutes and developing and strengthening culturally appropriate

social, economic, and political institutions, and all of this overlaid with a recognition of and

intent to further the realization of the inherent right to self-government, which requires that

such efforts be meaningfully directed and driven by Indigenous communities and leaders. This

also mirrors the normative argument I made based on Indigenous history and Canadian legal

norms at the close of section 4.3.1 above. Reflecting on status quo approaches to self-

government, economic development, and resource management, there is clearly a wide gap

between what is and what this suggests ought to be.

The Habermasian model of deliberative democracy (see sec. 2.4) and the

conceptualization of deliberative democratic NREM I described earlier (see sec. 2.5) are

explicitly oriented towards navigating this space between facts and norms in the interest of

arriving at more just and equitable outcomes, especially in contentious and complex contexts. It

is true that Habermas' model is a product of Western academic discourse, but it is directed at

the functioning of modern Western democracies, such as Canada, which is the existing reality

that Indigenous Canadians in East Side communities and across the country must confront. As well, my characterization of NREM is purposively designed to be flexible so as to attend to the particular range of interests, perspectives and understandings, as well as the socio-cultural realities and economic, political, and legal structures characterizing specific instances of NREM. As such, I think this conceptualization of NREM is relevant and useful in considering the design and conduct of governance processes involving Indigenous lands and resources, which I would argue, in the interests of the democratic principles of justice, inclusion, and equality, ought to directly engage Canada's colonial legacy that includes Indigenous social and economic marginalization, political disempowerment, the personal and cultural traumas of generations of genocidal programs and policies, and the dispossession of Indigenous lands and resources. In this context, NREM becomes a contested site with the potential to help facilitate decolonization, or it can continue to reinforce the colonially-created, unjust status quo.

Based on the regional profile in section 4.2, the history in section 4.3.1, and the discussion above, some of the relevant facts and norms that obtained for Indigenous people and ESPA communities in the context of the ESPI and WNO are summarized in table 4.2 below. For the Manitoba Métis, who have a historic and continuing presence on and use of the area's land and resources, there are the additional facts of the general lack of recognition of their rights or interests in the ESPA and failures to adequately consult with them, despite the constitutional affirmation of their Aboriginal rights and the application of the Duty to Consult to those rights. It is certainly true that the ESPI and WNO were never intended to grapple with all of these issues nor to take the exact approach described in my application of deliberative democracy to NREM; nevertheless, based on my reading of history and my understanding of

democracy, I believe that these issues could not be ignored if the processes were to claim

democratic legitimacy and approach the normative democratic goal of furthering justice and

equality.

Fact	Norm
political disempowerment	inherent right to meaningful self-government
narrow and legalistic interpretation of the treaty such that Indigenous title to lands and resources is extinguished	generous and liberal treaty interpretation, including Indigenous perspectives and intentions, such that the treaty is an agreement to share land and resources
history of and regulatory regime oriented towards resource development controlled by and for the economic benefit of external corporate interests	resources managed by Indigenous institutions, informed by locally described Indigenous values, by and for the benefit of local communities
Indigenous communities increasingly removed from a meaningful connection to the land	Indigenous culture fundamentally embedded in respectful relationship with the land
Indigenous knowledge increasingly fragmented and disconnected from communities and governance	Indigenous knowledge holders providing social, cultural, and practical guidance, enriching cultural discourses
legacy of betrayal and distrust	a special, honourable relationship with the Crown
communities in socio-economic crisis with limited opportunities for growth	the demands of equal opportunity across Canadian society and fundamental rights to safety, security, and healthy communities
cultural disorientation due to generations of genocidal government policies	respect and support for the right to cultural health and self-determination

Table 4.2. Select facts and norms in the ESPI and WNO context.

4.4 Resource Development in Manitoba – Policy and Indigenous Involvement

4.4.1 Indigenous Peoples and Provincial Resource Development

Following the *Natural Resources Transfer Agreement* in 1930, when the province set out

to establish regulatory structures for managing resource allocations and development, inclusion

of Indigenous interests was on the same basis as non-Indigenous Manitobans – Indigenous and

treaty rights and their special relationship with the Crown was understood as pertaining to the

federal government, who had no jurisdiction over land or resources outside of reserve lands. A

1917 government report outlined Manitoba's early plans for economic development in the

North as exclusively focused on large-scale resource extraction, while completely ignoring the

participation, rights, and well being of the region's Indigenous population (Loxley, 1992). The

1963 report of the Committee for Manitoba's Economic Future (COMEF) stressed that large-

scale industrial development in the North was needed in order to compete in the global

economy, and considered government support for the expansion of mining, forestry, and hydro

power an urgent matter because otherwise considerable assets would be left 'wasting.'

The conventional wisdom that underlay this approach to northern development

espoused a dualism that divided the region into a "white, industrial, modern north and a native,

backward, traditional north" (Loxley, 1981, p. 154). The COMEF report suggested that a

traditional economy could provide adequate livelihoods for Indigenous people who chose to

stay in the North, but assumed that many would be enticed, or forced out of economic

necessity, to migrate south and become "productive" by joining the mainstream society (Loxley,

1992, p. 59). The Manitoba Northland Transportation Study in 1975 concluded about

Indigenous peoples that "their traditional value systems may be in conflict with modernisation

ideals" by discouraging the individual initiative, work ethic, and strong leadership characteristic

of the 'other,' economically successful North (quoted in Loxley, 1981, p. 154). In this view,

Indigenous moral-cultural failings were responsible for their continued economic

marginalization, poverty, and social problems, and the facts and effects of a history of economic

disruption, oppressive government policies, structural and public racism, and dispossession of

land and resources were rendered invisible. This explicit racism is absent from the work of the

Northern Manitoba Economic Development Commission in the early 1990s, but they identified

a stark distinction between northern "Industrial communities" and First Nations and NACs, with

the former having employment and wage standards above the provincial average while the

latter two lagged far behind and faced myriad economic barriers resulting from "long term,

structural unemployment and difficulties in adjusting to an industrial wage economy," in other

words owing to the colonial history described earlier (Northern Manitoba Economic

Development Commission, 1992, p. 76). As was seen in section 4.2 above, this pattern holds for

the ESPA where the southern, road accessible First Nations had more economic development

opportunities but still lagged behind neighbouring industrial communities such as Bissett and

Pine Falls in terms of employment and wage levels, while the more northern and remote

communities faced significant barriers to economic development and employment.

Consistent with this mindset, at least up to the later 1980s provincial planning for land

and resource use in Indigenous territories, when it was done at all, was top-down, government

driven, and focussed entirely on identifying areas for various sorts of resource exploitation. For

example, a 1987 provincial land use plan for the east side of Lake Winnipeg devoted the bulk of

its content to outlining the interests, goals, and objectives of various government departments

as they related to the area (Manitoba, 1987). Indigenous interests, land and resource uses, and

rights are all conspicuously absent as important considerations, although the location of

communities are noted as resource development "access points." By the early 1990s, provincial

planning for the North began to be more participatory and to at least recognize the needs and

interests of Indigenous communities, but the promotion of large-scale resource extraction

continued, as before, to be the core of economic plans (Northern Manitoba Economic

Development Commission, 1993).

Manitoba's conduct in the construction of and negotiations regarding the massive hydro

projects on the Churchill and Nelson rivers in the 1970s, just to the north of the ESPA, were

emblematic of this general lack of concern for Indigenous peoples in the race to exploit wasting

northern resources, of their tendency to act first and negotiate disingenuously later, and of the

province's acceptance of the basic tenets of assimilation policy. The flooding and forced

relocations resulting from the multiple dams and diversion of an entire river system had severe

socio-cultural and economic consequences for numerous Indigenous communities (see

Chodkiewicz & Brown, 1999; Hoffman, 2008; Manitoba Aboriginal Rights Coalition, 2001;

Waldram, 1984, 1988). This experience demonstrated again that the province was well

prepared to put the interests and needs of the south ahead of concern for northern Indigenous

communities or environmental damage, and that Indigenous people could not simply trust the

government's intentions or promises, but would have to fight to receive just and fair treatment.

A mini-case study of this episode is included in appendix E.

The overall approach described above led to the situation where lucrative economic

development in Northern Manitoba routinely did not involve or benefit Indigenous

communities, a situation that has continued to characterize much of resource development in

the region to today (see Anderson, 1992; Simpson et al., 2007). The near complete absence of

interest in Indigenous participation in resource development only began to change in the last

decade of the twentieth century, after the constitutional protection of Aboriginal and treaty

rights and the court decisions discussed earlier forced the province to recognize that they must

begin to deal directly with Indigenous communities, or at least with First Nations, when resource planning and development affected them.

One example of this increased provincial-Indigenous interaction was experiments with co-management with Indigenous communities, particularly regarding the management of wildlife and renewable resources. The various collaborative arrangements across the province have met with varying degrees of success in achieving management goals and resolving conflict, but none constituted significant power sharing and most consisted of advisory boards where Indigenous communities were included alongside industry and other stakeholders in developing advice for government managers, who retained final say in what was implemented (see Crichton, 2001). As such, while their rhetoric sometimes suggested Indigenous leadership, most of these arrangements continued to regard Indigenous peoples' role in management as no different from that of non-Indigenous Manitobans, although by the early 1990s some managers felt that co-management would soon be recognized as an Aboriginal right (Notzke, 1995).

A year after the federal government's 1995 Inherent Right Policy officially recognized self-government as an Aboriginal right, Manitoba responded with Working in Partnership: Manitoba Policy on First Nation Government, which focused exclusively on First Nations with a land base, i.e. Indian reservations. The policy's principles stated respect for First Nations culture and traditions and support for their desire to "take greater responsibility for the decisions that affect their lives and for managing and controlling their own communities" (Manitoba, 1996, p. 7). A prominent feature of the policy is the minimization of the province's role in supporting self-government – they would participate only regarding issues and jurisdictions directly affecting the province – and it emphasized that it is the federal Crown that is bound by treaty

provisions while denying that the province had any fiduciary obligations. The policy identified

six key issues that self-government negotiations must address, and these had primarily to do

with ensuring the province would lose no jurisdictional authority and incur no additional costs.

Regarding the scope of self-government, the policy was very clear, "First Nation jurisdiction

should be exercised within the defined territory of First Nation communities or reserves," the

province was not prepared for any level of First Nations control over traditionally used lands

and the resources on them (Manitoba, 1996, p. 10). Clearly, the model they were prepared to

accept was that of the mini-municipality, which, as discussed earlier, does not meet Indigenous

aspirations for self-government or provide for meaningful self-determination.

In a rare example of cooperation, in 1998 Manitoba signed a memorandum of

understanding (MoU) with the Assembly of Manitoba Chiefs (AMC) and Manitoba Keewatinowi

Okimakinak (MKO) to: provide for the meaningful involvement of First Nations in the

identification, establishment, and management of protected areas; ensure that protected areas

would not infringe treaty and Aboriginal rights; enable First Nations to nominate lands from

their traditional territories for protection; and establish a protocol for consultation with

affected First Nations regarding the review of areas considered for protection (Manitoba, MKO,

& AMC, 1998). This reflects the government and First Nations' developing understanding of

how the delineation of Aboriginal rights and the Duty to Consult was changing the nature of the

relationship between provincial Crowns and Indigenous peoples, and represents a formal

partnership approach to policy implementation that was new for both.

Opportunities for public participation in provincial planning and regulatory processes,

especially in environmental assessment (EA), provided additional avenues for Indigenous

Manitobans to be involved in resource management processes. However, as the Consultation on Sustainable Development Implementation (COSDI) report highlighted in 1999, "there were substantial deficiencies in the consultation, land and resource use planning, resource allocation, environmental licensing and regulatory procedures, including environmental assessment processes, as they relate to Aboriginal peoples in Manitoba" (Manitoba, 1999, p. 36).

Poplar River First Nation's land use planning activities in the central ESPA provide a more positive example of Indigenous interaction with land and resource management in Manitoba. Starting in the early 1990s, Poplar River leadership and Elders became increasingly concerned with the detrimental effects of resource development on the environment of Indigenous territories in the province, especially the hydroelectric-induced flooding just north of the ESPA and forestry operations to the south, and began discussing the desire to protect their lands (BN interview). In response, Poplar River set out to develop a vision and plan for their traditional territory, starting with traditional land use and occupancy studies and involving a series of research projects over a period of more than a decade, including documenting traditional knowledge and community history based on interviews with Elders, investigating traditional patterns of movement and land use, exploring archaeological sites, and doing moose habitat mapping and an Indigenous plants study (Poplar River First Nation, 2011). This work was supported by a number of non-governmental organizations, including the Natural Resources Defense Council, the Metcalf Foundation, and the Canadian Boreal Initiative, while the province provided some funding as well as the services of staff from the Department of Natural Resources, later Manitoba Conservation.

To their credit, provincial department staff seem to have embraced the opportunity to support the First Nation's work, and were described as generally quite helpful throughout the process (BN interview). However, a number of interview participants commented that without substantial funding from non-governmental sources, they would not have been able to retain consultants and relevant experts nor take on the range and depth of research projects over the extended period of time that they felt were necessary to support their community-based land use planning (BN, JE, SL interviews). The complete land use plan that Poplar River produced in 2005 displayed a richness of vision and was supported by a wealth of historical and contemporary understanding that demonstrated some of what appropriate time and resources could accomplish. However, the community still regarded it as but a starting point in an ongoing process of planning and managing their lands, which contrasts with planning typically done by the province that was so often pushed for time and money, and where plans tended to be regarded as endpoints.

Following the above mentioned First Nations-Manitoba Protected Areas MoU, Poplar River nominated the bulk of its traditional territory, some 777, 270 ha, for protection. As there was currently no legislative route to give effect to First Nations' land or management plans, they requested designation as a park reserve under the *Provincial Parks Act*, which offers interim protection from industrial activities for a five year period while plans are developed and the protected status reviewed, usually with a view to establishing a provincial park. The First Nation's request was granted and the Poplar/Nanowin Park Reserve was established in 1999, the first of its kind in the province. While this designation barred all resource development, this reflects the First Nation's strategic use of the legislative tools available to them to assert control

over future development on their lands. As an interview participant described, Poplar River's

efforts, from the start, were an expression of how they understood their sovereignty and title

and was a move towards establishing self-government:

> They think that 'protected area' is to block development but that's not what it's about.
> It's about self-government, it's about ownership. … You have to use the process, we live
> in a day and age where we already have treaties and we already lost everything that we
> have. It's a matter of trying to recoup it. It's not enough to just say, "I'm a First Nation
> government," you have to substantiate that with something. … We have to pinpoint
> some kind of ownership on it … because certainly you don't want to wait until a hundred
> years from now and the government finally decides that it's your traditional territory.
> (BN interview)

Ray Rabliauskas, a Poplar River lands management coordinator, echoed this, explaining that

community members "felt it was important that we get recognition from the government. And

get control of the land back so that Poplar River makes decisions on what happens" (quoted in

Willow, 2013, p. 880). While this is an example of Manitoba-Indigenous cooperation in land use

planning, it is worth noting that the province became involved and was supportive only after

the First Nation took the initiative to proceed and secured substantial external funding.

There were of course other isolated instances of greater cooperation and increased

Indigenous influence over the management of resources in their traditional territories, but as

the above discussion illustrates, leading up to the ESPI the general history of Indigenous

communities in relation to provincial resource management was characterized by

marginalization, a favouring of corporate interests, and experiencing the harms associated with

development, both ecological and social, with little to none of the benefits.

4.4.2 The Evolution of Sustainable Development Policy in Manitoba

Policy in Manitoba related to economic development and environmental protection evolved from an initial focus on facilitating development and limiting water pollution in the 1870s, to an embrace of the principles of sustainable development by the close of the 1990s that led in a direct line to the ESPI and WNO planning processes. (see Manitoba Law Reform Commission, 2015; Northern Manitoba Economic Development Commission, 1992). An increasing focus on environmental protection was part of the second wave of environmentalism and led to *The Clean Environment Act* in 1968, which recognized connections among the components of the natural environment and strengthened pollution prevention, and *The Environment Act* in 1988, which broadened the conception of the environment to include humans and institutionalized the practice of environmental assessment for public and private developments.

The provincial discourse on sustainable development was initiated in response to the 1987 Brundtland report (World Commission on Environment and Development, 1987), and resulted in a flurry of policy and program activity from the late 1980s through the 1990s as the province sought to establish itself as a leader on sustainability. The Manitoba Round Table on Environment and Economy (MRTEE) was established in 1988, with high level government support, and the round table facilitated significant public consultation and research into sustainable development that, imperfectly, informed *The Sustainable Development Act*, passed in 1997 (Sinclair & Quinn, 2012). Significant dissatisfaction from all quarters with the government-led consultations leading up to the *Act*, and with the subsequent *Act*'s failure to include measures for implementing sustainable development in land and resource planning or

in development assessment and regulation (see Manitoba, 1997), resulted in the government

initiating the COSDI process (Sinclair, 2002).

COSDI was led by an 18 member Core Group of individuals selected by government for

their experience and expertise and who were charged with representing the public interest in

their deliberations, and they consulted with a sixty member Advisory Committee composed of

representatives of a broad range of self-selected organizations, and although Indigenous groups

were invited, only the Manitoba Métis Federation and Aboriginal Council of Winnipeg chose to

participate. The COSDI process was considered by many to represent significantly improved

consultation and careful deliberations, and it produced a report widely supported by the public

and government (Sinclair, 2002). The COSDI report recommended, among other things:

sustainable development planning that integrated social, economic, and environmental

considerations; a nested approach to this planning that started with planning for large areas

defined by natural boundaries, which would then guide planning at more local levels as well as

provincial development assessment and regulatory processes; ensuring meaningful public

participation at all, and especially early stages of planning and assessment; and forging positive

relationships with Indigenous peoples via cooperatively developing a consultation strategy and

protocol for Indigenous involvement in land and resource use planning and development

assessment and regulation (Manitoba, 1999).

Concurrent with the COSDI process, the province initiated a pilot project for engaging in

Ecosystem Based Management (EBM) in 1997, which had been recommended in the 1995

provincial forest plan (KPMG Consulting, 1995). This vision of management mirrored many key

elements of the COSDI report, especially planning based on large, naturally defined areas that

integrated social, economic, and ecological factors and that meaningfully involved the directly affected and general public. The EBM pilot had roughly three years to organize itself and complete its work, which was set in the Manitoba portion of Ecoregion 90, roughly covering the south and central regions of the ESPA. The project was government led, with a steering committee chaired by the Assistant Deputy Minister of Natural Resources and a core team of government staff, a science team of consultants, industry, and government representatives, and a values team led by the University of Winnipeg's Centre for Forest Interdisciplinary Research (Jones, Scaife, & Zebrowski, 2002). In addition, a standalone socio-economic study was produced (Peckett, 1999) and three First Nations participated with a consultant in preliminary traditional land use studies. The values team concentrated on the general public and did not attempt to elicit and analyze the values of the Indigenous residents of the area, a serious shortcoming of the project that in my judgement reflects a failure to understand and respect their rights and cultural ties to their lands (Fenton, Harris, Miller, & Smith, 2001). The land use studies were able only to scratch the surface and noted that significant additional work with the communities would be needed to complete adequate studies of their traditional and current land use (Northern Lights Heritage Services, 2000). Due to budget and time constraints imposed by government, the project was unable to address its final objective of 'lacing' together the social values and ecological science findings, which was of course foundational to the concept of integrated planning (Jones et al., 2002). All of the project teams noted data and information issues, especially missing or outdated data fragmented across government departments, and all also reported that more time and resources would be needed to properly

complete their tasks and then to integrate their findings into a comprehensive foundation on which to base planning.

Both the COSDI report and the EBM pilot project recognized that implementing sustainable development was a challenging endeavour that would require new policy approaches and, most significantly, new thinking among the public, industry, and government, which would take dedicated political leadership and a significant commitment of time and resources. By the turn of the century, there were some significant advances on sustainable development, but these proceeded in isolation and in the absence of an overall provincial plan or comprehensive vision (Sinclair & Quinn, 2012). There were also some persistent concerns with how the government sought to implement sustainable development, which fundamentally requires a holistic perspective that cuts across traditional government administrative domains. Sinclair and Quinn (2012) observe that the institutional structure of the government failed to evolve accordingly, and the continuance of existing ministerial silos was a primary barrier to implementing sustainable development. As a result, sustainable development remained marginalized within government, and policy integration one of the greatest challenges to moving forward on it.

In this history there is a sense that the government wanted to be recognized as a sustainable development leader in Canada, but wanted to do so without making significant changes to 'business as usual,' especially when it came to natural resource allocations and development approvals. There was also a consistent tendency for the government to dominate and push for short timelines while failing to provide sufficient support and resources, which was amply witnessed in the lead-up to the *Sustainable Development Act* and throughout the

COSDI process and EBM pilot project. And, as seen throughout this section, the meaningful inclusion of Indigenous interests, perspectives, and concerns has been a conspicuous deficiency.

From this background, the ESPI was announced in 2000 as a key part of the province's sustainable development strategy. To be successful it would have to address the deficiencies just noted. Trust would have to be built if the troubled Indigenous-Manitoba relationship was to be repaired, and this would require the province to act differently in some fundamental ways. They would need to stop seeking to limit the application of Aboriginal rights and self-government aspirations, start ceding their totalizing control over land and resource planning and development on Indigenous lands, and government would need to spend the time and resources necessary to partner with Indigenous peoples in ways that were acceptable to them and that would serve their pressing present and long-term needs and interests. Given the troubled history of resource development relations described in the chapter above, the ongoing evolution of legally recognized Aboriginal rights, and the principles of sustainable development that the province claimed to embrace, it ought to have been clear that it would not be enough to involve Indigenous people as stakeholders and give them a voice, they would need to be empowered to lead when it came to planning and decision making for their traditional lands and resources. The gap between the factual reality and the normative position I have been developing was still quite wide at the end of the century, and the ESPI process seemed positioned to at least begin to close the distance.

4.5 A Convergence of Interests – The Impetus for East Side Planning

4.5.1 Government, Industry, and Environmental Interests

In the provincial election of September 1999, Filmon's Progressive Conservatives were defeated by Gary Doer's New Democratic Party (NDP), who formed a majority government after eleven years in opposition. While the NDP were, rightly or wrongly, generally regarded as more progressive on environmental concerns, they were taking over from a Conservative government that had spent a decade cloaked in the mantle of sustainable development, and there was concern in the environmental community that in an effort to put their own stamp on government policy, recent gains might be abandoned or delayed with internal review. However, word filtered out that the COSDI report was being quickly assessed and moving up to the Cabinet level (Sinclair, 2002), and in June of 2000 Oscar Lathlin, Minister of the newly created Department of Conservation, released the provincial sustainable development strategy as required in the *Sustainable Development Act*.

Implementing Sustainable Development for Future Generations: Manitoba's Sustainable Development Strategy consisted of six sub-strategies. These included: accepting the COSDI report and committing to implement its recommendations; amalgamating the departments of Natural Resources, Energy, and Environment into Manitoba Conservation; and setting up an Aboriginal Resources Council to assist with COSDI implementation and to ensure Indigenous-Manitoba partnerships were developed. The final component was the first concrete action in implementing the COSDI recommendations – initiating large area planning for the east side of Lake Winnipeg as a pilot project for such plans to be eventually developed for all other regions of the province. The strategy's focus suggested the government viewed the COSDI report as

encapsulating the key perspectives and insights emerging from the public and policy discourses on sustainable development over the previous decade, and believed it presented a framework for implementation that was broadly supported by the public and industry stakeholders and that, with appropriate partnerships and consultation, would embrace Indigenous participation and interests as well. The ESPI would explore and showcase this new approach, in a sense it was the sustainable development work of the previous decade focused onto a fine point.

There were a number of additional factors and priorities that converged in the ESPI and that help explain why this region was chosen and some of the key factors and considerations that were involved. Broadly speaking, these related either to economic development or to environmental conservation, and in the case of Indigenous peoples there was interest in self-government and increased roles in resource management tied to urgent needs for community development and increased social wellbeing – taken together, these mirror the key components, often regarded as mutually opposed in past planning and development practice, that the concept of sustainable development sought to integrate.

With the election of the NDP, many environmental activists felt their opportunity to push the provincial government to take truly progressive action had finally come, and in fact some found themselves moving from government critic to government advisor or employee (SA interview). The NDP counted Indigenous peoples and the environmental community among their core constituents, and with Oscar Lathlin, a northern First Nations leader and the new Minister of Conservation, quickly moving to implement sustainable development and forming an Aboriginal Resources Council to advise him, there was considerable hope among Indigenous and environmental leaders that both of their agendas would be addressed. Around this time

there were also increasing formal and informal partnerships between Indigenous and environmental groups as both saw many of their interests aligning, especially regarding sustainability and social justice issues (SA, ON interviews).

At the time the ESPI was launched, and throughout its course, boreal forest conservation was a strong focus for environmental groups and governments in Canada. WWF Canada's Endangered Spaces Campaign through the 1990s highlighted the boreal forest, which covers the ESPA and is the country's largest forest system, and this focus continued past the end of the campaign (WWF Canada, 2010). This all existed within a larger international context that included the Convention on Biological Diversity that called for nations to establish systems of protected areas (Article 8(a)) and to involve Indigenous peoples and knowledge (Article 8(j)), and in 2002 the Conference of the Parties to the Convention established a program of work focussed on forest biodiversity as it was seen that global forests were especially under threat. In 2003 the Canadian Boreal Initiative was launched with support from the Pew Charitable Trusts, and it established an alliance among environmental organizations, First Nations, and industry groups to work with governments and other stakeholders to promote boreal forest conservation and sustainable development across Canada.

Specific to the ESPA, the Manitoba Model Forest was established in 1992 as part of the federal government's Model Forest Program, which was in response to commitments to move to sustainable forestry practices. This brought together a wide range of forest interests and stakeholders, including ENGOs, academics, industry, local communities, and First Nations, to share knowledge and develop innovative approaches to sustainable forest use. Operating until 2007, the Model Forest brought a focus on boreal conservation and participated in the EBM

pilot project mentioned above and in the ESPI process. The provincial Protected Areas Initiative, which sought to ensure that the 'enduring features' of each natural region were adequately represented in its network, also brought attention to boreal conservation in the ESPA. In 2001 the Initiative noted that the natural region comprising the south and central ESPA, which contained the Poplar/Nanowin River Park Reserve and Atakaki Provincial Park, was considered adequately protected, but that protection of the natural region of the northern portion of the ESPA was inadequate (ESRT Mines Presentation, 2002, May 15). The northern region did have eight Areas of Special Interest where negotiations regarding adding them to the network of protected areas were ongoing with industry and neighbouring First Nations as per the 1998 MoU, although none of these areas have been subsequently protected. As well, the three First Nations that participated in the EBM pilot project land use studies (Poplar River, Little Grand Rapids, and Pauingassi) had all expressed concerns with the potential for industrial resource development and by 2002 had nominated parts of their traditional territories for interim protection. All of this meant that protecting a significant portion of the boreal forest that covers the ESPA from development was a strong focus before and throughout the ESPI and WNO processes, especially for environmental organizations, the provincial government, and, with varying degrees of emphasis, the local First Nations.

As described earlier, the remoteness of all but the road-accessible southern tip of the ESPA had left it largely unaffected by large-scale, industrial resource development. However, there was increasing pressure to open up the area from industry, especially for access for forestry expansion, and from First Nations, some more than others, who wanted to see increased economic development opportunities for their communities. This 'opening up'

implied building an all-season road into the area, something that had been talked about for decades. For the isolated communities, in addition to increasing the potential for resource development, all-season road access would greatly reduce transportation costs, bring down the cost of goods and services, and create an increased sense of connectedness with the outside world, although there were also significant concerns that it could increase social problems, lead to ecologically damaging development, and destroy the sense of remote wilderness that many prized. As early as the late 1970s, extending an all-season road at least along the eastern shore of Lake Winnipeg was presented as a near certainty, and the 1987 provincial plan for the East Side recommended setting aside utility corridors for future road and utility infrastructure building (Manitoba, 1977, 1987). By the early 1990s, First Nations in the south and central ESPA anticipated that a road would be built into their area to facilitate forestry expansion, and partnerships were explored during the decade between Tembec and some of the central and southern ESPA First Nations, including Bloodvein and Berens River, which would be the first two communities reached by northward all-season road expansion (BN, GN interviews).

In the fall of 1999, just prior to the election, the province commissioned an economic justification and scoping study for all-season road development on the East Side. The study found that winter roads provided marginally acceptable service to isolated communities and that the anticipated impacts of climate change would soon render this unreliable; however, while acknowledging positive and negative potential impacts on communities, the deciding factor in the cost/benefit analysis appears to have been the prospect of revenues from future resource development the road would inevitably enable (Dillon Consulting, 2000). The report reflects the widespread belief among government, industry, and First Nations that the primary

impediment to resource development in the area had always been the lack of economical and

reliable access. The report also noted that there appeared to be qualified support for the road

among Indigenous communities, but that they had all expressed the desire for deeper

consultations regarding social, economic, and environmental impacts. So road building was

clearly something to be planned for, especially in light of the range of impacts it would have.

The ESPA had never been considered a likely candidate for hydroelectric development,

but ever since the hydro developments on the Nelson River, just to the north, the region's

strategic location between the source of generation and southern consumers "has and

continues to cause consideration of the routing of a High Voltage Direct Current (HVDC)

transmission line through the plan area" (Manitoba, 1987, p. 19). The 1987 plan even contains a

map showing such a line. Interview participants reported that during the 1990s Manitoba Hydro

representatives discussed possible locations for this 'Bipole 3' transmission line with First

Nations leaders on the East Side, making it clear this was Hydro's preferred route and leading

them to feel it was only a matter of time before it was built (BN, SA interviews). However, there

was no consensus among First Nations regarding such a line – some, such as Poplar River, were

vocally opposed, some wanted to pursue rental or benefit-sharing agreements with Hydro, and

others were undecided – more thorough consultation and planning was certainly called for.

There was also a new mindset in government that, while still supporting resource

development, favoured more planning than had previously been done. Nearly all interview

participants felt that under the Progressive Conservatives in the 1990s the opening up of the

East Side to industrial resource development had been a foregone conclusion. When the NDP

took power, there was still a sense within government that this would inevitably happen, but as

one interview participant reported hearing from a Deputy Minister regarding the drive for

forestry expansion in the area, "that forest will be there, we don't need to do it *tomorrow*" –

'planning before development' was the mantra of Manitoba Conservation's approach to

sustainable development (GN interview). Minister Lathlin also made a point of slowing things

down to ensure there would be appropriate Indigenous involvement in thorough planning that

would then guide development. As discussed numerous times above, by this time it was clear

that resource development on or near Indigenous lands needed to proceed with their

meaningful participation in planning and decision making, a point reinforced in COSDI and

supported by the NDP government, but this was not something the province had a great deal of

experience with doing well, or at all. There appears to have been a genuine sense within

government that it was best to take the time to get this right so the proper balance could be

struck between conservation and development that would also respect Aboriginal rights and

interests – given the proliferation of litigation related to development on Indigenous territories,

this would save time and costly conflict down the road. In establishing the Aboriginal Resources

Advisory Council in December 2000, Minister Lathlin acknowledged that "for far too long,

Aboriginal people have been excluded from having a say in decisions regarding natural

resources that have a direct impact on their lives," and stated that the council would have "an

important role to play in providing guidance ... as we seek to find a balance between

conservation and development of our resources" (MB News Release, 2000, Dec. 1).

Industry proponents also desired to have greater clarity and certainty before

considering large investments in projects in the area, and a well-supported land and resource

use plan could provide that. The EBM pilot project on the East Side had generated and

compiled a significant amount of relevant data and had identified many issues and concerns

relevant to resource allocation and management in the area, but it had not provided answers or

specific guidance other than that further and deeper planning was needed. Within the new

Department of Conservation there was recognition that the embrace of sustainable

development required taking a holistic view that considered more than economic values, but

facilitating economic development was still seen as a government mandate (GN interview).

Minister Lathlin echoed this in announcing the start of the ESPI in August 2000: "future land

and resource allocation and proposed developments must address social, environmental,

health, cultural and economic needs … planning must be done in an integrated and co-

ordinated manner" (MB News Release, 2000, Aug. 9). So it was about comprehensive planning,

but planning was about resource allocation and development.

There was thus a confluence of powerful factors that contributed to the government's

decision to announce the large area land use planning pilot for the east side of Lake Winnipeg,

including: a new government that rhetorically prioritized comprehensive planning and

Indigenous engagement in its approach to development; a focus on protected areas and

especially boreal forest conservation; pressure on the East Side for resource allocation and

development, road building, and hydro transmission lines; and the increasing importance of

Indigenous participation, rights, and consultation in resource planning and development.

4.5.2 Indigenous Communities and the Dilemma of Development

To be effective, the ESPI clearly needed the area's First Nations as willing participants,

and there were various factors motivating them to join, which chiefly revolved around the

common assumption that their traditional territories would soon be opened up to a greater

amount of development and so participation in prior planning would provide an opportunity to exert influence on how this unfolded. For the First Nations, the prospect of this opening up drew them into what Slowey (2009) has termed the 'dilemma of development,' whereby Indigenous communities' decisions regarding engaging in resource development have frequently been presented in stark, dichotomous terms: embrace resource development and the modern capitalist economy, or hold to and revitalize traditional cultural values and livelihood practices; extract resources and damage the land, or respect the land and nurture the web of relations that constitute it; build community capacity and self-government within colonialist parameters, or remain in poverty and dependency. In essence the dilemma is presented as a matter of having to choose between traditional culture and identity on the one hand, and development and modernity on the other.

It is true that there are values and perspectives embedded in capitalist resource development that stand in opposition to some traditional dimensions of Indigenous cultures, as Newhouse (2000), Wuttunee (2004), Alfred (2009), and Slowey (2009) all point out. Newhouse (2000) provocatively questions whether Indigenous cultural identity can survive an encounter with capitalism, given its totalizing and normative nature, and suggests that engaging in capitalist endeavours may represent finalizing the assimilation so long pursued by colonialist government policy and programs. Alfred (2009) argues that efforts to address pressing socio-economic challenges in Indigenous communities need to start with strengthening traditional spiritual and cultural practices and understandings as a foundation for decolonization, including reclaiming and reconnecting with the land where these practices and understandings are rooted, and he is wary of common approaches that emphasize resource and economic

development and capacity building programs, which too often amount to viewing Indigenous communities and people as problems to be managed from a Western, colonial perspective. However, both of these Indigenous scholars also recognize the location of Indigenous communities within capitalist and Western-democratic Canada and the need to engage politically and economically to some extent, in some way, if they are to continue to exist – their emphasis is on keeping Indigenous cultural values and perspectives alive and healthy as the foundation of autonomous Indigenous approaches to economics, governance, and socio-cultural healing. There is, however, a danger in taking these strong warnings too far, in that 'authentic' Indigenous culture becomes effectively an historical artifact, much like the notion of permafrost rights under the *Van der Peet* test that sees Indigenous authenticity only in that which does not change. But cultures are fundamentally dynamic, and the history of Indigenous peoples since European intrusion has been one of cultural adaptation and survival in the face of genocide, and Slowey (2009) and Wuttunee (2004) emphasize that what is key in facing this dilemma is that Indigenous communities be conscious of and in control of the cultural adaptation that accompanies resource and economic development.

The dilemma of development also draws Indigenous communities into the wider social debate between notions of resource development and environmental conservation, which in much of public discourse stand in opposition even under the unifying banner of sustainable development. Agrawal (1997) describes how the discourses of development and conservation have both historically operated to undermine the agency of Indigenous peoples. In colonial days, the development discourse constructed primitive Indigenous people who were incapable of developing their resources effectively and fully, and which were thus left wasting without

Western intervention, and this led to drives to alienate the people from their lands. More recently, development has become more about the lack of capacity of the 'underdeveloped' to help themselves or to develop in ecologically acceptable ways, necessitating Western-capitalist interventions in the form of capacity building and technology, expertise, and capital transfers.

The conservation discourse presents the flip side of this, making some similar paternalistic and disempowering assumptions about Indigenous people: that they are natural protectors of the earth and so should eschew development, and either live simply (i.e. in poverty) or dependent on the developed world, or both; or assuming that left to their own devices they will despoil their lands in a blind race for economic development and so need Western knowledge and guidance to understand the value of and acquire the means for conservation. So, for Indigenous people either choice, development or conservation, has meant choosing to accept their own disempowerment and left them to pursue their interests and aspirations on the terms of the society that has dominated them. Agrawal (1997, p. 476) notes that more recent approaches to development have seldom been successful in accomplishing the ubiquitously stated goals of facilitating local empowerment and improving material and social conditions, and concludes that "strategies that privilege external, centralized control are unlikely to achieve the ends desired," suggesting instead that what is needed is greater local autonomy and subsequently a more decisive weight to local preferences, interests, and values in the design and implementation of development and conservation strategies.

This accords well with Wuttunee (2004), Ladner (2009), and Slowey (2009) who in essence suggest that the solution to the dilemma of development is to see it through a lens of self-determination, which consists of self-sufficiency and self-government. Indigenous

communities have had different histories and will make different choices regarding if and how to engage in resource development, but the key is that it be their choice and that these choices be respected by federal, provincial, and other Indigenous governments. These scholars are also clear that a key contribution that Indigenous culture and values can bring to development, part of what Wuttunee terms the 'Aboriginal wisdom' that shares much with deep ecology, is a holistic perspective where development is about more than economics – development goals revolve around spiritual, cultural, social, and individual health and wellbeing, all of which are rooted in respectful relations within the land-community, and profits and wealth generation serve these purposes rather than being ends in themselves. But how this Aboriginal wisdom is understood and applied in particular development contexts, and how historically traditional the guiding values and perspectives are cannot be imposed from without, they are part of personal and community identity formation. A self-determination approach denies the dichotomies implicit in the dilemma of development, instead it prioritizes the ability of Indigenous communities to steer their own course towards economic *and* socio-cultural wellbeing, with both enhancing the realization of the other. "Although self-determined development can be viewed … as the reflection of the assimilation of Aboriginal peoples into 'Western civilization,' it can also be viewed as a mechanism through which to exert agency. … Ultimately, they seek to preserve their right to live on their land on their own terms" (Slowey, 2009, p. 243).

This approach to self-governed Indigenous development requires at least the potential to grow into self-sufficiency, the other component of self-determination, and in most cases this is impossible without some jurisdiction over or control of a land and resource base. This tie between land and the economic power necessary to the practice of effective self-government is

a point that has been consistently made by Indigenous leaders and organizations (see Abele &

Prince, 2006; Belanger & Newhouse, 2004; Manitoba Indian Brotherhood, 1971; Royal

Commission on Aboriginal Peoples, 1996; Slowey, 2000). The Indigenous development model

promoted by Wuttunee (2004) includes "control of assets" as an essential element, and she

identifies ownership and control of land and natural resources as among the most key assets

Indigenous communities may have. Supporting these points, Slowey (2013) observes in the far

north that self-government in the absence of settled land claims that grant some jurisdiction

over natural resources greatly restricts the ability of Indigenous communities to actually

determine their own course as described above.

In the ESPA of course, the federal and provincial governments consider all Indigenous

title to land and resources to have been surrendered to the Crown, leaving First Nations with

dim prospects for achieving self-sufficiency, and almost certainly not on their own terms. Given

their extremely challenging socio-economic conditions, the region's First Nations were certainly

keenly interested in development opportunities that could help them address pressing

problems, but following the argument I have outlined here, success in achieving this would

have to include a healthy dose of local agency and be informed by Indigenous values and

perspectives, and, ideally, this would be enabled by achieving some level of jurisdictional

control over the land and resources of their traditional territories. While First Nations within

the ESPA had their own particular priorities and points of emphasis, they all sought to use the

ESPI and WNO processes to enhance their local autonomy and to establish their leadership in

articulating a vision for how their traditional territories should be developed. While

participating First Nations did not use the language of legal jurisdiction or title, even the basic

planning steps that many were able to begin, of mapping out traditional territory and establishing historic and present use and occupancy, are subversive to Crown territorial sovereignty (Willow, 2013). And as one elder observed, even in imperfectly completed planning the groundwork has been laid, where it may lead is yet unknown but the future is in the hands of the people and their leaders now more than ever (confidential). While other Indigenous participants were less sanguine, there was wide agreement among them that Indigenous leaders considered the ESPI and WNO as valuable primarily for the potential to enhance their power to lead land-use planning and direct the nature and pace of resource development on their traditional territories, and that they saw, and continue to see achieving this as a necessary part of their communities being able to address pressing social and economic needs.

Chapter 5: Examining the East Side Planning Initiative (ESPI)

5.1 Introduction

This chapter explores the ESPI, a broad area planning process on the east side of Lake

Winnipeg, Manitoba, which consisted of two phases. The chapter is chronological and largely

descriptive, and a discussion of my findings is provided in chapter 7 following the exploration in

chapter 6 of the WNO process that succeeded the ESPI. A full description of the case study

research methods used is provided in chapter 3.

5.2 East Side Planning Initiative Phase 1, 2000-2002

The beginning of the ESPI was formally announced by Oscar Lathlin, Minister of

Conservation, on August 9, 2000, a month after it was introduced as part of the province's

sustainable development plan. Lathlin identified the key elements of the process, which were

clearly informed by the COSDI report and prior sustainable development policy work:

- planning would be inclusive of all stakeholders and incorporate meaningful public participation – "our objective is to establish a process, in collaboration with the public, local communities, industry and First Nations, that will ensure comprehensive public involvement;"

- the process would feature integrated sustainable development planning to guide resource development – "future land and resource allocation and proposed developments must address social, environmental, health, cultural and economic needs of local communities, First Nations and various stakeholders," and in order to address these diverse interests and concerns "planning must be done in an integrated and coordinated manner;"

- and the end product would be a land use plan reflecting the input and meeting with the agreement of those affected by it – "[the ESPI] will provide the opportunity to develop a consensus among these interests with a common vision for land and resource use now and in the future" (MB News Release, 2000, Aug. 9).

Within this broadly described planning process, the announcement went on to identify some

specific "major issues and options" in the area that would be examined, namely the expansion

of forestry, all-season road development, and routing a hydroelectric transmission line through the region.

The ESPI was initially conceived as taking place in two phases. Phase 1 would consist of a three-member government review panel undertaking consultations with First Nations, local communities, industry, non-governmental organizations, and the general public. The panel would then make recommendations regarding the 'large area'[27] boundaries, the planning process timing and steps, establishing a round table and advisory committee, and current issues and options for the area that should be considered in the planning. The round table and advisory committee arrangement was prescribed by government from the start, presumably in recognition of the success COSDI had with using this structure for stakeholder consultation. Phase 2 would then involve the round table, with input from the advisory committee and public consultations and support from government staff, developing a broad area plan (BAP) and recommending it to the minister for provincial approval.

The review panel, comprised of two members from Manitoba Conservation and one from Aboriginal and Northern Affairs, began their task in August, 2000, with internal meetings with provincial departments, branches, and agencies considered to have an interest in resource and land-use planning for the area, including forestry, mines, transportation, hydro, and water resources (GN interview). Described as typical of government planning, the idea was to first determine all the various existing governmental priorities, plans, and commitments for the area and use that as the starting point for setting up the boundaries and foci of the planning process. This helped determine the 'issues and opportunities' the BAP would address and ensure there

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[27] COSDI referred to "large area" planning, the ESPI initially used the term "wide area" and later "broad area," and all refer to the same concept.

would be cooperation, and minimal push-back, from within government – for example, the

mines branch took strong positions regarding any plan recommendations or actions that would

disrupt business-as-usual regarding existing mining claims, exploration, or developments, and

consequently mining regulatory processes were essentially off the table throughout the

planning process (GN, NE interviews). It is worth noting that the stated mandate of the Phase 1

review panel was to consult with First Nations, local communities, industry, non-governmental

organizations, and the general public to identify the interests and concerns that should inform

their recommendations, yet, as seen below, it would seem that the most influential interests

and concerns were those identified in these initial intra-governmental consultations. In effect,

this gave the ESPI a government-steered, top-down orientation from the start, which was

amply visible in the presentation used to introduce the proposed planning process during this

phase that featured an organizational chart with the Ministers of Conservation and Aboriginal

and Northern Affairs at the top, under which was a round table that was advisory to an

interdepartmental government work group who would draft the actual BAP (ESPI Review Panel

Presentation, 2001, Jan.).

Following these internal consultations, various "interested groups" were contacted by

Minister Lathlin and the review panel, and a brochure-style newsletter was sent to each to

introduce the basic idea of the ESPI and invite them to attend upcoming consultation meetings.

From mid January to early April 2001, 14 meetings were held with nine First Nations, rural

municipalities at the southern boundary of the ESPA, various industry representatives and

associations, the Northern Affairs Community Council, and recreation and environmental non-

governmental organizations (ENGOs). The panel also held information briefings with Manitoba

Hydro, the Manitoba Departments of Transportation and Government Services, and Industry, Trade and Mines, and the Ontario Ministry of Natural Resources. First Nations meetings were arranged through their Chiefs and Councils, and most ranged from one to several Chief and Council members and in some cases a few additional interested community members, and a couple of the First Nation meetings were open to the community (GN interview; ESPI Phase 1 Final Report, 2002, appendix 3).

The meetings started with an overview presentation from the panel in which they outlined their initial thoughts regarding the process' organization, scope, and foci, and this was followed by a question and answer period with feedback, which was usually minimal, recorded by the panel. Comments from the meetings were mostly concerned with the boundaries, road, hydro line, resource allocations (esp. mining and forestry), and protected areas, which were the very topics introduced in the opening presentation. It is true that these were seen by many as the key land and resource issues in the area, but as one research participant observed, the review panel, reflecting government priorities, set the parameters for how the planning process was understood from the start (HE interview). Some of the organizations met with provided presentations or papers at the meetings, and some sent written submissions to the panel after. Comment sheets were also distributed at the meetings and taken up by the panel. Of the 14 written submissions, there were nine from environmental advocates or organizations, three from industry, one from Berens River First Nation, and one from the federal Environment Minister.

The initial timeline was quite aggressive, with the newsletter sent to interested groups suggesting the panel would report their recommendations to government by March 2001, and

the presentation used in community and stakeholder meetings indicating that the BAP would

be completed and approved by the province by the end of 2002 (ESPI Review Panel

Presentation, 2001, Jan.). However, the panel soon recognized that this would be a complex

undertaking, and Phase 1 was extended to accommodate further consultation and feedback.

The review panel produced a draft report with 55 recommendations, released on November 9,

2001. This was distributed to those who had participated in consultations and was made

available to other interested parties via Manitoba Conservation's physical and internet public

registry, and written comments were invited for a 30 day period, which, after strong objections

primarily from ENGOs, was subsequently extended to mid January 2002. The ESPI Phase 1 final

report was released in March 2002.

The structure of the final report attempted to transparently demonstrate its roots in

COSDI and the impact of feedback from initial consultations and comments on the draft report.

Recommendations were divided into six sections: the planning area; advisory bodies, roles and

responsibilities; the planning process; issues and opportunities (which was the most extensive);

research needs; and comments on Phase 1 discussions. Each section began by identifying what

the COSDI report had recommended on the topic, then what the panel had suggested in initial

consultations, followed by excerpts from comment sheets, meeting notes, and written

submissions relevant to the topic. The sections then reproduced the panel's November 2001

draft recommendations, followed by excerpts of written feedback relevant to each, and then

presented the panel's final recommendation. In this way one can trace ideas from the COSDI

report through government's interpretation of its application, which was necessarily more

specific, to public and stakeholder feedback and on to the final recommendations for how East

Side planning would be done. What is missing in this is mention of the upfront intra-government meetings and a record of the interests and priorities of the various departments and agencies that helped shape the panel's responses to feedback and their proposed options in the first place.

Of course feedback was sometimes contradictory and so final recommendations could not satisfy everyone. For example, ENGOs were consistent in wanting the planning area expanded, in some cases significantly, in order to encompass entire ecoregions or watersheds as they felt this was necessary to enable ecosystem based planning and management, whereas industry generally wanted the planning area made smaller so as to cut out areas where development was already happening and to simplify and expedite the planning process. In the end, the final recommendation for the planning area boundaries was left unchanged from what the panel initially proposed, which was itself a compromise between the COSDI recommendation to use natural regions and government's concern with complicated logistics and extended timelines that would accompany a larger area. The ESPA boundaries also demonstrate the impact of the intra-governmental consultations. The panel's first thought was to follow the EBM pilot project boundaries, which encompassed a natural ecoregion but would have excluded the northern ESPA, and this was expanded primarily in response to nascent plans from Manitoba Transportation for road building up the East Side to the communities in the northern region, and from Manitoba Hydro to run their Bipole 3 transmission line from the northern ESPA through the central and southern regions – in both cases engineers stressed that projects do not stop at ecoregion or watershed boundaries (GN interview).

In some instances, draft recommendations were left unchanged despite all of the feedback received recommending similar changes. For example, the 'issues and opportunities' section's draft recommendation on mining stated that exploration and development would continue "as per existing established processes and procedures" (ESPI Phase 1 Final Report, 2002, p. 82). All of the feedback on this recommendation objected, pointing out that this was contrary to the 'planning before development' mantra that the government embraced in accepting the COSDI report and that it represented development driving planning rather than the reverse; however, the only change in the final recommendation was to insert wording to clarify that all existing legislative procedures would be followed, which of course was no different from the original "existing established processes and procedures." Presumably the invisible feedback from the mining branch, and perhaps industry, would have supported keeping the draft recommendation intact. Feedback from the environmental community, which contributed by far the most feedback in Phase 1, consistently stressed the need for planning to be driven by sustainable development principles and voiced the fear that what was being proposed looked rather like planning in the service of enabling resource extraction. This stemmed primarily from two aspects: most of the issues and opportunities to be addressed were development related, and, in addition to mining, there were provisions for development and resource allocation decisions to proceed before the BAP was completed. However, the final report did not recommend meaningful changes related to either concern. It should be noted that Berens River and Hollow Water First Nations did express interest in the expansion of forestry development continuing during planning, so long as they were included in decisions

and benefited from developments; however, Poplar River was expressly opposed to this while other ESPA First Nations did not address the issue directly.

There were, however, some important changes made in the Phase 1 final report in response to feedback. The most significant change was related to the ESPI advisory bodies. COSDI had suggested planning undertaken by ad hoc stakeholder committees, and from the initial announcement of the ESPI it had been envisioned as consisting of a core round table and an advisory committee, which was what the panel proposed in consultations and in its draft report. However, consultations revealed that representation in the process would be a thorny issue – nearly everyone, from First Nations to industry and ENGOs wanted their own or a proxy representative on the more powerful round table to ensure their particular issues and interests were adequately considered, and some in government and Hydro wanted representation at the table as well. The panel was concerned that too large a core body would be too unwieldy to complete planning in a timeframe that would meet government and industry priorities, and recognized that including government representation would lead to a government dominated process that was contrary to the stated goal of establishing a participatory and stakeholder driven process (GN interview). In an effort to achieve satisfactory representation, the draft report recommended a 14 member round table comprised of: four local First Nations representatives; two members from the Northern Affairs Community Council; one member each from the forestry, trapping, mining, and tourism industries; three members from social, recreational, and environmental organizations; and one federal government representative (ESPI Phase 1 Draft Report, 2001, p. 16). Participation on the larger East Side Planning Review Committee would provide additional opportunity for these same groups and sectors to

influence the planning. A number of First Nations and ENGOs argued that this constituted

insufficient First Nations representation and pointed out that the recommendations in the

COSDI 'Aboriginal Interface' section, especially regarding developing Indigenous-government

partnerships and a protocol to guide consultations, were nowhere apparent in the draft report.

The Boreal Forest Network, at the request of some ESPA First Nations and the Anishinaabe

Turtle Island Protectors, a Network member, retained a law firm specializing in Indigenous law

to review the Phase 1 draft report. This review explicitly criticized the lack of any direct

consultation process between government and First Nations, suggesting it was far short of what

was required by relevant court decisions, and that there were no provisions for direct

communication, never mind partnerships between them as recommended by COSDI (see ESPI

Phase 1 Final Report, 2002, pp. 164-168).

In response, the Phase 1 final report removed reference to numbers and simply

recommended the round table include representatives from the groups identified in the draft

recommendation with the addition of the Assembly of Manitoba Chiefs and Manitoba Métis

Federation. The report also highlighted the importance of consultations with First Nations, but

did not provide any recommendations directing how this be done, other than stipulating that

the plan "recognize, affirm and be in compliance with treaty obligations and Aboriginal rights

and be consistent with the consultation/protocol guideline recommendations of the COSDI

report respecting First Nation and Aboriginal peoples" (ESPI Phase 1 Final Report, 2002, p. 64).

However, the relevant COSDI section specifically recommends first developing a protocol to

guide consultation with Indigenous peoples, and this recommendation was not included in the

Phase 1 final report. The most significant response to feedback regarding inadequate provisions

for First Nations representation and consideration of their issues was the introduction of a new advisory body, the First Nations Council (FNC). The FNC would be made up of representatives from each ESPA First Nation and would be on the same level as the renamed East Side Advisory Committee (ESAC) relative to the East Side Round Table (ESRT). Both the ESAC and FNC would provide general advice to the ESRT, with the final report expanding this to include advising on the integration of local community plans in the BAP, and the FNC would also work to ensure traditional knowledge was considered in planning.

As mentioned above, some within government had wanted more direct involvement in the planning bodies, but to avoid government domination and to ensure the process was seen as legitimately representing public and stakeholder interests, they had no direct representation on the round table or advisory committee. However, government interests would presumably speak via the Interdepartmental Working Group (IWG), which would be made up of staff appointed from all relevant departments and according to the draft report would "coordinate preparation of the broad area plan" and provide "planning, resource and policy advice and information to the round table" (ESPI Phase 1 Draft Report, 2001, p. 28). The IWG would also ensure government was kept aware of ESPI activities and considerations. Feedback on the draft report, again especially from the environmental community, was critical of the influence government would have over the planning process. It appeared that the IWG would essentially be drafting the BAP, in addition to acting as in-house consultants to and advising the ESRT. Concern was expressed that they were essentially another advisory body alongside the ESAC and FNC, and that plan preparation should be more independent and based only on the advice and direction of the ESRT. The ESPI Secretariat, which would provide direct support services to

the ESRT, ESAC, FNC, and IWG, would also be comprised of government staff, leading to suggestions that they hire independent consultants and, along with the IWG, be made directly accountable to the ESRT. The Phase 1 final report responded to these concerns by moving the IWG from the "planning process" to the "advisory bodies" section and shifting responsibility for plan preparation, following the direction of the ESRT, to the Secretariat, which, in being devoted full-time to the ESPI would presumably be more independent of the government departments its members were drawn from. However, it still appeared to some that the ESPI was in danger of being driven by government priorities and interests due to the influence of the IWG and Secretariat, the former composed entirely and the latter largely of government staff (e.g., ON, HE, SB, NP interviews).

The structure and organization of the various ESPI bodies as recommended in the Phase 1 final report is presented in figure 5.1 below. Round table members would provide their best advice and represent the public interest rather than any organization or sector, whereas those on the FNC and ESAC were to represent the perspectives and interests of the community or organization they were appointed from. The ESRT would be responsible for: developing a work plan, overseeing research and information collection, consulting to gather public and expert input, consulting with the three advisory bodies; deliberating on all of this and, via consensus, identifying the vision, goals, and objectives for the plan, as well as the issues, opportunities, and concerns to be addressed; and, considering options and alternatives for addressing the identified issues, opportunities, and concerns (ESPI Phase 1 Final Report, 2002, pp. 18-19). This work would then constitute the ESRT's direction to the Secretariat regarding the contents of the BAP. The ESRT would also provide advice to government regarding significant land and

resource allocations in the ESPA during the course of the planning. The FNC, ESAC, and IWG

would provide advice and review the work of the ESRT, thus ensuring public, stakeholder, First

Nation, and government interests and perspectives were considered in the planning. The East

Side BAP would include, at a minimum: a vision for the ESPA; goals and objectives for the plan;

land and resource use and management principles and/or codes of practice; a land use zone

map with guidelines for each zone; procedures for regular plan review and amendment; and

identification of any incompatibilities with existing policy. In addition, the plan would identify

existing resource allocations, licences, and permits, and provide a summary of all input received

from the FNC, ESAC, and public consultations. All of this, including preparation of a draft BAP

and consultations on it to inform the final plan, would be completed in two years.
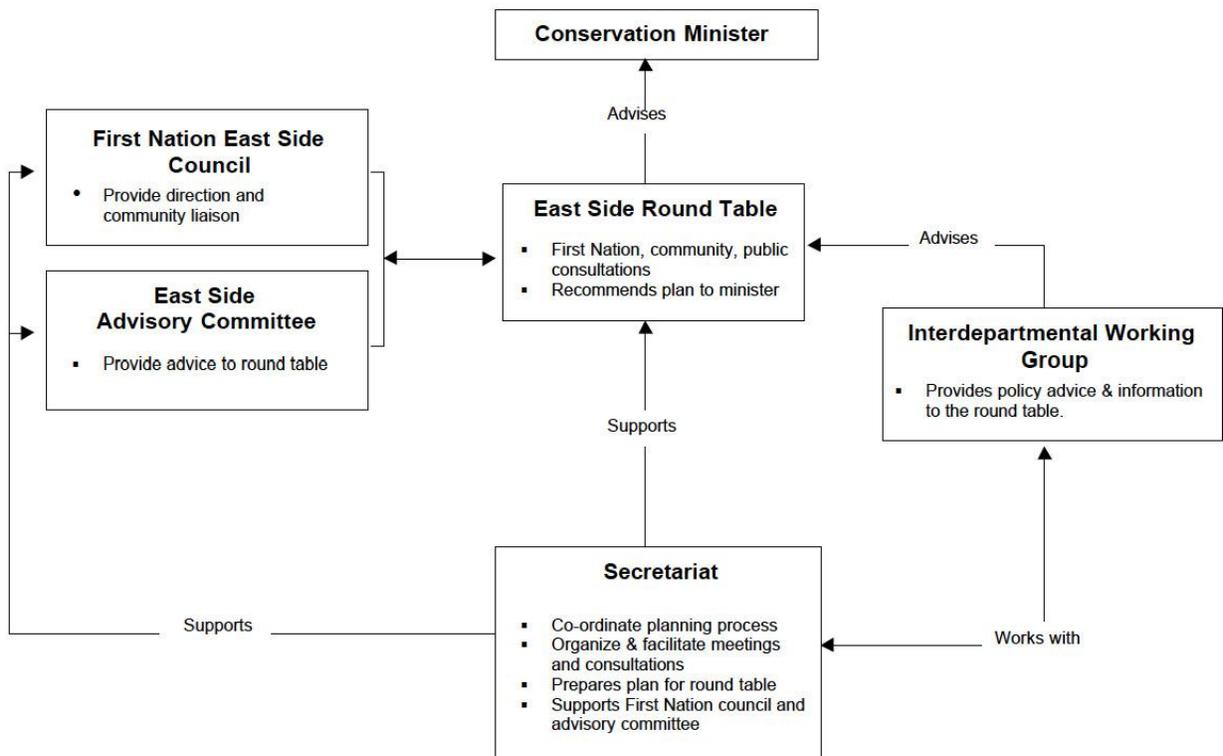
Figure 5.1. ESPI Organizational Chart (ESPI Phase 1 Final Report, 2002, p. 203).

5.3 East Side Planning Initiative Phase 2, 2002-2004

The ESPI Phase 1 final report was released in March 2002[28], and while not explicitly stated, its recommendations would appear to have been fully endorsed by government. Phase 2 began immediately, in fact Phil Fontaine was appointed to chair the ESRT, as well as the ESAC and FNC, prior to the release of the Phase 1 report. Fontaine had served as Grand Chief of the Assembly of Manitoba Chiefs from 1991 to 1997, when he was elected National Chief of the Assembly of First Nations for a three year term, and his appointment to chair the ESPI's three main bodies was intended to signal the seriousness of the province's commitment to the planning exercise and their recognition of the importance of Indigenous participation and leadership (GN, TK, ON interviews). The profile of the ESPI was further bolstered by the government's appointment of Edward Schreyer, a former Premier of Manitoba and Governor General of Canada, as a special advisor to the planning process.

The process began as envisioned in the Phase 1 report – the ESRT, FNC, and ESAC were established and met, consultations were held with ESPA communities and stakeholder groups, and feedback was sought from these sources and the general public. A Secretariat was formed, comprised of government staff and some external hires, and included an executive coordinator[29] and members with resource planning, policy analysis, GIS, mapping, and administrative support skills. A few additional persons were added, sometimes briefly, to the Secretariat during the process as particular skills or services were needed. In July 2003 the Secretariat was significantly reorganized, a new executive coordinator was hired and the body was enlarged from seven to nine members with only three persons remaining from the start of

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[28] No release date is given in the report nor in official news releases from the province. A March 7 news release said the Phase 1 final report would be presented "in the coming weeks" (MB News Release, 2002, March 7).
[29] This position is sometimes also referred to as project manager.

Phase 2. An Interdepartmental Working Group was formed, intended to act as in-house consultants for the process and to ensure the various government departments were kept informed of ESPI activities, but there is scant evidence of its activities and a few comments suggest it was marginally effective at best.[30] While not called for in the Phase 1 report, a Government Liaison Committee was formed, comprised of three senior level members of Manitoba Conservation, including one who had served on the Phase 1 review panel. There is no reference in any documents to this committee other than to its existence.

At the March 2003 meeting of the FNC, Fontaine noted that June 2004 was an "unrealistic deadline" for producing a complete BAP, which he had already raised with the Minister of Conservation (FNC Minutes, March 17/03). By late 2003 this conclusion was widely shared by ESPI participants. Instead, it was decided to produce a status report by the deadline, later extended to the end of 2004, that would contain preliminary recommendations towards a BAP. Working groups were formed by members of the three main bodies to consider input received, deliberations by the three bodies, and to provide their own insights in developing recommendations for the status report. The Secretariat produced a set of draft recommendations, which were reviewed by the ESRT and FNC, and the status report was delivered to the Minister of Conservation in September 2004. In what follows I describe some of the key activities and issues from phase 2 of the ESPI.

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[30] For example, at the January 29, 2004 meeting of the FNC, five cabinet ministers joined the discussion and noted that there was confusion and a lack of understanding regarding the ESPI within government (FNC Minutes, Jan. 29/04). And in the fall 2004 Phase 2 status report, the only mention of the IWG's work is a one sentence note that its efforts to support the ESPI public participation process "has met with only marginal success" (*Promises to Keep*, 2004, p. 28). While these are not definitive, there is a general lack of documentation or comment regarding the IWG's activities.

5.3.1 The East Side Round Table (ESRT)

On March 11, 2002, some weeks prior to the release of the Phase 1 final report, the as-yet unofficial ESRT was assembled for the first time, followed by their first official meeting May 14-15. Members were invited by government, and included representation from ESPA First Nation and Northern Affairs communities, industry stakeholders, recreation and environmental organizations, and the general public, although the method and rationale for individual selections were not explicitly stated and were unclear to some of the members (see ESRT Minutes, March 11/02). Membership on the ESRT was quite stable over its two years, and when a few individuals did need to leave they were replaced by individuals drawn from the same constituencies. ESRT members were directed to exercise their best judgement and represent the general public interest rather than organizations or groups they belonged to, but they were nonetheless selected because of their experience and/or affiliation with the constituencies named above and some members belonged to more than one of the target groups. So, while affiliations were not given, the 19 members of the ESRT can be grouped as: 7 First Nations; 5 industry; 2 NAC; 2 ENGO; 2 academic/professional; and 1 Métis.

According to meeting minutes available on the ESPI website, the ESRT met 15 times, including joint meetings with the FNC and ESAC; however, there appear to have been further meetings from winter through summer 2004 when recommendations for the status report were being developed, but no minutes were made available and there is no official record that these meetings took place (Manitoba Wildlands, 2005, Jan.). For roughly the first year, from March 2002 – April 2003, the ESRT met ten times. These meetings were spent primarily hearing and discussing informational presentations, finalizing their terms of reference, and planning for

community and public consultations. Presentations were mostly from government departments and agencies, and aimed to provide members with relevant background information on topics such as: the COSDI and Phase 1 reports and the provincial approach to sustainable development; hydro and transportation infrastructure procedures, plans and considerations for the area; parks and protected areas policy, programs, and initiatives; mining, forestry, and tourism regulations, operations, and potential for development; perspectives on broad area planning and experiences in other jurisdictions; and treaty and Aboriginal rights and issues related to First Nations participation in land use planning. ESRT members described these meetings as valuable learning experiences and as necessary to ensure everyone shared the same baseline knowledge; however, some were also frustrated that with half of their allotted time gone there had been no public consultations and no planning done (e.g., ON, HE, WG interviews; ESRT Minutes, Feb. 18/03).

Conducting consultations was clearly a high priority for the ESRT, as Indigenous, public, and stakeholder input was to inform their development of a BAP, and a subcommittee was struck early on to work on consultation options. Discussions led to a two pronged approach: East Side communities would be consulted directly via community visits, and the bulk of public and stakeholder consultations would be accomplished through working with the ESAC and FNC, essentially mirroring the stakeholder consultation approach used successfully in COSDI. The community visits were described as primarily intended as information meetings, where ESRT and Secretariat members would present on the ESPI, its origins, process and intended outcomes, and would seek feedback regarding how communities would like to be involved in

the process – it was felt that seeking substantive feedback at this point would be premature as most people in the communities would know little to nothing of the ESPI prior to the first visits.

An introductory video and presentation were developed by the Secretariat for use in community meetings, and a pilot community visit was held in Hollow Water First Nation in April 2003. This video, key summary documents, and maps were translated into Ojibwa, Oji-Cree, and Cree in order to make them more accessible to Indigenous people, especially elders. From September 2003 to January 2004, teams comprised of ESRT and Secretariat members made 25 community visits, including to all 16 ESPA First Nations save for Poplar River. In most cases, meetings in First Nations included the neighbouring Northern Affairs community, and in some cases the Manitoba Métis Federation was contacted to invite local Métis residents, although the MMF, representing the Manitoba Métis Nation, was not consulted directly. Notes from the community visits were compiled into two What we Heard documents organized by community and topic respectively. From these documents and comments from research participants, it is clear that many of the community visits were poorly attended, many attendees had little prior knowledge of the ESPI, and feedback consisted most often of questions and general comments (e.g., BN, ON interviews). Common topics commented on included:

- recognition that their views had usually been ignored by government, leading some to see this as an important opportunity and others to doubt the province's motives and sincerity;
- concern that treaty and Aboriginal rights be understood and respected;
- a desire for economic development balanced with a desire to protect the natural environment;
- mixed views of the all-season road, with recognition of its importance for economic development, increased access for community members, and lower local prices, but also concern for negative social and environmental consequences;

- concern that Indigenous culture and traditional knowledge were being lost and that changes could accelerate this;

- and, a clear desire for local communities to have control of, or at the least a decisive voice in, planning and development on their traditional territories

(see *Promises to Keep*, 2004, appendix 8.4).

Following this, the work of the ESRT was focussed on developing recommendations for

the status report, discussed below in sec. 5.3.6.1 – there are no minutes or official reference to

ESRT meetings after December 3-4, 2003.

5.3.2 The East Side Advisory Committee (ESAC)

The ESAC and FNC, both also chaired by Phil Fontaine, were first convened in a joint

meeting with the ESRT on October 24, 2002. The ESAC consisted of 49 members, representing

industry sector organizations and companies operating in the region, NACs, rural municipalities

and economic development bodies at the ESPA's southern edge, ENGOs and recreation groups,

and Indigenous organizations, including the Manitoba Métis Federation and tribal councils

serving ESPA First Nations. Based on available meeting minutes posted on the ESPI website,

following this introductory meeting the ESAC met four times. The bulk of ESAC meetings were

spent with informational presentations, updates on ESRT and Secretariat activities, and

discussing how public consultations might be done. For example, at their May 9, 2003 meeting,

Dr. Ian Wight from the University of Manitoba's City Planning Department presented on

planning perspectives and approaches. The presentation advocated taking a bottom-up,

collaborative approach that started with relationship building, collective visioning, and capacity

building as necessary to enable true collaboration in plan development and implementation. An

ESAC member described the kind of planning presented as "great in theory," but observed that

"it had absolutely nothing to do with what the [ESPI] exercise ... how it was designed ... it seemed to have no application in what we were doing" (KS interview). There were also concerns expressed in the later meetings that communication and information flow between the ESAC and ESRT was insufficient.

Also at the May 9, 2003 meeting, ESAC members representing industry, recreation, and environmental groups were asked if their organizations would like consultation meetings along the lines of the ESRT's plans for First Nation and NAC visits, and all but the ENGOs reported they would be able to attend and provide their input at the community meetings in the areas relevant to their concern. The Manitoba Eco-Network offered to organize a meeting where the ESRT could jointly consult all the involved ENGOs, which were based in Winnipeg. ENGO representatives did meet September 29, 2003, to prepare for an information session with members of the ESRT, and representatives expressed concern that this session not be construed as ENGO consultation and that a second meeting with the ESRT may be needed to provide specific feedback; however, there is no record of feedback from the initial information session nor indication of any follow-up ENGO consultation (ENGOs Meeting, 2003, Sept. 29; KS, HE interviews).

At the next ESAC meeting, February 12, 2004, members were engaged in a half-day workshop to gather their prioritized input on the broad question of "what kind of Plan do we need and how can it be implemented?" (Lombard Report, 2004, Feb. 12). The workshop produced 58 recommendations, which highlighted interest in ecological sustainability, local community consultation, and control of development in collaboration with local First Nations. There were also recommendations for improving the effectiveness of the ESAC, including

establishing better communication with the other ESPI bodies, forming thematic working

groups, and, interesting given this relatively late date, clarifying the mandate and role of the

ESAC within the ESPI, which was never entirely clear to many ESAC members (KS interview).

None of the recommendations regarding the ESAC's effectiveness were taken, apart from

inviting them to join already established regional working groups, and the committee met only

once more where they received updates on ESRT, FNC, and Secretariat activities. This workshop

appears to be the only specific gathering of ESAC input into the planning process, and it is

unclear if and how it was used.

5.3.3 The First Nations Council (FNC)

The Chief and Council of each ESPA First Nation appointed a representative to serve on

the FNC, often the Chief, and an additional member represented the Grand Council of Treaty 3,

whose territory overlaps with the southeastern corner of the ESPA. The Treaty 3 representative

only attended the first few meetings and they were not involved further in the ESPI or WNO.

Based on available meeting minutes, following the introductory joint ESRT-ESAC-FNC meeting,

the FNC met six times, although, as with the ESRT, it appears there were additional meetings in

2004 for which there is no record (Manitoba Wildlands, 2005, Jan.). As with the other ESPI

bodies, FNC meetings featured informational presentations on and discussion of government

policy and programs relevant to planning and development in the ESPA, prospects for resource

development, and Aboriginal and treaty rights and First Nations participation in land use

planning.

However, what is most notable in these meetings is the members' attention to the

position of the FNC within the ESPI, in particular its power relative to the ESRT and its

connection to the provincial government, as they repeatedly stressed the need to ensure that

their communities' economic and social interests were served and rights respected in the

planning process. In the minds of First Nations leaders, not only did they represent some 96% of

the directly affected population, but they regarded the land as their traditional territories

where they held Aboriginal and treaty rights and over which they felt they should have the

paramount voice in planning and resource development decisions (BN, NP, SL, RL, OS

interviews). Some FNC members felt disrespected from the start by initially meeting with the

ESRT together with the ESAC, which positioned them as 'stakeholders' alongside industry and

ENGOs from outside the area, and Fontaine urged ESRT members to acknowledge the anger

and distrust in First Nations stemming from the history of negative relations with government,

and that all needed to work to overcome this legacy (ESRT Minutes, Oct. 25/02). At the FNC's

first stand-alone meeting, February 6, 2003, Fontaine began proceedings by noting that

successful processes in the past had involved First Nations from the start, and that he would

work to ensure the province was committed to working with the First Nations. Steve Ashton,

then Minister of Conservation, was the first speaker and described the ESPI as ambitious and

historic, and emphasized that government-to-government discussions were needed between

the province and First Nations as part of the process. FNC members pressed him repeatedly as

to whether government regarded the initiative as a partnership with the ESPA First Nations,

and while he replied that the province took partnerships with Indigenous peoples very

seriously, he stopped short of characterizing the ESPI as such. Later, in discussion of the draft

FNC terms of reference prepared by the Secretariat, some felt that in recognition of First

Nations rights and the Minister's statements of the importance of their participation, it would

be appropriate for the FNC to report directly to the Minister rather than to the ESRT, but in response Fontaine explained that the arrangement, with the FNC on the same level as the ESAC, was to ensure that the diversity of the Manitoban community be equally represented in the overall ESPI process.

The position and relative power of the FNC was further enhanced as they amended and then adopted their initial terms of reference at their second meeting on March 17, 2003. Terms were added specifying that: the FNC have access to any relevant information government has regarding the ESPA; all environmental, governmental, planning, and land-use decisions related to the ESPA be made available to the FNC prior to any final ratification; and that the FNC provide *direction* to the Government of Manitoba, ESRT, and ESAC, and act as a liaison for their communities. Specifying that they would provide direction rather than advice to the ESRT echoed what had been said in the Aboriginal Relations Branch of Manitoba Conservation's interim status report on the COSDI recommendations concerning Indigenous consultation, which was presented to the ESRT at their February 2003 meeting. The report stated that the creation of the FNC with a mandate to provide direction to the ESRT "recognizes the importance of First Nations input into any decision making respecting resource allocation within their traditional territory," which led an ESRT member to question the table's very purpose if decisions would be made between government and First Nations (ESRT Minutes, Feb. 18/03).

The newly adopted FNC terms of reference were presented at the ESRT meeting held the following day, and in response to a query about the new directive mandate, the minutes simply state that "it has been ascertained that the Government prefers First Nation Council to provide <u>direction</u> as Government recognizes the special status of First Nations due to Treaty

Rights" (ESRT Minutes, March 18/03, emphasis in original). Further questions were raised as to why the ESRT had not been consulted prior to the adoption of the FNC terms of reference, especially as the terms stated that the FNC had been established by the ESRT, and Fontaine replied that the FNC would decide for themselves how to participate and conduct themselves in the ESPI and that this did not undermine the ESRT. A question was also raised as to whether this essentially gave the FNC veto power over ESRT decisions, and it was reported that Moses Okimaw, a First Nations lawyer from the ESPA under contract to the Secretariat, was working on a protocol that would clarify the relationship between the two bodies. While this protocol was never finalized, it is clear that moving forward the province began to regard the FNC and ESRT as on equal footing in the ESPI and in relation to government. Without explanation of how, the status report produced at the end of Phase 2 tersely states that "while initially seen as being in an advisory capacity role, the FNC quickly asserted its place alongside the ESRT" (*Promises to Keep*, 2004, p. 21). The FNC did maintain a distinct focus on Indigenous communities, needs, and interests, which they understood as touching on all aspects of the ESPI, while the ESRT's mandate gave them the wider focus of representing the interests of the general Manitoban population. Nonetheless, there was clearly some discomfort on the ESRT with the enhanced profile and power of the FNC.

The Phase 2 status report, discussed below, describes the FNC and ESRT as having been jointly given the same mandate and both having been charged with responsibility for developing all aspects of the BAP, and it presents this as if that was the arrangement from the start (*Promises to Keep*, 2004, pp. 23, 28). Yet, the presentation given to introduce the ESPI during community visits in September 2003 – January 2004 reproduced the organizational chart

from the Phase 1 final report that depicted the FNC on a par with the ESAC, and described the

FNC as having an "advisory capacity" in providing "direction" to the ESRT to "help" the round

table as it developed the BAP (Community Visits Briefing Book, 2003, ESPI intro. ppt.). In any

case, by early 2004, documents from the Secretariat are increasingly addressed jointly to the

ESRT and FNC, and an April 22 memo regarding timelines clarifies the new hierarchy by being

addressed to the "RT/FNC & ESAC" and outlining that while all three bodies would give input

into recommendations for the status report, final approval of recommendations would come

from the ESRT and FNC. So clearly the elevated status of the FNC in the ESPI was something that

developed over the course of Phase 2, and raised them from their initial advisory role to where

they shared the highest level of power and responsibility with the ESRT.

The means by which this was accomplished is obscured in ESPI documents, but

according to research participants it was the result of the FNC's actions – in amending their

terms of reference, lobbying government behind the scenes, including at the cabinet level, and

simply asserting what they saw as their rightful role. The government accommodated the FNC's

efforts in recognition of the normative democratic force of their representation of the vast

majority of 'those affected,' in response to the trajectory of legal interpretations of Aboriginal

and treaty rights, and for political reasons that included that Indigenous peoples were part of

the NDP's core base and the efforts of two senior Indigenous cabinet ministers committed to

the process (NE, TK, NP, HE interviews). Oscar Lathlin, elected from the northern riding of The

Pas, was a well-respected Indigenous leader who served as Minister of Conservation 1999-2002

where he immediately advocated greater Indigenous involvement in resource management,

and after moving to Aboriginal and Northern Affairs in 2002 he remained extensively involved

in promoting the ESPI and WNO within Cabinet until his death in 2008. Eric Robinson, elected

from the riding of Rupertsland, later Kewatinook, that includes much of the ESPA, was another

Indigenous Cabinet Minister who served as Minister of Aboriginal and Northern Affairs 1999-

2002, 2008-2016, and Culture, Heritage, and Tourism 2002-2009, and as such, was also present

at numerous ESPI and WNO meetings, in meetings in ESPA communities, and advocated for

Indigenous interests within Cabinet. Both of these ministers, along with other Conservation

Ministers, ensured that First Nations leaders had direct access to the highest levels of the

provincial government, which appear to have involved some private, behind-the-scenes

meetings that are referenced obliquely in meeting minutes and were referred to in research

interviews (e.g., AG, NE, TK interviews).

Another major focus of the FNC was the development of a MoU with the province

regarding how First Nations would be involved in the ESPI. The FNC was clear in stating that

First Nation participation in the ESPI and input gathered in community consultations could not

be considered official Section 35 'Duty to Consult' consultation, and neither would it constitute

consent for nor replace the Crown's Duty to Consult regarding future developments in the area.

However, COSDI had called for the collaborative development of general consultation protocols

and, as was pointed out at the FNC August 29, 2003 meeting, an MoU on consultation was

needed because the ESPI was a government initiative whose outcomes would have impacts on

Aboriginal and treaty rights. Thus, it was felt the MoU could address both general and official

consultations with ESPA First Nations within the ESPI process. FNC discussion of the MoU

highlighted that ESPA First Nations were suspicious of government, some suspected there was

already a plan in place, and the FNC took seriously its mandate of ensuring that their

communities' rights and interests were protected (FNC Minutes, Aug. 29/03). In an October

2003 memo, the ESPI executive coordinator invited the FNC to consider working with the ESRT

to develop a comprehensive protocol, along the lines suggested in COSDI and the Phase 1

report, to guide all future government consultations with ESPA First Nations, and which could

then become a key part of the BAP. There was talk in FNC meetings about protocol

development, but this does not appear to have advanced far, and instead the MoU route was

pursued.

The original MoU draft developed by Moses Okimaw while on the Secretariat was quite

ambitious. It would have seen the ESPA First Nations and the province agree to a set of

principles and develop processes to guide planning, consultation, communication, and

information sharing throughout the ESPI and its implementation, and among its stated

purposes were "to clarify Aboriginal and Treaty rights with respect to resource development

within the planning area" and "to ensure that economic benefits based on aboriginal and treaty

rights enure to the First Nations as original inhabitants of the land" (ESPI Draft FNC-MB MoU,

2003). This draft also described how the First Nations would participate in the ESPI's BAP

development, discussed interim decision-making processes for developments in the area prior

to BAP implementation, committed to establishing a dispute resolution mechanism, and

included an appendix outlining principles and procedures for the consultation process to be

followed. As such, this MoU would have addressed the issues the COSDI report recommended

be covered in a protocol. Okimaw was elected chief of Manto Sipi First Nation in 2003 and so

left the Secretariat for the FNC, and the revised MoU draft that members were presented at

FNC meetings in December 2003 and January 2004 was described as having been "watered

down to almost nothing" (FNC Minutes, Jan. 29/04). The FNC established a committee, or

working group, to negotiate the MoU with the province; however, details of this are scant in

documents and in the memories of research participants, and no discussion of any negotiations

are included in FNC meeting minutes.

The final MoU signed in April 2004 retained most of the original draft's principles,

significantly including:

- framing the relationship between the parties as being government-to-government;
- acknowledging that the Elders view the treaties as agreements to share benefits from and power on the land;
- recognizing that First Nations peoples have treaty and inherent Aboriginal rights that must be respected;
- confirming First Nations' recognition that looking after the land in their territories is a shared responsibility;
- affirming that the province holds fiduciary obligations to First Nations peoples and that First Nations participation in the ESPI would not constitute present nor replace future Crown consultation duties;
- and, identifying that the ESPA First Nations have traditional territories, although it did not define them or comment on title.

Some of these principles appear to go against advice from Manitoba Justice's review of the

draft MoU, which had recommended against explicitly acknowledging provincial fiduciary

obligations, inherent Aboriginal rights, and the Elders' understanding of the treaty. The first two

were considered legally ambiguous at the time while the last was contrary to the government's

own understanding, and they clearly did not want to assert or imply anything that might bind

them to doing more than legally necessary (Manitoba Justice, 2003, June 13). Manitoba

Justice's review had also recommended omitting the draft consultation plan since Manitoba

Conservation was currently developing a First Nations consultation policy and it was felt that

this policy should be used as the basis for developing a specific consultation process for the ESPI (Manitoba Justice, 2003, June 13). Whereas COSDI had recommended the province work *in partnership* with Indigenous peoples to develop a comprehensive consultation strategy and a cooperative protocol to guide Indigenous involvement in land and resource use planning, the approach suggested here was to wait for the province to unilaterally produce a consultation strategy and follow its direction. Meanwhile, the province produced an interim consultation policy only in 2009, which is still in place with the interim designation intact, and a consultation plan specific to the ESPI was never developed.

The final MoU's stated objective was simply to work together to develop a protocol to guide how the ESPA First Nations would be involved in decisions affecting their communities and traditional territories – details from the original draft regarding how this would be done and what it would include were entirely absent, as were purposes related to the priority of First Nations economic benefits and clarifying land and resource rights. In essence, it was a vague plan to develop a plan for how to involve First Nations in planning, and the BAP itself was due in a matter of months. The province invited the media to a formal signing ceremony for the MoU, referred to in FNC meetings as the "government MoU," on April 22, 2004. The signing was delayed by an hour as First Nations leaders met with government officials and voiced their disappointment, and in the end only eight of the 16 First Nations signed, although most of the remaining who were active in the ESPI did sign on later (Janzen, 2004).

5.3.4 Public and Stakeholder Consultation

Early on, the ESRT envisioned a thorough and multi-step public engagement process that would inform and gather quality input from residents of the ESPA, stakeholder groups, and

the general Manitoba public. The ESPI "comprehensive public participation process," described as having been approved by the ESRT and FNC although there is no record of deliberations on this in either body's meeting minutes, was presented at the February 12, 2004 ESAC meeting and is outlined graphically in figure 5.2 below.
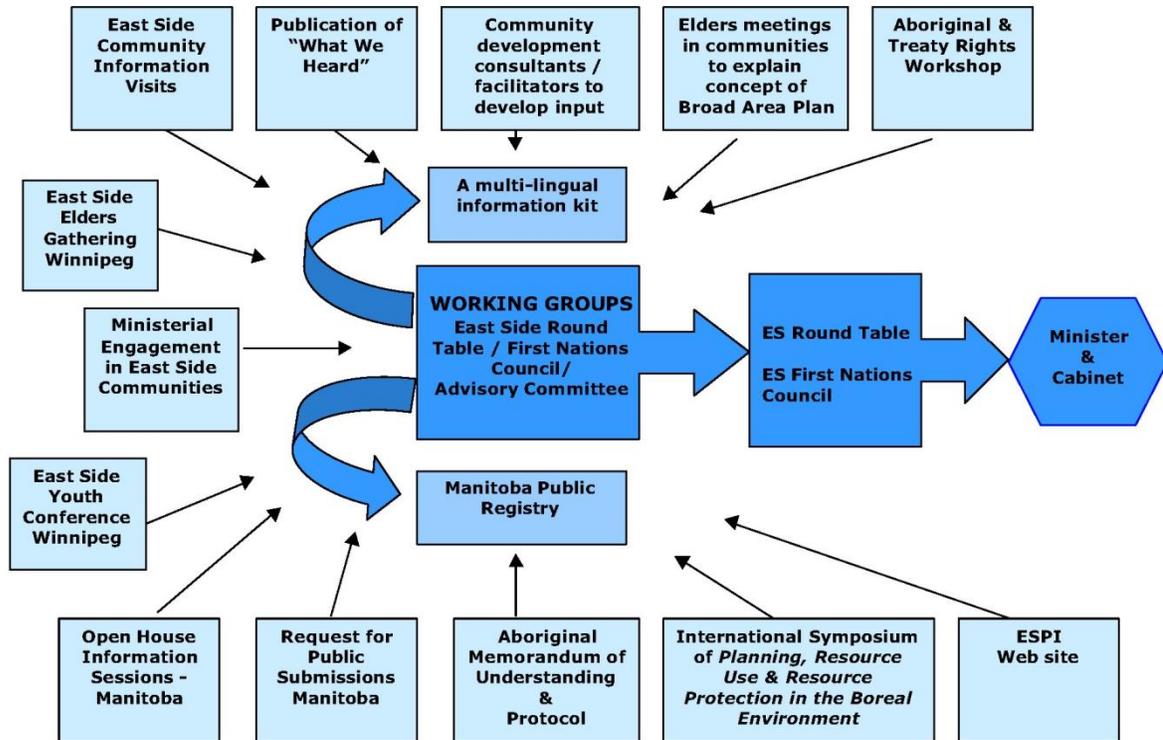
Figure 5.2. ESPI Public Participation Process (*Promises to Keep*, 2004, appendix 8.2).

This figure was also reproduced in the status report at the end of Phase 2; however, the figure suggests a more fulsome public engagement program than actually occurred. For example: the international symposium did not happen; First Nations protocols were not developed; the youth conference was not held; there is no record of the Aboriginal and treaty rights workshop, although presentations were made to the ESRT and FNC on the topic; there is record of input from Elders and an Elders Gathering appears to have been held, but the input is poorly reported and there is no description of when or how it was obtained; and hiring local

community development facilitators to engage community members and develop input was discussed by the ESRT and FNC, but if they were hired there is no record of their activities and no BAP input was identified as being generated this way. It is also worth noting that neither the First Nations-Manitoba MoU nor a workshop on Aboriginal and treaty rights would generally be considered public participation activities.

The most prominent element of public engagement in the ESPI Phase 2 was the community visits made September 2003 – January 2004, described earlier. One participant described some of these visits as "failed" attempts at community consultation, primarily because they were poorly attended and local attendees had little prior knowledge of the ESPI mandate or what issues were being considered and so were not prepared to offer informed feedback (ON interview). However, the original plan was for there to be at least two rounds of visits: the first would aim at informing residents about the ESPI and stimulating thinking and dialogue among them, while subsequent visits would then seek to engage them in a more active, participatory way to gather meaningful feedback. The community development facilitators would be key to this as following the initial informational visits they would ensure community members were kept informed of ESPI developments and would engage them in activities to develop well-considered positions that could then be communicated to ESPI representatives during later community consultations; however, these local facilitators were not hired. This multi-visit approach was discussed in ESAC and ESRT meetings, and was most explicitly laid out in the Benchmarks and Timelines section of the Community Visits Briefing Book given to ESRT members prior to the first community visits in fall 2003. This document describes plans for a second round of community consultations focussed on receiving

community input "on all and any aspects of the broad area plan," which would be used to inform a "preliminary report comprising a framework for a broad area plan" (ESPI Community Visits Briefing Book, 2003, Benchmarks, p. 3). The preliminary report would be circulated to communities and stakeholder groups, and followed by a third round of community meetings focussing on "this is what we heard" and seeking additional input to inform the final BAP. However, only the first round of information-out community visits was completed, and the What We Heard documents purporting to report community perspectives were based on this.

The Phase 2 status report and the province's news release announcing receipt of the report both reference 80 or more meetings with East Side communities, and leave the distinct impression that these were a significant source of input shaping the report. However, it is entirely unclear how that number was arrived at. There appear to have been 25 community visits that resulted in the What We Heard documents and there are no records of any further official consultation or public participation meetings arranged or conducted by the ESRT or FNC. On the face of it, the public citation of this number by government, which continued to crop up for years, appears designed to exaggerate the degree of community consultation in Phase 2.

"Ministerial engagement in East Side communities" is another component of the ESPI public participation process outlined in figure 5.2. But this was not directed by the ESRT or FNC, nor do they appear to have ever considered it as part of their consultation strategy, and plans for the visits are mentioned only once, at the January 29, 2004 FNC meeting. A senior government employee described the impetus for these visits as emanating from the top – Phase 2 was taking its time "finding its way" and "sort of spinning its wheels" as it figured out what issues to consider and how to go about planning, and as a result Premier Doer directed

relevant cabinet ministers to make a series of visits to ESPA First Nations to demonstrate that the province was serious about the ESPI, that First Nations participation and input was essential to it, and to hear community concerns and interests (TK interview). Over the last two weeks of March 2004, 14 First Nations were visited by 5 ministers travelling in pairs, and the premier joined the visit to one community. The mandate given to these ministers is unclear, but the news release announcing the visits quoted Lathlin as saying "this is a good opportunity for us to hear directly from the people in the area," and Struthers said "we want to strengthen our partnership with the people in the area and ensure that they have a voice in any decisions regarding the future of the region and in the development of the broad area plan for the East Side" (MB News Release, 2004, March 15). Neither the ESRT or FNC met following these visits, and the only available record of the meetings was a half-page document on the Department of Conservation's ESPI website (Ministers Visits, 2004). Although they are listed as part of the ESPI public participation process, it does not appear input from these visits could have informed the process' planning or recommendations.

There was discussion early on by the ESRT and FNC regarding the importance of the participation of Indigenous Elders. There was talk of inviting Elders from each community to attend meetings on a rotating basis, but there were logistical and cost concerns, so instead it was made clear that Elders were welcome to attend any meetings. The ESRT had one Elder, Peter Kinew, as a member, and there was generally at least one visiting Elder present for ESRT and FNC meetings. However, there was a strong desire expressed to have more direct and in-depth engagement with Elders, and Kinew and the Secretariat appear to have arranged an Elders Gathering with the FNC and ESRT in December 2003. At this gathering Ed Wood, an Elder

from St. Theresa Point First Nation, was appointed as co-chair for the ESPI since Phil Fontaine

had been elected National Chief of the Assembly of First Nations and, while he continued on as

co-chair, Elder Wood effectively chaired the remainder of the process. Despite the emphasis on

the importance of Elders' participation, no ESPI documents describe exactly when or where the

gathering took place nor how it was facilitated or input elicited. The Phase 2 status report does

contain an appendix "Reports of Meetings with Elders" that consists of bullet-point lists of

Elders' comments and concerns organized somewhat confusingly – most are listed by

community and most dated December 5, 2003, which is perhaps when the Elders Gathering

was held; some communities' comments are dated mid to late February 2004, when there is no

record of gatherings or community visits; some communities have two separate lists of Elders'

concerns, some with different dates and some twice for the same day; and two more lengthy

lists are attributed to groups of Elders, one to "Oji-Cree Elders" and another to "two Elders

each" from four different First Nations (see *Promises to Keep*, 2004, appendix 8.6).

No effort was made to summarize or thematize input from Elders into a more readable

or cohesive document, making their comments appear scattered and gathered in a careless

manner. Some comments make reference to "the video," presumably the one used in

community visits to give a basic introduction to the ESPI process, and one list is organized as

responses to specific questions, but some communities' lists of Elders' concerns are as few as

two unrelated bullet points. All told, there are 9 pages of bulleted lists of feedback from

meetings with Elders from the 16 First Nations. The themes that are most prominent among

these include:

- commitment to protecting the environment and concern that it has been and will be
  further degraded by development;

- concern that treaty rights be fully respected, which they have not been in the past;
- concern that traditional knowledge, activities, and values are declining and will be threatened by development and roads;
- belief that economic development should benefit local communities, who should have decision-making power regarding planning and development on traditional lands to maximize benefits and minimize social and environmental harms;
- and, a clear distrust of government and industry's motives and commitments based on past actions, especially planning and development done without consultation, resource extraction that benefits only companies, broken treaty promises, and government interference with traditional activities on the land.

It is also repeatedly stressed that they needed more information, more chance for dialogue, more meetings and workshops, and a mechanism for ongoing, meaningful involvement in the process – "if we want to work in partnership we need more dialogue," and "the government has to be willing to let us be main players in this process" (*Promises to Keep*, 2004, appendix 8.6). Elders noted that this was the first time they had been asked to participate in the ESPI process and for many this was the first time they were learning about it, which limited their capacity to offer meaningful advice. What was offered was mostly very general or occasionally very locally specific, and often not directly applicable to the ESPI's planning mandate; the comments read like what one would expect from discussion following an introductory informational briefing. There is no record of any follow-up Elders Gatherings.

Input from the general public was sought through three open houses in late May, 2004 – in Thompson to the north of the ESPA (five attendees), Lac du Bonnet to its south (65 attendees), and in Winnipeg (85 attendees). These were organized by the Secretariat and a consulting firm, who also staffed the events to explain the planning process to date and answer questions. The open houses presented ten large panels, which included maps and information on: the ESPI purpose and objectives; ESPA geography and communities; current land uses,

including traditional activities, protected areas, and resource management; and current and potential resource extraction activities, especially forestry and mining. Attendees were invited to fill in exit surveys that could also be returned by mail, and out of 155 attendees 27 surveys were completed. The surveys consisted of four questions that asked for comment on important issues and opportunities related to economics and quality of life, environmental health, and resource development and management, as well as any other issues the ESPI should consider. Survey responses were reported similar to the Elders' comments, i.e. in bulleted lists with no further analysis or organization, and responses from the three locations were aggregated. Input ran the gamut of perspectives, but, compared with comments from the ESPA community visits, they were generally more favourable towards resource development, more trusting of existing government regulations and resource management, and less focussed on Aboriginal rights and traditional activities.

The ESPI website and public registry were intended to provide transparency and facilitate public and stakeholder participation by ensuring planning-related information was freely available. The ESPI website was part of the Manitoba Conservation site, and the public registry refers to the online and physical repository of public information maintained by the department, primarily documents related to projects assessed under the *Environment Act*. There does not appear to have been much discussion of the registry, website, or information on them by the ESRT or FNC, but ESAC members identified information management as a priority at their first meeting, with concern expressed that timely and complete information would be needed to enable meaningful participation. In April 2003, the Canadian Nature Federation evaluated the ESPI against the National Round Table on Environment and Economy's guiding

principles on consensus processes, and concluded that it was not providing equal access to relevant information – "important information is being provided to Planning Table members late and is posted on the government web site and in the public registry file on a selective basis with presentations to the Table not being posted" (Canadian Nature Federation, 2003, April 14, p. 2). An ESAC member wrote the Minister of Conservation in spring 2003 and expressed concern that minutes from the first two ESAC meetings had not been made available to members or on the website or public registry, despite members having been told they would be available a week after the meetings, and it was further observed that the website and registry had not been updated since November 2002 (ESAC Member Letter, 2003).

In July 2004, Manitoba Wildlands, the Western Canada Wilderness Committee, and the Boreal Forest Network, all of which were active participants in Phase 2, submitted comments on an early draft of the status report. They noted that public and stakeholder input submitted to the ESPI was not being posted to the registry, that minutes from and documents distributed at meetings were not being posted in a timely manner, and that some significant planning documents had not been made available at all (ENGOs Recommendations, 2004, July 22). Manitoba Wildlands released further comment on the wind-down of the ESPI Phase 2, and were highly critical of the lack of transparency and access to information in the later stages of the process (Manitoba Wildlands, 2005, Jan.). In particular they identified several significant ESPI meetings with members of the FNC and ESRT in the summer of 2004 where recommendations for the status report were discussed, yet no minutes or documents from the meetings were available as of January 2005, and have in fact never been made publically available. The document also notes that no minutes or recommendations from any of the

working groups' meetings were available to other working groups or the general public. A

member of the ESAC also noted that when minutes from the ESRT and FNC were made

available it was often difficult to follow much of the substance of their deliberations due to the

brief and summary nature of minutes and the failure to provide copies of presentations and

papers given and discussed at meetings, which left the member wondering if minutes were

being deliberately selective to obscure differing positions and present a picture slanted towards

the government or ESPI leadership's preferred view (HE interview). In research interviews,

members of the ESRT and FNC did not generally view information distribution or public

availability as a significant problem, whereas ESAC members and participating ENGOs did.

The ESPI public participation process (see figure 5.2) included a "request for public

submissions" component; however, it is not clear if, when, or how an official request for such

input was made. The Phase 2 status report's appendix 8.3 is titled "community and stakeholder

submissions" and contains 15 documents, but it does not identify how these were received,

with whom they were shared, nor how their input was used. These 15 submissions were

primarily from industry, First Nations, and environmental organizations or individuals belonging

to organizations directly engaged in the ESPI: 11 were represented on the ESAC; four were open

house exit surveys, two of which were also ESAC members; one was from the Wabanong

Anishinaabe Trappers Association, formed in July 2003 in response to the ESPI; and one from

the grade 12 students of Wasagamack First Nation, an ESPA community. One of the

submissions has no date, one is from June 2003, and the remainder are from March through

July 2004. Only four of the submissions could be considered substantial and comprehensive:

the Anishinaabe Turtle Island Protectors, with the separate Wabanong Anishinaabe Trappers

Association submission adapted directly from their recommendations; the Manitoba Model Forest; Tembec; and a joint submission from the Western Canada Wilderness Committee, Manitoba Wildlands, and the Boreal Forest Network. Other submissions were brief and/or single-issue focussed. It is worth noting that the bulk of these documents were submitted after working groups were already developing recommendations for the status report, and some after a draft of the status report was completed, and so the extent to which they informed the report at all is questionable.

A submission from the Northern Association of Community Councils (NACC), representing NACs in the ESPA, is included in the status report as its own appendix titled "Community Facilitation Reports." The NACC, with support from the ESPI, retained a consultant to prepare the report, which was informed by consultations with and feedback from at least 11 communities.[31] The report was structured around categories identified as components or considerations of the BAP during the ESPI community visits, which themselves were largely based on the Phase 1 report, and the report noted that this effectively "pre-determined the type of information to be collected and thereby the outcomes to be achieved" (NACC Recommendations, 2004, June). In addition, the report highlighted that these non-First Nation communities, which were populated primarily by status and non-status Indians and Métis, had historically been marginalized and felt that the ESPI itself was continuing this pattern with its focus on First Nations, industry, and NGOs. Residents were also concerned that their interests would be lost in land use planning due to the fact that land outside of their community

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[31] This represents the sort of community-level work leading to "more formal community submissions" that the local community development facilitators had been expected to do in First Nations communities (ESRT Minutes, Dec. 4/03; *Promises to Keep*, 2004, p. 31); however, the Secretariat and FNC had hoped to secure funding from the federal Indian Affairs Department to hire facilitators and support their work, but application was not made until late 2003 or early 2004 and funds were not available during Phase 2 (see FNC Minutes, Dec. 3/03, Jan. 29/04).

boundaries was identified as First Nations' traditional territory and Crown land, and First

Nations were claiming the right to plan and control resources and development there, leaving

them with little influence and no territorial or resource rights. Many NAC residents were cynical

regarding prospects for the ESPI to lead to meaningful consultation or benefits for their

communities. Nonetheless, there was support for land use planning and communities wanted

to participate in the ESPI, but in doing so they wanted to be heard and to see their communities

benefit from development in areas surrounding their communities.

The ESPI Phase 2 started out with a strong stated commitment to local community and

general public participation in developing the BAP, but as the above discussion demonstrates,

this was not achieved. The Phase 2 status report noted that "building a public participation

process with limited resources and a tight time frame has been no easy task," and that much

work was yet needed to complete it (*Promises to Keep*, 2004, p. 27). Nearly every research

interview participant, as well as numerous of the public submissions and civil society

commentaries, identified this as a significant shortcoming of the process, especially regarding

consultations with ESPA communities. The most frequently identified reasons for failing to

achieve meaningful public participation were insufficient time and resources provided by

government, which were needed to keep the public informed, support active and ongoing

engagement, and enable processes of clarification of values and interests – the province's

pattern of behaviour in this regard, seen in earlier policy work, was repeating (see sec. 4.4.2).

5.3.5 "Overarching Themes" and "Priority Issues"

The ESPI Phase 1 final report identified "issues and opportunities" that planning should

address, and these formed the basis of specific mandates given to the ESPI in Phase 2 and

essentially set the template of the BAP to be developed. The 2004 status report commented

and developed recommendations on these issues under the headings "overarching themes"

and "priority issues." Overarching themes were building positive relationships with Indigenous

peoples related to consultation and participation in the ESPI, and protection of the boreal

environment. Priority issues were related to: local community planning and development;

forestry; mining; transportation, especially all-season road development; hydroelectric

transmission, i.e. Bipole 3; and tourism and recreational use. As the NACC report described

above pointed out, none of these priorities directly relate to social issues, despite social

concerns being consistently raised by local communities and the overall ESPI mission being to

develop a BAP reflecting sustainable development's commitment to integrating social,

economic, and environmental considerations (NACC Recommendations, 2004, June, p. 1). Of

the remaining components of sustainable development, economic considerations, primarily in

the form of resource development, clearly dominated the identified priority issues, although

the inclusion of boreal protection as an overarching theme was meant to convey that

environmental sustainability would be woven into considerations of resource development. To

set the stage for later discussion, I will briefly comment below on consideration of and

developments affecting these themes and issues during Phase 2.

5.3.5.1 Building Positive Relationships with Indigenous Peoples
Building positive relationships with Indigenous peoples in Phase 2 was focussed on

clarifying and ensuring appropriate consultation and participation in planning, and this was to

be achieved via the development of Protocols of Agreement with the province, as suggested in

the COSDI and Phase 1 reports, which would define relationships and guide how the parties

would work together during planning and implementation. This work resulted in the general

and aspirational provisions of the April 2004 MoU described earlier, which did specify that the

relationship was government-to-government, but did not result in any further clarity regarding

official consultation with First Nations beyond agreeing that participation in the ESPI could not

be considered Section 35 consultation. Further to the provincial-First Nations relationship, the

FNC, essentially created by the province via the ESPI, established itself as officially representing

the ESPA First Nations communities in ESPI work, especially in relating directly to the provincial

government. While it received very little attention in FNC and ESRT meetings, there was talk of

negotiating a separate Protocol of Agreement with "the Métis Nation resident on the east side"

in recognition of their constitutionally protected Aboriginal rights, but this was never

undertaken (e.g., *Promises to Keep*, 2004, pp. 41-42). This language also betrays a lack of

understanding of the nature of the Manitoba Métis Nation, which does not define itself

according to territory, and it is unclear who exactly the government would have been

establishing a protocol with since ESPA communities were represented either by First Nations

governments or Northern Affairs community councils, while Métis citizens are represented by

the provincial-level Manitoba Métis Federation (SB, FN interviews).

5.3.5.2 Protecting the Boreal Ecosystem

Protection of the boreal environment was a significant focus of information gathering

and discussions by the ESRT, especially in its first year, and included multiple presentations on

topics including parks and protected areas, boreal forest ecology, co-management with

Indigenous communities, options for land use planning, and wildlife management. One of the

officially stated reasons the ESPA was selected to pilot the BAP concept was because it

represented a relatively intact boreal ecosystem with little disturbance from human development, and with increasing pressure for road building and resource development from industry and local communities it made good sense to first undertake integrated sustainable development planning to ensure the ecosystem was protected (e.g., MB News Release, 2003, Dec. 5; ESPI Phase 1 Final Report, 2002, p. 2; Promises to Keep, 2004, pp. 19, 45). As described earlier, environmental organizations and programs were already emphasizing the need for boreal forest protection, such as through Manitoba's Protected Areas Initiative. There was a flavour of 'development *or* protection' in much of the discourse on sustainable development among environmentalists and industry proponents, and the ESPI was mandated to navigate this and recommend a BAP that provided for both. The approach taken was to assume that the BAP would provide guidance and recommend policies ensuring that resource extraction would be done with as little environmental damage or disruption as possible, and that in addition to this, overall ecosystem-level protection could be achieved by creating areas fully protected from industrial resource development.

A significant development related to boreal protection during Phase 2 was the 2002 signing of the Protected Areas and First Nation Resource Stewardship: A Cooperative Relationship Accord among Pikangikum First Nation in Ontario and the ESPA First Nations of Poplar River, Pauingassi, and Little Grand Rapids, joined some years later by Bloodvein First Nation. In the Accord, the First Nations set out to outline their respective traditional territories and to work to complete land use plans that would ensure protection and direct management of their ancestral lands and resources. The Accord recognized growing pressure from governments and industry to open their territories to resource development, and the First

Nations pledged to establish protected areas within their territories to form a large, linked

protected area stretching from within Northwestern Ontario to Lake Winnipeg. The Accord

further outlined a plan to jointly nominate their linked protected areas for designation as a

UNESCO World Heritage Site. The three original signatory First Nations in Manitoba were the

same that had participated in the EBM pilot project in the late 1990s, which they participated in

due to concerns related to talk of all-season road building and seemingly inevitable future

resource development (Jones et al., 2002). When the four First Nations presented to the ESRT

in July 2002, shortly after signing the Accord, each community emphasized their intent to

exercise control over how their lands and resources would be protected for future generations

and used to benefit their communities – without being explicitly referenced, there was an

element of self-governance and assertion of title in the Accord and in how community

members described it (ESRT Minutes, July 30-31/02; BN, RL interviews).

In Manitoba, the prior positive working relations established between Poplar River and

the environmental community and the emphasis on protected areas in the Accord resulted in

strong support from a wide variety of environmental organizations, many of which were less

optimistic or trusting of the ESPI itself and considered supporting First Nations' aspirations as

more likely to result in protection of the boreal ecosystem (HE, SA, BN, SL interviews). The

potential for the World Heritage Site in the East Side boreal forest also appealed to the

Manitoba government, as it aligned with their policy commitments to protected areas and

building more positive relations with Indigenous peoples, and because the environmental and

Indigenous communities were traditionally NDP supporters (NE, TK, SA, AG, interviews). Work

on the World Heritage Site nomination package began in 2007, guided and coordinated by

Pimachiowin Aki, a not-for-profit corporation established by the involved parties for this

purpose, and community land use plans were completed for Little Grand Rapids, Pauingassi,

and Bloodvein First Nations by 2012, while Poplar River's had been completed by 2005.[32] While

these plans include both resource development and protected areas, the protection aspect has

consistently been more emphasized, especially in ENGO and provincial statements of support.

5.3.5.3 Local Community Planning and Development

Local planning and economic development were certainly frequently mentioned in ESPI

meetings, and presentations and workshops on land use planning emphasized the importance

of attending to local concerns and economic needs. As well, the terms of reference for the ESRT

and FNC both spoke of recognizing and integrating local plans with the BAP, but the ESPI's focus

in Phase 2 was on planning for the entire region and no specific steps were taken to facilitate

local planning. The FNC and feedback from local communities highlighted the historic reality of

their economic marginalization from resource developments located on Indigenous traditional

territories or near NACs, and consistently emphasized the desire, at a minimum, to have a

meaningful voice in decisions about and benefits from development. Sometimes this was

expressed more strongly as a demand to have control over land use planning and natural

resources management. Most of the ESPA communities expressed a desire to undertake

traditional occupancy and land use studies, often a first step in establishing Indigenous resource

management or undertaking community and land use planning (Tobias, 2000), or to begin

directly with land use and resource development planning for their territories. However, the

only such planning that took place during Phase 2 either predated or was incidental to the ESPI.

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[32] See "Manitoba World Heritage Site" at http://manitobawildlands.org/lup_whs_mb.htm; Pimachiowin Aki project website at http://www.pimachiowinaki.org/.

Only Hollow Water and Black River First Nations at the south edge of the ESPA, and Poplar

River, discussed earlier, engaged in land use planning for their traditional territories during this

period, and the communities of Manigotagan and Wasagamack did some work on developing

community plans (*Promises to Keep*, 2004, p. 55).

5.3.5.4 Tourism

As described in chapter 4, tourism in the ESPA consists primarily of remote, fly-in lodges,

outcamps, and boat caches that serve fishing and hunting clients from outside the area. Any

significant expansion of tourism and recreation in the area was considered dependent on road

access, and community members expressed concern that increased access could also lead to

cottage developments and increased hunting, fishing, and backcountry camping pressure that

would degrade the area's remote and wilderness qualities. However, communities and ENGOs

also saw tourism development, especially ecotourism, as one of the few environmentally

sensitive economic opportunities available to local communities. Despite this, tourism and

recreation were not considered in any detail by the ESRT or FNC during Phase 2.

5.3.5.5 Forestry

Forestry and mining were the two resource extraction activities considered 'priority

issues' in Phase 2. Industrial forestry operations were restricted to the southern region, with

Tembec Industries being the primary private sector interest and holder of the Forest

Management Licence (FML #1) that covered most of the ESPA's southern region. Tembec also

had access to the Integrated Wood Supply Area (IWSA), which stretched from FML #1 to north

of Berens River First Nation and from Lake Winnipeg to roughly half-way to the Ontario border.

FML #1 and the IWSA encompassed nearly all of the forest considered 'high value' for

harvesting (*Promises to Keep*, 2004, appendix 8.1, forest value & forest activity maps). In 1995, the Pine Falls Paper Company (Tembec's predecessor) had applied for a licence to extend their forest access road north to Bloodvein First Nation to enable extension of their timber harvest further into the IWSA, which was part of the impetus for Poplar River initiating their studies and land use planning described earlier. In 1996 a licence was granted to extend the road to one kilometer from the Bloodvein River, with the completion of the road dependent on a separate application and EA, which was not pursued during the Phase 2 period. The ESPI Phase 1 report recommended no expansion of existing timber allocations above historic levels until the BAP was complete. This recommendation was followed in Phase 2, meaning that forestry operations continued as before but did not expand in the ESPA throughout the period.

Feedback on forestry from community visits included voices for and against its expansion into their territories, but all were concerned that it should provide more benefits to local communities. Berens River First Nation leadership was keen to pursue commercial forestry in their territory, and in a presentation to the ESRT in October 2002 they urged the round table to support their request that the proposed road project be extended north to their community, which was couched in terms of potential for employment and training. Some research participants suggested that this interest in forestry, coupled with the perception that a World Heritage Site would preclude it, was a prime reason that Berens River chose not to sign the First Nations Accord discussed above, leaving a gap in the World Heritage Site nomination between Bloodvein to the south and Poplar River to the north (BN, HE interviews).[33]

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[33] It was also suggested by several research participants, who wished their comments to remain confidential, that the official Berens River position in favour of commercial forestry was not necessarily reflective of the community's

5.3.5.6 Mining

As described in chapter 4, there was a mine operating at Bissett in the extreme south of the ESPA and some mining claims and exploration sites were active in the northern region. However, it was acknowledged that mineral potential was high throughout the area and that the prime factor limiting exploration and development was the lack of all-season road access. The Phase 1 report had recommended, as with forestry, that existing activity continue during planning; however, whereas a moratorium was effectively in place regarding new timber allocations, mining exploration and development, including new projects, could continue as per existing regulatory requirements and procedures. The FNC does not appear to have discussed mining issues, and ESRT consideration was restricted to discussion following presentations by the Mines Branch. However, input from community visits did reveal a general discomfort with and distrust of mining operations, especially related to exploration activities that communities had no say in, and were sometimes not adequately informed of, and knowledge of mines operating elsewhere in the province near First Nations communities who received little if any benefits. The Phase 1 recommendation to allow new mineral exploration and development to continue during planning was roundly criticized by the environmental community as an example of development before planning (ENGOs Comments, 2001, Dec. 19, pp. 3-4); however, the recommendation was left unchanged and was the course followed throughout the ESPI Phase 2 and WNO that followed (ESPI Phase 1 Final Report, 2002, pp. 82-83).

The ESRT heard a number of presentations on mining from the province's Mines Branch. There was a strong emphasis on the extreme risk and cost associated with mining development,

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general population, and that it was more likely due to a local political leader who had a financial interest in a forestry company that would have profited from such expansion.

pointing out that only one in 1000 explorations result in any level of actual production, and that

companies require certainty in two areas before investing – land access and tenure, claimed to

be the "single largest risk factor," and the regulatory framework (ESRT Mines Presentation,

2002, May 15). It was also emphasized that mining exploration and development had to be

allowed to continue during planning because the regulatory process meant that companies

with existing claims or exploration sites, even if currently inactive, were legally permitted to

access and further develop them, and any actions to limit this would risk litigation and

constitute regulatory uncertainty that would discourage future investment in the sector.

Clearly land use planning, especially in establishing land use zones and codes of practice,

would impact access and tenure, and the Mines Branch stressed that given the limited nature

of data regarding mineral potential in much of the ESPA, as much land as possible should

remain open to mining exploration and development. The lone Phase 2 stakeholder submission

from the mining industry was singularly focussed on opposing the potential heritage

designation for the Hayes River, which flows from the northern ESPA to Hudson's Bay. The

submission minimized the ecological footprint of mines because "the disturbed land is quickly

reclaimed by nature," pointed out that protected rivers attract "the tourist, canoeist and

camper, well known to be the greater polluters of the wilderness," and characterized

environmental regulations and licensing procedures, protected and wildlife management areas,

and the Northern Flood Agreement and associated First Nations community interest and

resource management zones as "difficulties" faced by mining companies in the province

(Manitoba Prospectors & Developers, 2003, June 4). The clear impression left from participants

(e.g., GN, AG interviews), Mines Branch presentations, and the stakeholder submission was of

an industry and regulator disinclined to cooperation and compromise, and holding a

perspective that, due to the inherent extremes of economic risk and reward involved, they

were entitled to special considerations.

5.3.5.7 Transportation

The Phase 2 explicit mandate for considering transportation issues in the ESPA was to

provide advice on the already proposed road extension to Bloodvein First Nation and on the

options presented in the East Side Transportation Network Study, which was not completed

until 2011 (*Promises to Keep*, 2004, p. 61). The ESPI was not charged with considering whether

an all-season road was in the interests of ESPA communities or compatible with boreal

protection; that question appears to have already been answered with a 'yes' from within

government. In 1999, the province commissioned a justification and scoping study, which

concluded that a cost-benefit analysis of transportation expenditures alone justified a "main

stem" north-south all-season road through the area, but that roads to connect several of the

more remote communities to the main stem would "require significant resource development

and socioeconomic justification" (Dillon Consulting, 2000). The report further suggested that to

manage negative social, cultural, and environmental impacts, both community and regional

planning should be done and have input into the road project. Thus, from the start it was

identified that road building would lead to increased resource development and should be

integrated with and directed by planning processes involving local communities. A review of the

study found problems with how some of its costs and benefits were calculated and that it had

overstated the level of support for the road in most communities (Hart, 2001). In 2001, Dillon

Consulting completed a work plan for developing an all-season road network on the East Side,

which consisted of two components: upgrading the existing southern forest access road to provincial highway standards and extending it to Bloodvein First Nation, and undertaking the East Side Transportation Network Study referenced in the ESPI Phase 2 mandate above (*Promises to Keep*, 2004, pp. 62-62). It was part one of this work plan that Berens River's representatives repeatedly requested to be included in as described above.

ESPI Phase 2 saw a fair amount of discussion of the coming road by the ESRT. In a presentation from Manitoba Transportation in May, 2002, it was suggested that once the full road network study was complete it would be submitted to the round table, who would then conduct public review as necessary and make recommendations on road development to government (ESRT Transportation Presentation, 2002, May 15). So the initial idea seemed to be that road planning, and the community and public consultation that would presumably inform it, would be undertaken by government in a separate process, which the ESPI would review and comment on after the work plan was complete. By early 2003 there was concern on the ESRT about the lack of communication from Manitoba Transportation regarding their road planning work and what information was being communicated to communities, especially considering that a road would have significant impacts on nearly every component of the BAP they were supposed to be developing (ESRT Minutes, Feb. 18/03). The topic of all-season road access also featured highly in feedback from community visits, where it was frequently regarded as a central feature underlying or affecting most planning considerations. Overall, there appeared to be at least qualified support from all communities, with the promise of improved services, lower local prices, and increased economic opportunities balanced with concerns regarding environmental impacts, potential decline of traditional values and activities, loss of a sense of

wilderness, increased social problems, and decreased control over what happened on their traditional lands. What was clear was that meaningful consultation and careful planning would be needed before an all-season road was built, and to many it made sense for the ESPI to be meaningfully involved in if not directing this. It was also clear that most accepted that an all-season road was an inevitability. By the end of Phase 2 in 2004, a project plan had been developed for upgrading the forest access road and extending it the relatively short distance to Bloodvein First Nation, but it was not actually completed until the fall of 2014.

5.3.5.8 Hydro

ESPI Phase 2's mandate regarding hydroelectric issues was simply to have Manitoba Hydro coordinate communications and consultations regarding future transmission facilities in the area with the ESPI. By this point it was well known that Hydro was well into preliminary planning for routing their Bipole 3 line from generating facilities on the Nelson River through the ESPA to Winnipeg (GN, BN, SA interviews), and this soon became the specific and singular focus of ESRT and FNC discussions and public and stakeholder input about hydro issues in the ESPA. There was widespread and strong First Nations' distrust of Hydro and resentment over what they saw as the province regularly allowing the Crown corporation to run roughshod over Aboriginal rights and interests (SA, BN, ON interviews; *Promises to Keep*, 2004, pp. 70-71, appendix 8.4). So while there were no generation facilities proposed and hence no flooding as had been experienced just to the north, there was strong opposition to any transmission lines from some First Nations, especially Poplar River, and most others stated their support would hinge on being satisfied that environmental damage would be mitigated, disruptions to traditional practices, including to treaty-protected activities and Aboriginal rights, would be

compensated, and there would be some tangible and long-term benefit to their communities

for the use of *their* lands (ON, NE, BN, GN interviews).

Despite the charge to coordinate Hydro communication and consultation with the ESPI,

Hydro proceeded to meet with East Side communities regarding plans for Bipole 3, and a first

round of "information sessions" with community leaders took place May-October 2002

(Manitoba Hydro, 2002, Dec., p. 2). Manitoba Wildlands obtained a copy of the presentation

used in these meetings, and noted that it clearly conveyed the impression that Bipole 3 down

the length of the East Side was simply going to happen, and that Hydro wanted communities to

be involved and to hear their concerns regarding the inevitable; however, there was no

mention of the need for or alternatives to the project, no details of potential benefits to

communities, nor a clear indication of an intention to consult meaningfully regarding

potentially infringed treaty or Aboriginal rights (Canadian Nature Federation, 2002, July 29).

When the ESRT requested that Hydro officials share notes from these meetings, they were

hesitant to discuss details and offered instead to provide a general synopsis (ESRT Minutes, July

30/02). Hydro did prepare a summary document in December 2002 and indicated that all but a

handful of visits had been completed, but there is no mention of seeing or reviewing this

document at ESRT or FNC meetings. The Hydro summary identified that First Nation leaders

were all concerned that there be some lasting benefits to communities for the line crossing

their territories, and a variety of ideas were offered, including: pre-project training for clearing

and construction jobs, reduced hydro rates in communities, partnership in the project, a share

in revenues from electricity transmitted, shares in the project, or the establishment of a trust or

development fund (Manitoba Hydro, 2002, Dec., pp. 6-7). However, Hydro responded with a

firm "no" to all of these, except for the vague possibility of a development fund and community-by-community negotiations regarding involvement for communities whose traditional lands were crossed (Manitoba Hydro, 2002, Dec., pp. 4-5, 10).

Hydro presented to the ESRT again in January 2003, and spoke of plans for a second round of "consultation" visits to East Side communities (ESRT Minutes, Jan. 17/03). In ensuing discussion, concerns were raised that Hydro's current approach was disruptive to the ESPI, and Fontaine responded that he would meet with the minister responsible for Hydro, but that government had instructed the ESRT to move forward with their work and that their eventual recommendations in the BAP would speak to Hydro's future plans and actions. When ESRT members asked Hydro how their upcoming visits fit with the ESPI's plans for community consultations, Hydro responded that there had been discussion around the possibility of working together, yet when FNC members asked about this two months later, they were told by Secretariat members who had met with Hydro that Hydro was prepared to include ESPI information in their community visits, but were not prepared to allow the ESPI to "piggyback" on their meetings (FNC Minutes, March 17/03). In further discussion at this FNC meeting it was clear that members had understood that Hydro was supposed to wait to complete their planning until receiving direction from a completed BAP, and while this was not exactly what the ESPI mandate had stated, Fontaine noted that the ESRT also felt that Hydro's approach and actions were undermining the ESPI process.

Although few details are given, there is mention in the FNC and ESRT meeting minutes of numerous meetings that the ESPI chair, Phil Fontaine, and Secretariat staff had with Cabinet Ministers and high-ranking government staff where, among other ESPI matters, Hydro issues

and concerns were discussed. It would appear that these back-channel communications, along with what ministers heard when they attended ESPI meetings, were successful in eventually convincing government that the approach Hydro was taking was leading to confusion, was disrupting ESPI activities, and was not building support in communities, and as a result Hydro was told to cease their activities on the East Side (SA, GN interviews). At the May 2003 FNC meeting, a Hydro representative stated that they were stopping their community meetings for the "next couple of months," and at the ESAC meeting the next day it was clarified that this was to allow the ESRT to hold their community visits (FNC Minutes, May 8/03; ESAC Minutes, May 9/03). At the FNC meeting it was noted that some of the Chiefs were still unfamiliar with Bipole 3, which calls into question the quality of Hydro's information sessions with community leaders, and a comment was made that Hydro seemed to be the only party who knew what was happening – it seemed a divide and conquer approach was being taken as secrecy and confusion meant communities didn't know what their neighbours might be saying or agreeing to and when they had requested that Hydro fund a meeting of the region's Chiefs to discuss Bipole issues it had been denied.

There is no mention of any further Hydro community visits or consultations during the ESPI Phase 2. In any case, there was no effective coordination or cooperation between Manitoba Hydro and the ESPI process as directed in the ESPI mandate, and instead there was procedural confusion, ineffective communication, and no meaningful involvement of the East Side leadership or public in planning that, with the outcome seemingly predetermined, appeared a mere formality. Yet again, a historic pattern that had created much distrust and fueled conflict was being repeated (see appendix E for another example).

5.3.6 "Promises to Keep" – The Phase 2 Status Report

5.3.6.1 Working Groups and Recommendations Development

In October 2003, as the first community visits were getting underway, the ESRT discussed the status and development of the BAP, a pressing concern given that the deadline was eight months away and no actual planning had yet occurred. Oscar Lathlin, now Minister of Aboriginal and Northern Affairs, was in attendance and emphasized that the most important message for the process to deliver was that local communities would be involved and they would listen to the Indigenous and other residents on the East Side (ESRT Minutes, Oct 8/03). He clarified that government did not expect a completed BAP by June 2004, but did expect a preliminary report and recommendations and that there "may be" a need for the ESRT to continue after the deadline. Nothing in the ensuing discussion indicated that the group had a clear sense of how to begin developing the BAP draft, or even of what the plan would include. Then, at the December 2003 ESRT meeting, the Secretariat's executive coordinator presented options for establishing working groups to undertake in-depth consideration, informed by community input, public submissions, and ESRT/FNC/ESAC discussions, of issues and topics to be incorporated in the BAP (ESRT Minutes, Dec 4/03). After lengthy discussion it was decided that a sub-committee would work to refine options and make recommendations on the structure and operation of working groups for BAP development.

This committee prepared a report, authored by the executive coordinator, recommending the creation of five working groups (ESPI Memo, 2004, Jan. 17). Three regional working groups (i.e. southern, central, northern) would consider all of the major issues the BAP was expected to address as relevant to their region. Membership would be open to members of the ESRT, FNC, and ESAC. Importantly, it was specifically identified that the plan-mandated

issues to be considered were precisely those contained in the "Issues and Opportunities" section of the Phase 1 final report, as discussed earlier themselves highly reflective of government perspectives and priorities, which continued to set the basic frame for the BAP. In addition, an Aboriginal Protocol Working Group, chaired by the ESPI chair or co-chair and restricted to members of the FNC, would consider the development of the promised Protocols of Agreement or a new MoU that would be incorporated into the BAP. As work progressed, and since the work was to lead to an agreement between the province and the Indigenous peoples on the East Side, relevant government ministers would be invited to join this group. And finally, a Plan Coordination and Implementation (PCI) group, made up of members of the ESRT, FNC, and ESAC, would coordinate the logistics and work of the other working groups, ensure that recommendations were consistent with the principles and values of the BAP, and develop recommendations for a vision and values statement and an on-going mechanism for plan implementation and management. The PCI was chaired by Elder Wood, the ESPI co-chair, and included the chairs of the three regional working groups, who were FNC or ESRT members.

All groups would be expected to complete their work and forward their recommendations to the ESRT and FNC by April 30, 2004, surely an aggressive timeline given that the groups were not constituted until after the ESAC meeting on February 12. It is also worth noting that while the working groups were charged with considering all public and stakeholder input, nearly all of the public and stakeholder submissions to the ESPI were received May-July 2004, the public open houses were held in late May, and no notes from the Ministers' community visits or the Elders' gathering were made available, meaning little if any of this material was considered by the working groups. The only real public input available to

them were the What We Heard documents reporting on the ESPI community visits, which can best be considered information-out engagement, and as discussed previously, not all presentations, documents, and minutes from ESRT and FNC meetings were available. This left working group members informed primarily by their own prior knowledge and experience, which was often considerable, ESPI meetings they had attended, and knowledge, research, and perspectives brought to working group meetings by fellow members (HE interview). During this time ESPI documents stop referencing work on a BAP, and instead it is a "report" that will be prepared for the Phase 2 deadline.

The deliberations of the working groups was far from transparent: no agendas, minutes, or even records of meetings held were made publically available, and the status report, which states that its recommendations were informed by those of the working groups, does not identify the source of any of the recommendations nor indicate instances of con- or dissensus among or within working groups. Manitoba Wildlands, a local ENGO that participated on the Phase 2 ESAC and southern working group, attempted to track working group meetings, and according to their list all five working groups were convened together in the last week of February.[34] There is no indication that the Aboriginal Protocol group met again, and a member of the group was unable to recall anything substantive from their meeting (SB interview). The northern and central working groups met three times from February through March 2004, while the southern group met an additional three times in April and early May. While the first three meetings were scheduled for the same dates and venues for all three regional working groups, there was no coordination or official communication among them. A participant in one

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[34] See http://manitobawildlands.org/web_docs/ESPI_chrono_sub3.htm#working.

group explained that they were in fact discouraged from communicating or sharing information with other groups convened in neighbouring meeting rooms, and that the group chairs tightly controlled information in and out of the groups, including keeping scant minutes that failed to adequately track recommendations as they were brought forward and debated (HE interview).

Reading between the lines of documents and interview comments, there is the impression that the Secretariat and key ESRT and FNC members, such as the PCI group, were essentially running things and determining the parameters under which the report was being crafted, and wanted to avoid complications that could arise if working groups were given too much freedom to operate. The executive coordinator was described as very organized, strong-willed, and even "bull-headed" in driving things along the path they took, but he was also described as skilled in working to bring together diverging interests and perspectives on the ESRT and FNC, and his approach was seen by some as an asset and as necessary to keep the process from stalling entirely (HE, ON, TK, NE, GN interviews).

Despite clearly suboptimal procedural conditions and a dearth of public, scientific, or traditional knowledge input, the working group meetings were described by research participants as yielding the most fruitful discourse and honest exchange of perspectives as occurred in Phase 2, and members were seen to be committed to the task and motivated by the chance to begin getting down to actual planning work (ON, HE interviews). Minutes from the central working group were examined and, while they are not detailed enough to get a sense of the quality of debate, they do reveal an attempt to grapple with a wide range of complex issues and make clear that the group felt there was much more work to be done before they could make informed recommendations on the full range of topics relevant to their

region. Description of the work by the southern group, which included the bulk of ENGO and industry representation, was similar – members spoke openly and passionately and made sincere attempts to understand and to be understood, and at times took matters into their own hands by exchanging information with other working groups, keeping their own notes, and tracking and developing their own recommendations when it seemed to some that the chair and Secretariat were not adequately supportive. The PCI working group was similarly described as comprised of dedicated members committed to ensuring that the beginnings of a plan were brought together (ON interview), and by mid April they had approved a somewhat more lengthy but still aggressive timeline for completing the status report that involved multiple rounds of review by all working groups and ESPI bodies (ESPI Memo, 2004, April 22).

The actual process unfolded somewhat differently than envisioned. In mid May, a document with the input from the three regional working groups, organized according to the topic headings they were given, was sent to the working groups and ESAC, not for comment but for "information," and members were told this should be considered input to the PCI and that the ESRT would determine what made it into the report, now termed a "status report" (ESPI Memo, 2004, May 17). It does not appear that working group members were ever invited to comment on how their recommendations were used, although they were given access to a July 5th draft of the report that the Secretariat had prepared. ENGOs commenting on this draft noted that some recommendations did not appear to originate from any of the working groups and that others appeared to be opinions of individual group members but were included on a par with consensus recommendations, and that absent any transparent tracking or chance to review there could be no confidence that the report's recommendations reflected the work of

the groups (ENGOs Recommendations, 2004, July 22). According to a letter sent to members of

the FNC and ESRT and another to ESAC members, both dated July 20 and covering a document

with preliminary ESRT and FNC changes to recommendations (i.e. "Promises to Keep" Draft

Recommendations, 2004, July 21), this July 5th draft report was presented at a meeting July 11-

12, but who was at the meeting or what was discussed is not reported, and research

participants did not recall details either, other than that if any ESAC members were involved it

was not open to all (ESPI Memo, 2004, July 20 a & b). The letters indicate that the ESRT had

completed their review and provided comments on the draft recommendations and that the

FNC would be meeting in camera for two days to complete their review, following which the

groups would meet together to work through final changes on August 5. This appears to be

what happened, and on August 10 a package was sent to ESRT and FNC members containing

"the more important final changes to the recommendations" for final comment, after which the

Secretariat would finalize the report for presentation to the minister ("Promises to Keep" Draft

Recommendations, 2004, Aug. 10).

The organizational structure of the final status report, and most of the wording save for

select recommendations, were unchanged from the July 5 draft, whose footer noted that it was

prepared by the ESPI Secretariat for the ESRT and FNC "as an illustrative example only" that did

not necessarily represent their views ("Promises to Keep" Draft Status Report, 2004, July 5). The

issues and topics addressed closely followed the Phase 1 report, which had been developed

primarily with government input, and the status report was further shaped by the Secretariat

and consultants hired to write it (HE, NE interviews). A joint press release from three

participating ENGOs noted that ESRT members had not seen nor approved the final version of

the report, leading Don Sullivan of the Boreal Forest Network and an ESRT member to say "I have been deceived by this process," and this lack of review extended to the general public as the report was not presented for any public comment (ENGOs Press Release, 2004, Nov. 16).

Regarding the recommendations of the working groups, the ENGO press release quoted Ron Thiessen of the Western Canada Wilderness Committee as saying "there's no indication they were even used." However, documentation made available by Manitoba Wildlands shows (some) working group recommendations in their raw form, as well as revisions and additions subsequently made by the PCI, ESRT, and FNC, and an analysis of this together with the final recommendations in the status report reveals that the working group recommendations did directly constitute or inform a significant amount of the report's recommendations and context sections (see "Promises to Keep" Working Groups Input, 2004, May 17; "Promises to Keep" Draft Recommendations, 2004, July 21, Aug. 5). Yet the ENGO criticisms are certainly correct that not all of the working group recommendations survived and those that did were often reworked and sometimes lose the context and nuance they were given with. Some key recommendations originated directly from the ESRT and/or FNC after the working groups were finished, but these are not identified as such in the status report and the description of how its recommendations were generated leaves the distinct impression that they issued from the working groups and were fully informed by public and stakeholder input (*Promises to Keep*, 2004, pp. 53-55; "Promises to Keep" Draft Recommendations, 2004, July 21, Aug. 5). A senior government employee explained that the Secretariat had recorded detailed feedback at all community, ESRT, ESAC, and FNC meetings, and that that, together with written submissions, had provided the basis for the report's recommendations (confidential); however, if such

detailed notes existed they were not available to the public or participants, and while fidelity to

public input was stressed in this interview, no specific mention was made of the use of working

group recommendations.

There were suspicions that the report had been significantly influenced by government

priorities and interests, which themselves may have been informed by work of the ESPI, but

with insufficient transparency it is not possible to tell. Commentary from Manitoba Wildlands

on the final stages of Phase 2 reported that through spring and summer 2004, government

ministers and senior staff consistently insisted that the ESPI was not a government process, that

it was independent, and that they did not know what was contained in recommendations

currently under development – yet at an October 2004 meeting two cabinet ministers made

comments that reflected knowledge of specific content in the not-yet-released report

(Manitoba Wildlands, 2005, Jan.). The commentary goes on to note that all external staff hired

on the Secretariat reported to the executive of Manitoba Conservation, and that they and

Secretariat staff seconded from government attended weekly meetings with Cabinet staff to

report on and plan their duties. There was a feeling that the Secretariat was strongly influenced

by or at least reflected government perspectives and priorities (HE, AG interviews). In any case,

the lack of transparency to the public and even ESPI participants, especially around the

development of the status report and contacts between Secretariat staff and government,

leave the process well open to suspicions of undue government interference.

5.3.6.2 The Status Report Arrives

On November 16 the status report was officially received by the Minister of

Conservation. It was titled *Promises to Keep: Towards a Broad Area Plan for the East Side of*

Lake Winnipeg in recognition of the work yet to be done to complete the ESPI mandate.

Minister Struthers framed the report by stating that "the boreal forest and the people who live in the area are the primary considerations of our government," and ESPI chair Phil Fontaine described it as "a framework for a broad area plan" that would "shape the way we deal with [the] environment and community economic development in this special area, ensuring that First Nations can establish sustainable economies" (MB News Release, 2004, Nov. 16). Fontaine went on to hail it as "a critical step forward for the 16 First Nations on the east side who will work side by side with the Province of Manitoba, government to government." As described above, other assessments were not so kind. The report was delivered in the hallway outside the minister's offices with little media attention, no media scrum, fanfare, or big public announcement (HE interview). To some this reflected recognition that the process had all but failed. What had started as a high profile, ground breaking initiative to implement sustainable development, protect a swath of relatively undisturbed boreal forest, and forge new relationships with Indigenous peoples had come in overdue and nowhere near complete:

- instead of a broad area plan there were 102 recommendations on topics that such a plan would address;

- instead of Protocols of Agreement with Indigenous peoples there was a tepid MoU that not all First Nations had signed and a vague promise of engaging the Métis Nation;

- instead of an holistic, sustainable, and ecosystem-based approach there was missing data, recommendations were not integrated, and priority issues were focussed on resource exploitation and weak on social and cultural issues;

- and, instead of the promised progressive, inclusive, and meaningful public participation, public engagement had been late, top-down, one-way and information-out, and the lack of transparency in the process left the actual influence of public input impossible to determine.

Clearly there were significant promises to keep, and some broken promises to mend, before the

sustainable development mandate of the ESPI could be considered met, and the status report

was clear that it was merely a significant step along that path.

   Promises to Keep begins by linking the ESPI to prior work on sustainable development,

identifying the COSDI report as the "genesis of the Broad Area Plan for the east side of Lake

Winnipeg" (*Promises to Keep*, 2004, p. 15). The vision for the BAP was adapted directly from

COSDI, and emphasized the need for maintaining balance between economic development and

conserving the boreal ecosystem, for honouring the social integrity of local communities and

the natural integrity of the environment via integrated planning – a vision that regarded the

area as a "protected landscape in which economic development activities are permitted if it is

agreed that they are sustainable and benefit local communities" (*Promises to Keep*, 2004, p.

16). This would be nothing less than a new social contract recognizing and implementing "the

right to human development in all its dimensions but not at the cost of diminishing the

environment that sustains us all" (*Promises to Keep*, 2004, p. 17). The report identified

fundamental values that underlay this vision of the to-be-completed BAP, which included:

honouring the interests and aspirations of ESPA residents in the plan via an ongoing mechanism

providing for meaningful public participation; recognizing the historic relationship between the

people and the land; affirming and complying with Aboriginal and treaty rights, including via

protocols of agreement setting out the nature of the government-to-government relationship;

including and integrating traditional knowledge and sound science as a guide; and following the

precautionary principle whenever data were lacking. The BAP, once completed, "will not so

much be a prescription, but more of a template," providing "strategic advice and direction to ...

everyone engaged, or thinking of engaging, in commercial and recreational activities in the area," which is an interestingly tenuous and development-focussed description given the depth and range of sustainability innovation just promised (*Promises to Keep*, 2004, p. 18). However, it also described the BAP as providing a framework for, and principles, codes of practice, and land-use designations that could be incorporated into, regional and/or community-based plans, which being more local and detailed would perhaps provide for the conservation, socio-cultural wellbeing, and community development objectives the above vision and values pointed to.

5.3.6.3 Overarching Themes – Continuing the Process, Indigenous Relations, & Boreal Protection

The status report divided its recommendations into two sections – overarching themes and priority issues. Most significant for the period following the status report, the first overarching theme related to options for how to continue the process of creating a BAP. All of the regional working groups developed recommendations urging that the broad area planning process continue until a full plan was completed; however, none contained details outlining how this ought to be done. The status report's description of how the continued efforts should be structured and function appears for the first time in the July 5 draft prepared by the Secretariat, which states that the ESRT and FNC "remain convinced that an on-going structure and mechanism ... is essential to the completion of the Broad Area Plan," and that "we" characterize this as an East Side of Lake Winnipeg Planning Council ("Promises to Keep" Draft Status Report, 2004, July 5, p. 44). There are no available documents that provide insight as to the extent to which the draft's details about this council were suggested by either the ESRT or FNC, nor is it clear who "we" refers to.

The draft's proposed purpose and mandate for this planning council was not

substantively changed following review and revisions by the ESRT and FNC in July and August

2004. The council would continue to oversee completion of the BAP, including community and

public consultations and completion of the Protocols of Agreement; would be resourced by

government, supported by a Secretariat, and advised by the ESAC as before; and would assume

interim planning authority until such time as the BAP were adopted, which would involve

providing government with advice and recommendations on large-scale land use developments

(see *Promises to Keep*, 2004, pp. 36-38). These large-scale land use developments, as part of

any environmental assessment that may be required, would also undergo an "Aboriginal and

Treaty Rights and Traditional Lands Impact Assessment," and the new council would have to

quickly commission research to establish an acceptable methodology for such assessments

(*Promises to Keep*, 2004, p. 38). The July 5 draft recommended the composition of the planning

council provide for continuity with and transfer of institutional memory from the existing

structures, and suggested two options for its makeup, both of which were composed primarily

of representatives of the ESPA communities with one or a few stakeholder representatives.

Upon review, the ESRT added a new first option, that the council be composed by combining

the existing ESRT and FNC ("Promises to Keep" Draft Recommendations, 2004, July 14, pp. 3-4).

The FNC subsequently reviewed these three options and replaced them with one of their own,

that the council be named the East Side First Nations Council (ESFNC), and be comprised of the

16 ESPA First Nations Chiefs or their designates ("Promises to Keep" Draft Recommendations,

2004, Aug. 5, p. 6). *Promises to Keep* accepted the FNC changes with the inclusion of one

representative from the Métis Nation government and four current ESRT members, for a total

of 21 members on the ESFNC.

The second overarching theme in *Promises to Keep* related to building positive

relationships with Indigenous peoples, and focussed almost exclusively on completing Protocols

of Agreement with both the ESPA First Nations and the "Métis Nation resident on the East

Side." The introduction to this section acknowledged the history of conflict and distrust

between Indigenous peoples and government and how their interests and voices had been

ignored and their communities excluded from receiving benefits from resource developments

in their areas, and it was this legacy that the BAP would seek to address via forging a new

relationship. It also noted that Indigenous communities were regularly confronted with "a

barrage of never-ending social and economic challenges," which resulted in long term, strategic

planning often being sacrificed to dealing with immediate crises, and this meant that building a

new relationship in a planning context would require time, trust-building, information

exchange, and meaningful participation to ensure local voices were heard and concerns and

interests addressed (*Promises to Keep*, 2004, p. 40).

Recommendations associated with this theme provided some details regarding the

possible contents of the protocols, which included: an umbrella framework for resource-sharing

across the ESPA; provision for 'second level' agreements for specific land uses, which would

address access, revenue sharing, capacity building, and shared stewardship and environmental

management; second level agreements for all resource developments to provide shared

management and royalty and/or revenue sharing for resources extracted from traditional

lands; and community-based land-use planning, consistent with the values and principles of the

BAP, prior to and guiding development activities on communities' traditional territories. This description of the promised Protocols of Agreement was quite progressive from both resource management and Aboriginal rights perspectives, in essence stipulating co-management and resource development partnerships and all but recognizing Indigenous title to their traditional territories and the resources they contained. Such protocols, and the specific agreements they would have provided for, certainly suggest more effective jurisdiction and control over their lands and resources than available to 'landless' Métis or 'land-surrender-treaty' First Nations under the federal government's provisions for negotiating self-government or the courts' interpretation of treaty and Aboriginal rights.

The final overarching theme was protecting the integrity of the boreal environment. This section interpreted "protected area" according to a reading of the 2002 First Nations Protected Areas Accord, which was seen as defining protection as open to a variety of land uses and resource developments so long as they were under local control and provided local benefits, and that this local control represented management according to traditional Indigenous values and knowledge under the guidance of Elders. Recommendations associated with boreal protection included:

- that the entire ESPA be considered "protected" in the Indigenous sense just described;
- that the provincial and federal governments support establishing a UNESCO World Heritage Site including the lands so designated by the First Nations in the Protected Areas Accord and Atikaki and Woodland Caribou Provincial Parks in Manitoba and Ontario respectively;
- having the ESFNC identify and define varying levels of protection to be specified in the BAP, informed by the guidance and principles of the Canadian Boreal Initiative;
- ensuring the Areas of Special Interest (ASI) in the northern ESPA were expeditiously evaluated with local community input and the Protected Areas Initiative goals and timelines updated accordingly;

- and, having the province develop and implement adaptive ecosystem-based management practices, informed by sound and comprehensive scientific data to be acquired and updated by the province as needed.

Declaring the entire area as protected according to Indigenous understandings does sound laudable; however, it is important to note that this is an interpretation of the Indigenous understanding rather than an Indigenous articulation of their own cultural understanding. And while the emphasis on local control and management according to traditional values again sounds progressive, what this would mean in practice was all yet to be determined, and an environmentally minded cynic would point out that it could end up effectively neutering the concept of environmental protection by allowing all manner of resource exploitation to take place in areas labelled 'protected.' The section addressing ecosystem protection is conspicuously bereft of recommendations specific to environmental assessments, development regulations and licensing, or the application of provincial environmental management policies, for example related to species or water quality protection, and how these might relate to or be integrated into the recommended ecosystem-based management regime.

5.3.6.4 Priority Issues – Community and Natural Resources Development

All but the first of the priority issues *Promises to Keep* addressed had to do with development projects. The first priority issue was "Aboriginal and Community Development," and the ESPI mandate for this was entirely related to providing advice on how community plans could be completed and integrated with the BAP. The brief introduction acknowledged that community development issues in the ESPA were broader than this narrow mandate, especially the lack of economic opportunities, lack of local ownership, control, or benefits from existing economic developments, and a seeming lack of interest from government in pursuing

development partnerships (*Promises to Keep*, 2004, pp. 55-56). Recommendations for this issue

related to: ensuring that all local communities were adequately resourced and supported as

necessary to develop plans for their communities and surrounding areas of interest; making

future development contingent on local involvement in resource allocation decisions and the

provision of training and employment opportunities for local residents; providing support for

local enterprise and joint ventures or partnerships as a means of ensuring local benefits from

developments; and collaboration among the province, ESFNC, and ESPA First Nations to

establish a natural resources management authority. Presumably, negotiations leading to this

management authority would also include establishing what jurisdictional power it would have,

which, absent a legislative base, would likely be limited to advising and recommending.

 Promises to Keep does not directly comment on means for addressing concerns related

to social issues, community health and wellbeing, or cultural integrity that one might expect in

a discussion of community development given the pressing realities in the region described

earlier in section 4.2. This perhaps reflects the common reasoning described in section 4.3.2,

that local, community-based planning, together with mechanisms ensuring local involvement in

development decision making, would lead to greater control over developments on

communities' traditional territories and to increased local economic benefits, and all together

this would provide the basis for supporting locally directed efforts to address pressing social

and cultural concerns. However, as noted in this earlier section, this causal chain is all too

seldom observed in actual practice, and much rests on effectively removing the underlying,

colonially-rooted causes, i.e. the state's unequal and racist policies and institutions of

dispossession, marginalization, and denigration, and on positive factors such as cultural-

spiritual revitalization, reconnection with land and traditional values, and practicing meaningful self-determination (see Alfred, 2009; Newhouse, 2000; W. Wuttunee, 2004). Given the narrow focus of the section's recommendations on community planning and assuring economic benefits, success in addressing deeper community issues related to socio-cultural health and wellbeing would seem to rest heavily on the depth and quality of these community plans and, as suggested by Simpson et al. (2007), on the willingness of the government to give up much of its totalizing legislative and regulatory control in managing these lands and resources.

The remaining priority issues addressed in *Promises to Keep* related to development in the region. No land use zoning was done, and no principles or codes of practice were developed, rather recommendations identified concerns and issues that the BAP should attend to and sometimes suggested the general approach or direction the plan should take in doing so. The overriding emphases in recommendations for each priority issue included ensuring: local involvement and meaningful participation in decisions, allocations, and plans for developments; local benefits from any developments, which could include resource sharing, revenue or royalty sharing, local ownership, partnerships or joint ventures, training and capacity building, or impact benefit agreements; and environmental sustainability, although the former two emphases regularly predominated over this. An illustrative example is the discussion of forest resources where report noted that the BAP should aim "to achieve long-term sustainability of the forest as a habitat and a source of social and economic benefits," and that there was general "support for development that is sustainable, as long as there is local input to the process and benefits accrue to communities directly" (*Promises to Keep*, 2004, pp. 59-60).

However, while the direction of these recommendations was surely progressive from a sustainable development and Aboriginal rights perspective, there was also a distinct affirmation of the status quo within them. Existing policy and regulatory approaches were left unchallenged, most explicitly in the case of mining where the report concluded that "mineral exploration and development within the planning area is manageable within established procedures and approval mechanisms, but requires more attention to local communications and co-operation" (*Promises to Keep*, 2004, p. 74). So greater input from local communities was recommended, but since existing procedures already required public participation this amounts to suggesting that the same thing be done, only more effectively, and without new legislative or policy tools it is difficult to see how the recommended local decision-making mechanisms could amount to more than bodies for generating local advice to feed into established development approval processes.

The promised Protocols of Agreement could, potentially, outline in binding terms how the First and Métis Nations would take on effective jurisdiction and control over management and development of their traditional lands and resources such that the status quo would be meaningfully transformed, but details were yet to be worked out and the largely empty and aspirational MoU that protocol negotiations had led to in Phase 2 did not inspire great confidence. Many of the recommendations point to innovative approaches that, at their best, could empower local communities and fundamentally alter how the area's lands and resources were managed and who would benefit from their development, but lacking specific procedures and legally backed mechanisms, such as to grant decisive authority to community plans and local decision-making bodies, require benefits sharing, or provide legal recognition of

Indigenous title and self-government jurisdictions, the prospects for actually achieving these

transformative outcomes were ambivalent – much rested on the yet-to-come BAP, the

promised community plans and Protocols of Agreement, and the province's willingness to

support the development and implementation of all of these and then to share jurisdiction and

power accordingly.

Just prior to the end of his contract on the ESPI Secretariat in September 2004, the

executive coordinator wrote a brief titled "Ten Challenges to the Broad Area Plan," in which he

anticipated problems that would be faced in staying the course and completing the BAP, and

suggested approaches for overcoming them. This document, which appears addressed to the

incoming ESFNC, clarifies his view that the BAP would be "*what* you want to do with or about

protected spaces, resource development, ecotourism and the like," while the Protocols of

Agreement would be about "*how* you will do it" (Ten Challenges, 2004, p. 3). He cautioned

against losing sight of the BAP in the process of protocol negotiation, which, based on the vision

presented in *Promises to Keep*, held the promise of outlining a new government-to-government

relationship and instituting revenue sharing between the East Side Indigenous communities and

the provincial and, possibly, federal governments, and hence would be a long and contentious

process. However, the BAP would be needed to give direction and purpose to the new

relationship and resources.

The most significant challenge to completing both the plan and protocols was identified

as the availability of adequate resources, including money, necessary expertise, and a visibly

independent Secretariat, especially as it was considered unlikely that the province would

commit the resources needed to support the process adequate to a thorough job. Further

challenges included maintaining will and attention at both political and administrative levels in

the provincial government, especially as considerable time and money would be needed, and

maintaining effective focus and leadership in First Nations in the face of more immediate

pressing needs and the one or two year election cycle mandated under the *Indian Act*. The

outgoing executive coordinator also observed that "the greatest stress point ... will be the need

to consult with as broad a spectrum of people as possible while still completing the

components of the plan and the protocols in a reasonable period of time. It will be an on-going

balancing act between inclusiveness and time-bound certainty" (Ten Challenges, 2004, p. 4).

Achieving this would require meaningful consultation and the timely distribution of

information, because "otherwise, we cannot speak credibly about participatory decision-

making and informed consent" (Ten Challenges, 2004, p. 5). Clearly there was much promise in

holding to the course and completing the mandate the ESPI began with, but also evident were

significant challenges to be met as the next phase of the process was about to begin.

5.4 Summary

The ESPI began in 2000 with the progressive and immense task of preparing a BAP for a

large geographic area that would: instantiate the principles of sustainable development via

integrated planning, that was informed by thorough and meaningful public participation, and

that would establish a new, positive relationship between the province and Indigenous peoples.

The ESPI Phase 1 was led by a government review panel, closely reflected government

perspectives and priorities, and established the organizational frame and geographic and

topical scope of the initiative. The panel held consultations within government, with

stakeholders, and in a number of ESPA communities, and invited written comments on a draft

of their report. The most significant change from their initial vision was the introduction of the

FNC as an additional advisory body to the ESRT, and this was done based on strong feedback

from ENGOs and Indigenous communities.

Public participation activities in Phase 2 were limited, largely information-out, and

conducted late in the process. An Elders gathering was held to solicit their input, but it also

occurred late in the process and was a one-off event that was not conducive to developing

substantive guidance. Stakeholder consultation via the ESAC was largely ineffective. The rising

power of the FNC through the process, from an advisory to a co-leading body, signaled that

government and ESPI leadership recognized the need to involve First Nations in a more

meaningful role in planning affecting their traditional territories. The FNC was able to forge

direct lines of communication with the Cabinet level of government and ensure that their

interests and perspectives were heard by government and within the ESPI. However, instead of

the promised protocols detailing a new relationship, the process was able only to develop a

MoU outlining general principles and vague goals that some First Nations refused to sign.

Running out of time and with only preparatory planning work done by early 2004, the

BAP was abandoned for the time being and working groups were formed from the ESRT, FNC,

and ESAC to develop recommendations for a status report. Work was again rushed, lacked

transparency, working groups were discouraged from collaborating, and were not given

opportunity to review how their input was used, or not, in the report. The ESRT and FNC also

contributed directly to some of the recommendations, and did review drafts of the report and

provide comment, but this again lacked transparency. In the end, the report itself was authored

by the Secretariat and the lack of public input and transparency around its development left some to suspect significant political influence had been brought to bear on its contents.

The status report, *Promises to Keep*, recommended continuing BAP development under the leadership of a new body, the ESFNC, composed of representatives of the 16 First Nations, one Métis, and four provincial appointees to represent stakeholders and the general public. There was much in the report that affirmed the status quo regarding the regulation of resource development, and a significant portion of the report was devoted directly to development issues, leaving the impression that the envisioned BAP would be, in effect, a development plan. Yet, *Promises to Keep* was surprisingly progressive in its rhetoric regarding First Nations and economic/resource development, with numerous recommendations for instituting benefits and revenue sharing and co-management with the province, and even approaching endorsing self-government and Indigenous title in ways that would have pushed beyond federal policy or judicial rulings. But details of how this might be accomplished were entirely left to be worked out by the ESFNC, and would most certainly require a level of provincial cooperation and power sharing that was historically lacking.

By the end of the ESPI Phase 2, a start had been made, but some serious shortcomings, especially regarding transparency, public engagement, and adequate funding and staffing were already evident. Much was left to do if the initial promises of sustainable development planning and Indigenous relationship-building were to come to fruition, and this would depend on the imagination and capacity of the next phase of the process to take on the difficult work, and on the seriousness of the province's commitment to provide the time and resources needed to complete a task that was much larger than originally understood.

Chapter 6: Examining the Wabanong Nakaygum Okimawin (WNO), 2004-2013

6.1 Introduction

This chapter examines the WNO planning process. The province considered the WNO to

be a direct continuation of the ESPI, as the third phase undertaken based on the

recommendations in Phase 2's *Promises to Keep*, and this is how it was presented on the WNO

website; however, nearly all non-First Nations research participants saw it as a new and

separate initiative, while First Nations participants tended to regard it as an appropriate

evolution from the ESPI but with a significantly different focus and structure (e.g., HE, FN, KS,

WG, NP, SL, NE, AG interviews). A discussion of this chapter's findings is provided in chapter 7,

and full details of my case study research methods are presented in chapter 3.

6.2 Overview of WNO Structure and Activities

In announcing receipt of *Promises to Keep*, Conservation Minister Struthers said that

government would be examining its recommendations carefully, and that the East Side First

Nations Council would be continued and protocol discussions would begin immediately (MB

News Release, 2004, Nov. 16). The ESFNC was constituted as per the status report's

recommendation, with 16 chiefs or designates representing the ESPAs First Nations, one

representative of the Métis Nation, and four members representing industry, stakeholders, and

the general Manitoban public. A Planning Coordination Committee (PCC), with some

membership continuity from the Phase 2 PCI working group, was immediately formed to:

develop a strategic work plan for moving forward, prioritize issues, ensure inclusive

participation, coordinate the various working groups and integrate their findings towards the

BAP, serve as a first point of contact for those wishing to make presentations or requests to the ESFNC, and to examine proponents' development or land use proposals, evaluate them against the recommendations in *Promises to Keep*, and present them to the ESFNC for consideration (ESFNC Minutes, Dec. 13/04, Feb. 10/05; WNO Minutes, July 14/05; ON interview). This last function reflected the ESFNC's expectation that, as per the status report, they would begin to function as an interim planning authority with a role in development approvals.

Early on, there was discussion of working with Elders to rename the ESFNC to better reflect the majority makeup of the planning body and region's population, and by summer 2005 Wabanong Nakaygum Okimawin (WNO), an Oji-Cree title roughly translating to "east side of the lake governance," was adopted, and the ESFNC became the WNO Council. According to minutes posted to the public website, the ESFNC/WNO Council met 10 times between December 2004 and November 2006, with one meeting following in September 2007; however, minutes were obtained for a WNO Council meeting in May 2009 and an agenda for a meeting in January 2010, both of which indicate there were no intervening Council meetings. There is no record or memories of further meetings of the WNO Council – as the focus of work turned to local, community-based planning, as discussed below, Council activity and meetings "trimmed down quite a bit" (NE interview).

The WNO was served by a Secretariat, including the same resource planner and policy analyst seconded from government as in Phase 2, along with a new project manager, community liaison, communications, and administrative support hired on contract by Manitoba Conservation. Ed Wood, who continued on as chair of the WNO Council, noted that staffing levels had been reduced from Phase 2, and this was creating problems and requiring extra work

from himself and other WNO participants (ESFNC Minutes, Feb. 10/05). In addition to the PCC, the WNO quickly established a Protocol Negotiating Team (PNT), which initially included two lawyers from ESPA First Nations, and it was immediately observed that both the PNT and Secretariat were insufficiently resourced to be meet their respective tasks adequately (ESFNC Minutes, Feb. 10/05). The province established their own PNT, and protocol discussions between the two teams appear to have been frequent and extensive over the first few years. In addition, three working groups – Community Planning, Communications, and Transportation – were set up to discuss, explore options, and make recommendations to the WNO Council on their respective topics. Three further working groups – Energy, Resource Management, and Tourism – were approved by the WNO Council in the summer of 2005 at the recommendation of the PCC, to deal with issues related to land use and development proposals; however, it does not appear that any of these three groups ever met (WNO Minutes, July 14-15/05, May 29/06). The PCC and PNT were comprised of WNO Council members, while the working groups contained primarily appointees from ESPA First Nations together with one to several WNO Council members and a representative from the province.

By the WNO Council's second meeting in February 2005, the WNO Council of Chiefs (CoC) had been formed as a subset of the full Council, consisting of the 16 First Nation's chiefs or designates, to meet and deal with issues that applied specifically to the area's First Nations. The CoC generally met in camera, and records of their meetings, agendas, or minutes were not made publically available, although some of their discussions and decisions can be gleaned from reports made in WNO Council meetings. A five member subset of the CoC, the Executive Committee of Chiefs (ECoC), was established in the summer of 2005 at the suggestion of the

Minister of Conservation to provide a direct line of communication between the CoC and provincial ministers "so that decisions are not being made that impact First Nations without First Nations input" (WNO Minutes, July 14/05). The ECoC was initially envisioned as an interim measure needed only until the Protocols of Agreement and community plans were completed, which would then provide mechanisms and direction for relations between First Nations and the province. Concern was expressed early on that the ECoC could be used by the province to short-cut a genuine government-to-government relationship between the province and First Nations, as Chief David McDougall of St. Theresa Point First Nation stated for the record, such a relationship demanded "meaningful bidirectional communications" and not "just go[ing] through the motions of consultations" (WNO Minutes, July 14/05). No records were made public of the number or nature of any ECoC meetings, but it was observed that it was costly and logistically difficult to convene all of the chiefs, and, especially as the WNO Council began meeting less frequently, the Secretariat and government "worked a lot through the Executive Committee of Chiefs" (NE interview).

Within the first year of the WNO it became apparent that the focus was shifting away from developing a BAP and towards local community-based land use planning, along with the protocol negotiations – these three activities are discussed in succeeding subsections (see WNO Minutes, July 14-15/05). Reference to the BAP continue to occasionally appear in WNO Council discussions, and there were multiple mentions of the Secretariat developing a BAP based on *Promises to Keep,* or at least a framework of BAP principles, but drafts of these do not appear to have been completed nor seen by any of the WNO bodies (see Manitoba Conservation, 2006, p. 151; WNO Minutes, March 2/06, May 29/06, Aug. 30/06, Sept. 26/07). By the later years of

the process, it was clear to most, if not all of those involved that a BAP would not be developed (SB, HE, AG, NE, TK, NP, SL interviews).

Protocol negotiations failed to reach Protocols of Agreement with the detail and strength originally envisioned by the First Nations, but negotiations did result in the *WNO Council of Chiefs Accord* (*WNO Accord*) between the province and the ESPA First Nations in April 2007. The *Accord* did officially define the First Nations–Government of Manitoba relationship as government-to-government and committed the parties to working together in a spirit of cooperation and mutual recognition to develop land use plans for First Nations' traditional territories and to establish Regional Resource Management Boards (RRMB) to ensure First Nations involvement in management and planning decisions for those lands (*WNO Accord*, 2007). The province also committed in the *Accord* to develop regulations, with the participation and approval of the First Nations, to implement the *Accord*, land use plans, and RRMBs under existing planning legislation. As it was found that existing legislation was unsuited to these purposes, in 2009 the province introduced and passed *The East Side Traditional Lands Planning and Special Protected Areas Act* (*East Side Planning Act)*, which provided for the recognition and implementation of land use and resource management plans for First Nations' traditional territories and for the establishment of RRMBs. Protocol negotiations were never initiated with the Manitoba Métis Nation as had been promised throughout Phase 2 and recommended in *Promises to Keep* (SB interview).

In order to provide some First Nations control over management of the funding for community-based land use planning, which came to be termed Traditional Area Land Use Planning (TALUP), money was provided via a transfer payment agreement from the province to

WNO Inc., which was a legally incorporated not-for-profit body established for the WNO CoC in summer 2006 (WNO Minutes, Aug. 30/06). WNO Inc. reported to the CoC and was controlled by a five member board appointed to three year terms by the CoC. A funding agreement was reached for $2.5 million over five years, from April 1, 2006 to March 31, 2011, and this was extended for one year to provide additional funds for communities working on TALUP projects. Beginning in the 2012-2013 fiscal year, any First Nations' TALUP work was funded via direct agreements with the province, and WNO Inc. effectively ceased to function (TK, AG, NE interviews). Over the period from 2007 to 2013, all ESPA First Nations who submitted proposals received some funding and did some planning work (NE, TK interviews), but by the end there were only four land use plans completed and regulated under the new *Act* – Poplar River, Pauingassi, Little Grand Rapids, and Bloodvein – which were also the communities involved in Pimachiowin Aki's World Heritage Site nomination process and as a result had access to significant additional resources.

Since the TALUP process was looking to be complex and lengthy, in the summer of 2007 the province began to pursue negotiations to establish RRMBs to facilitate First Nations involvement in resource allocation and management decisions until such time as their TALUPs and associated resource management plans were completed (WNO Minutes, Sept. 26/07; WNO CoC Minutes, Jan. 27/10, 'RRMB update'). By 2010, negotiations on three RRMBs, with the ESPA's central region First Nations and the Cree and Island Lake First Nations of the northern region, reached the point of producing draft documents that were reviewed by legal counsel, but none were ever signed (WNO Island Lake Region, 2010, Oct. 13-15, 'WNO update, June 2010'). Instead, throughout the WNO phase, resource allocations and developments and land

use proposals were received and assessed under pre-existing provincial policy and regulatory mechanisms (AG, HE interviews).

Promises to Keep, whose full title included *Towards a Broad Area Plan*, was clearly intended as a waypoint along a continuous process; the recommendations it contained pointed towards what a completed BAP would address and what it might say, and, apart from a few addressed to interim steps, were not intended as the ESPI's final word for government to take as advice for policy and decision making. The status report was clear that much work was yet required, especially regarding public and local community consultation, before the ESPI could complete its task of developing a BAP with final recommendations for government. Yet, from the start the province picked select recommendations and used them as support for actions and policy direction, and by 2009 the Conservation Department boasted they were making progress on implementing "about 97% of relevant recommendations," although no explanation of what was considered relevant nor evidence of progress was offered (Manitoba Conservation, 2009, p. 135). There was talk of government developing a matrix to track which of the 102 recommendations were being implemented, but such a record was never publically produced and from a scan of the breadth of *Promises to Keep*'s recommendations the claim to any meaningful progress on 97% is hardly credible (HE interview).

Inadequate funding was a persistent issue throughout the WNO process. As mentioned above, staffing on the Secretariat had been reduced, and the PNT observed that the province's budgeted amount for their work would not enable them to be effective (ESFNC Minutes, Feb. 10-11/05). At their third meeting, the ESFNC proposed a $3.5 million annual budget, whereas the province had allocated $400,000. The Conservation Minister was in attendance and

thanked them for not asking the province for that full amount, but after he left a motion was

introduced to demand the province provide the $3.5 million within two months or the First

Nations would withdraw their participation (ESFNC Minutes, April 11-12/05). This threat was

not carried through, but it does demonstrate a recognition from the start that the province's

funding would not be sufficient for even a small portion of what they understood the task

before them to entail. As seen below in section 6.3.1, lack of funds to support WNO working

groups was a primary reason they were unable to function effectively, if at all.

With the $500,000 annual funding to WNO Inc. added to the amount spent maintaining

the Secretariat and covering meeting expenses, the province claimed to be contributing $1.2

million annually to the WNO process (WNO Newsletter, 2008, p. 2). Starting with the 2006-07

fiscal year when the contribution agreement with WNO Inc. started, the Department of

Conservation's annual reports provide separate reporting of monies budgeted and spent for the

WNO process, which show that for the life of the five-year funding agreement plus the one

additional year of bridge funding, i.e. for the full TALUP phase, annual averages were

$1,021,000 budgeted and $867,000 actually spent, leaving $154,000 unspent (Manitoba

Conservation, 2007, p. 152, 2008, p. 132, 2009, p. 137, 2010, p. 133, 2011, p. 134, 2012, p. 28).

Despite this, insufficient funding made available to the WNO process continued to be a problem

constraining the work of the Secretariat and community TALUP activities.[35] For example, in

2009 badly needed GIS training and computer equipment for local planners were obtained only

after $75,000 was received as a federal grant to do so, yet at year end $173,000 of provincial

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[35] The annual reports for each of the first four of these years include a footnote stating that under expenditure is due to "reduced meeting and travel related costs for traditional land use planning and community consultations," which were costs covered by the Secretariat and not WNO Inc., meaning that remaining funds should have been available for other Secretariat functions, such as training and provision of specialist services as needed to support TALUP work.

funds budgeted for the WNO went unspent (Manitoba Conservation, 2010, p. 133). And after

the Secretariat hired a consultant in 2009-10 to assess TALUP progress and deliver training to

community planners, described below in section 6.5.2, the Secretariat claimed they wanted to

extend his contract in order to provide additional training but were unable to due to lack of

funding, despite $147,000 of budgeted provincial funds remaining at year end (Manitoba

Conservation, 2011, p. 134). Inadequate funding was a serious issue, which was exacerbated by

choices to not spend all of the monies that appear to have been available, and several research

participants felt that monies were regularly left unspent due to pressure from the province,

who they believed did not want to see robust, comprehensive TALUPs developed that might

bind the hands of government to pursue their interests in the future (3 interviews,

confidential).

Despite the many voices at the close of Phase 2 urging that the province and process

hold firm to the task and not lose sight of the ESPI's initial vision and mandate, by the time the

WNO effectively ceased to function following the end of WNO Inc.'s funding agreement and a

departmental review in 2012-2013 that saw Secretariat staff reduced and funding slashed, none

of the BAP, Protocols of Agreement with First Nations and the Métis, or RRMBs had been

developed, and procedures for resource development approvals and regulation remained

largely as before. However, there were some relatively significant achievements, including: the

WNO Accord's affirmation of a new government-to-government relationship between the

province and First Nations, the implications of which were yet to be fully seen; the *East Side*

Planning Act that was certainly imperfect, but it did provide a legal means for the area's First

Nations to articulate their vision for the use and protection of their traditional territories and

four First Nations did make use of it; support was added to the World Heritage Site nomination process that promised added protection to a wide swath of boreal ecosystem; and the region's First Nations leadership were brought together over an extensive period of time, which facilitated mutual learning and sharing of perspectives and interests among related communities that have often operated in relative isolation.

6.3 Broad Area Planning and Priority Issues

6.3.1 Whither Broad Area Planning and Public and Stakeholder Consultation?

The nearly immediate shift in the WNO Phase away from broad area planning was clear to participants and can be seen in meeting minutes and other WNO documents (e.g., ESFNC Minutes, April 11-12/05; Preparing for CBLUP, 2006, Aug.). However, it is less clear how or by whom this move was initiated. *Promises to Keep* had recommended supporting community-based planning, but as a part, and not at the expense of developing a BAP. A September 2005 document prepared for the WNO by a consultant stated that in the course of developing the BAP in the ESPI Phase 2, "it became apparent that First Nations and other communities on the east side needed to do some local land use planning in order to have better input to the broad area planning process. Furthermore, the WNO (then the ESFNC) at its February 2005 meeting, identified community level land use planning as its top priority" (Proposed CBLUP Framework, 2005, Sept., p. 2). However, this need was not predominant in any available Phase 2 documents nor referred to by research participants active during that time, and the minutes from the February 2005 meeting make no reference to the subject. It is true that insufficient environmental and land use data, especially for the northern region, was noted as an obstacle to planning in the earlier EBM pilot project and during the ESPI Phase 2, as was the generally

low level of local residents' awareness of and engagement with planning issues and processes. Additionally, a number of research participants talked about a growing realization among WNO members, especially from First Nations, that planning for the entire area was simply not feasible given the above noted absence of local plans and low levels of community awareness, which local planning could ameliorate, and many communities were uncomfortable participating in a larger process where they felt they would essentially be telling other First Nations what to do with and on their territories (SL, NP, TK, AG, interviews).

A 2006 document developed by the Secretariat outlining scenarios for undertaking community-based land use planning suggested that it was the area's communities who identified the need for local land use planning in order to ensure that they could "participate in land use decisions with a solid base of information," and to "provide better certainty for both proponents and communities about the potential for future development and protection in the region" (Preparing for CBLUP, 2006, Aug., p. 3). This development-focussed motive for the new focus on local planning was clarified later in a document prepared by the Secretariat for the WNO CoC, which states that "the shift was due to the widely held belief that economic progress and benefits will be achieved sooner at the community level as a result of planning and fostering sustainable economic development on traditional lands" (WNO CoC Minutes, Jan. 26-27/10, 'RRMB update,' p. 1). However, this sentiment is not particularly strong in the Phase 2 What We Heard documents, which were the only publically available records of community feedback, so it is not clear when or how the communities identified this need. Two research participants, who were government staff extensively involved during the early WNO Phase, recalled the decision for moving to focus primarily on community-based TALUP as coming

directly from the WNO, either the Council or the CoC, which they felt would have represented

the wishes of the First Nations (2 interviews, confidential). In any case, this rationale of doing

planning to facilitate quick economic benefits from resource development represents a rather

significant shift away from the original mandate of holistic, integrated planning before

development and towards economically driven planning for development, although the

pressure for realizing the financial and employment benefits associated with resource-based

economic development that the impoverished and marginalized First Nations felt was certainly

real and understandable.

At the very start of the WNO there was still a clear expectation that *Promises to Keep*

would be built upon and a BAP would be developed, and this would require re-engagement

with local communities who had not heard from the planning process for about a year. At the

WNO Council's second meeting, chair Ed Wood noted the need to take the status report's

recommendations back to the communities, both for transparency and to generate feedback,

and to use it to initiate discussions that would inform the WNO's work in developing a complete

BAP (ESFNC Minutes, Feb. 10-11/05). In late March 2005, funding for First Nations' community-

level engagement, which had been applied for during ESPI Phase 2 but was delayed until now,

was secured from Indian and Northern Affairs Canada (INAC), a rare instance of federal monies

spent supporting the planning initiative. To satisfy the INAC Resource Partnership Program's

rules, the funding had to be administered by an existing tribal council organization, be related

to community benefits from resource development, in this case strategic planning, and all

project activities and final report had to be completed by the end of July, a mere four months

from when funding was received (Keewatin Tribal Council, 2005).

Keewatin Tribal Council headed up the project, which aimed to hire and train community facilitators in each of the 16 First Nations and have them engage community members and leadership in meetings and other activities to develop a community vision and strategic action plans for how they would like to be involved in planning and how they could best capitalize on opportunities created and cope with threats posed by planning outcomes. Needless to say, four months was too short a time to accomplish any of this in any depth, and the concerns and recommendations noted in the final report are no different from those contained in the Phase 2 What We Heard documents, which were similarly informed by rushed and largely ineffective community engagement. The report did note that community members were largely unaware of the ESPI, *Promises to Keep*, and the WNO, did not trust government to consider their voices and interests or respect their Aboriginal or treaty rights, were concerned about negative environmental and social impacts associated with road building and resource development, and were sceptical of receiving lasting benefits from development (Keewatin Tribal Council, 2005, pp. 35-37). The report's findings are not mentioned in any available WNO meeting minutes, and this represented the last attempt at local community engagement in a comprehensive manner – all future community engagement in planning occurred in the context of individual TALUP activities.

There was also early discussion of including wider public and stakeholder consultation via the ESAC, either by convening the entire body for information-out and feedback purposes at periodic milestones or by inviting submissions from members or groups on topics related to their particular interests or constituencies, but it was instead decided to invite individuals to participate on working groups depending on their expertise and convene the entire ESAC only if

needed (ESFNC Minutes, April 11-12/05). This need apparently never arose, and as seen below

the working groups were largely ineffective. The "WNO 5," as the WNO Council members not

representing First Nations were termed, did raise the issue of the general public and

stakeholders being excluded from the WNO process. At the May 2006 meeting they presented

a report to the WNO Council in which they noted that their inclusion on the Council was in

recognition that much of the ESPA was Crown land that many Manitobans held interests in,

ranging from environmental protection to recreational use and resource development, that the

province had a democratic responsibility to take account of these citizen interests while

respecting Aboriginal and treaty rights and developing a new relationship with the First Nations,

and that they hoped the forthcoming Protocols of Agreement would develop governance

structures to harmonize these interests (WNO Minutes, May 29/06). They further urged that

input be sought from the defunct ESAC and pointed out that greater support, including

significantly more funding, and guidance would be needed to ensure the timely production of

community plans that could be integrated into a BAP. The WNO 5 raised these issues again at

the next meeting, and this led to them, along with the PCC and a representative of the ECoC

meeting with the Conservation Minister to discuss the concerns. Notes from this meeting were

distributed at the September 2007 WNO Council meeting, but were not made publically

available and no discussion was included in the minutes (WNO Minutes, Sept. 26/07). In the

end, these issues were not addressed, and the general public, the Métis, and stakeholders were

effectively marginalized from participation in the WNO.

The various working groups were addressed to topics earlier identified as BAP priority

issues, but they were not effectively engaged. At the July 2005 WNO Council meeting, the

province presented their budget for the WNO process and described it as oriented towards supporting and building capacity for community land use planning and establishing a government-to-government process whereby the First Nations could manage the money for this (WNO Minutes, July 14/05). In discussion, concern was expressed that the working groups were being phased out, and two meetings later, in fall 2005, reference was made to the minister being concerned that "the proliferation of working groups" was too costly (WNO Minutes, Nov. 30/05). Throughout 2006 it was noted in multiple WNO meetings that working groups had not been able to meet at all due to no funding being available to support them. Initially they were told this would have to wait for the new fiscal year, but in August it was observed that the new year's budget had failed to allocate any resources for the working groups (WNO Minutes, Aug. 30/06), and while the transportation working group did appear to meet and report back some in 2006, half of the working groups never met at all and none appear to have been able to operate effectively. As described earlier, significant sums of money were regularly left unspent at year end, and so it would appear that it was a strategic decision to leave the working groups unfunded, and not one that was made by the WNO Council.

In the overview above, reference was made to the Secretariat working on a set of BAP principles that do not seem to have proceeded beyond the draft stage, but there was also talk of developing an umbrella BAP framework that would provide direction to individual TALUPs, ensuring a level of consistency among them so that once plans were completed for each ESPA First Nation's traditional territory, they could in essence be joined together to constitute a BAP covering the region (e.g., Proposed CBLUP Framework, 2005, Sept.; WNO Minutes, May 29/06). However, as discussed below, while the WNO Secretariat did provide some training and

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produced several planning guidance documents, no framework was agreed upon for communities to follow. The PCC, described as initially functioning like a steering committee and gateway to the WNO process (ON interview), met regularly throughout 2005 and into 2006 and reported to the WNO Council regarding how to move the BAP forward, but the PCC was increasingly marginalized as the focus moved away from the BAP, and by 2009 the committee was left asking the WNO Council for suggestions of what they could do to help with the local planning approach (WNO Minutes, May 6/09). At this WNO 2009 meeting, held after a 20 month gap from the previous one, the very purpose of the WNO Council was called into question since the focus had turned entirely to TALUP, which was under the oversight of the CoC and WNO Inc. The minutes record fellow Council members being asked what they thought about the fact that the Conservation Minister "has a very singular focus right now which is Bill 6 [i.e. the *East Side Planning Act*] and sees this as a new framework for the WNO process" and has stated that the WNO Council "should be put on hold until after Bill 6 is passed;" however, the minutes fail to record any responses to this question or discussion of the issue (WNO Minutes, May 6/09). These are the last mentions of the PCC, BAP, or the involvement of stakeholders or the general public in WNO activities, and the WNO Council appears to have only met one last time the following year.

Some felt that First Nations' traditional territories could themselves be considered "large areas" as referred to in the COSDI report, and so TALUPs could be thought of as BAPs on a smaller scale than originally envisioned, and some First Nations local planners felt that while they shared some common interests and values with their neighbours, it was most appropriate for each First Nation to articulate their own vision and follow their own path in planning (WG,

OS, SL, RL, AG, NE, TK interviews). However, this also meant that significant issues that required

a broader landscape approach or that cut across multiple traditional territories, such as road

development, certainty and consistency in resource development opportunities, ecosystem

based management, woodland caribou habitat protection, or ensuring the network of

protected areas adequately captured the enduring features of natural regions, could not be

planned for in a coordinated and comprehensive way. Thus, the 'priority issues' that were a

primary focus in the ESPI and featured prominently in *Promises to Keep* were not dealt with by

the WNO apart from in individual TALUP work, which, as seen below, was uneven and for many

communities did not progress to the point of substantively considering these issues at all. Two

of these broader issues more appropriate to BAP-level planning, namely the all-season road and

Hydro's Bipole 3 transmission project, did become prominent on the East Side, but since they

could not be adequately addressed via the more fragmented TALUP approach they proceeded

largely disconnected from WNO processes or oversight.

6.3.2 Manitoba Hydro's Bipole 3

Local community feedback and working group recommendations in Phase 2 regarding

Hydro's Bipole 3 project strongly emphasized the need for lasting economic benefits from any

transmission corridor running through traditional territories, and a variety of mechanisms were

suggested for this, including a share of revenues from transmitted power, partnership in

owning the line, or leasing the land to Hydro for it. *Promises to Keep* did report this in its

recommendations, but added a slant not directly evident in community feedback or working

group recommendations – whereas up to this point people were generally assuming the line

would proceed down the East Side, it was just a matter of under what conditions, the status

report appended "should it proceed" to every mention of Bipole 3 and added that Hydro should

identify potential routes external to the East Side (*Promises to Keep*, 2004, pp. 72-73). At the

first meeting of the ESFNC, Minister Struthers reported that these recommendations had been

forwarded to Manitoba Hydro, and that they were currently reviewing alternate routing

options (ESFNC Minutes, Dec. 13/04). In April 2005, the minister responsible for Hydro

presented to the ESFNC and stated that they had instructed Manitoba Hydro to look at

alternatives to Bipole 3 because "a transmission line is not economic development," and that

Bipole 3 was "not on [the] table from our point of view" (ESFNC Minutes, April 11-12/05). He

also explained that Hydro's policy required them to own transmission lines outright and this

was unlikely to change, meaning the rental or leasing arrangements some First Nations wanted

were non-starters, and in the WNO's July meeting it was observed that how communities could

receive permanent benefits from a transmission line was unknown and would require further

research (WNO Minutes, July 14-15/05).

There is no further mention of the Bipole 3 project in WNO Council minutes until

September 2007, when, in response to the province's sudden announcement that the line

would be moved to the west side of Lake Winnipeg, Council members noted that most ESPA

communities had not objected to the line, they simply wanted economic benefits that Hydro

was apparently not willing to consider (WNO Minutes, Sept. 26/07). In December the province

released a study on Bipole 3 routing options that claimed: there was significant opposition to

the East Side route from environmental organizations and the area's First Nations; this

opposition could pose threats to energy export markets in the United States; the line would

impact an intact East Side boreal forest; an East Side route would undermine efforts for

achieving World Heritage Site designation; and as a result, although more costly and less energy-efficient, a west side route was preferable (MB News Release, 2007, Dec. 19). This decision sparked significant political and public debate, with the government being accused of improperly interfering with a business decision of a Crown corporation, and a significant amount of the media attention devoted to the East Side since this time has been in reference to the Bipole 3 routing issue.

Several senior government staff interviewed were hesitant to go into details on the record, but agreed that while the ESPI and WNO processes had had some discussions about the Bipole project, the routing decision was not theirs. Other research participants were more direct, although some still hesitant to speak on the record, and suggested that the First Nations and ESPI and WNO processes were used by government to provide cover for a decision that was taken for political reasons. One participant said of the government's decision to reject the East Side route that "they, I think dishonestly, used the *Promises to Keep* report to justify that," and regarding the claims that it reflected the will of First Nations, that "it became Cabinet making decisions, 'ok, we're going behind the heritage area,' and we plunk some money into that, 'we heard some First Nations folks saying they didn't like the idea of the Bipole on the East Side,' well they didn't listen to the ones that would and wanted to get some funds out of that" (ON interview). What is clear is that neither the ESPI nor WNO processes, mandated to facilitate and support comprehensive land use planning on the East Side, were involved in the decision to move the transmission line away from the region. The best supported of the government's stated reasons for taking the decision was concern for backlash from environmental groups in states targeted for energy exports.

6.3.3 The East Side All-Season Road

The all-season road, which was a significant motivator for initiating the ESPI and remained a focus through its two phases, seemed to quickly fade from the purview of the WNO. It was suggested that during the ESPI government was content to allow the planning process to unfold and make recommendations regarding the road, but that following *Promises to Keep*, after years had been spent without any real planning done and facing the prospect of yet more years before a BAP would be developed, the province felt it needed to get moving on the road (GN, NE interviews). At the ESFNC's first meeting, the Minister of Conservation listed support for finishing the road to Bloodvein First Nation as one of the government's immediate responses to *Promises to Keep*'s recommendations (ESFNC Minutes, Dec. 13/04). The transportation working group report at the July 2005 WNO Council meeting indicated that Manitoba Transportation's detailed planning and Environmental Impact Statement for the road to Bloodvein was nearly completed, but the group had questions as to the adequacy of the government's consultation activities and noted that the recommendations in *Promises to Keep* to conduct an Aboriginal and Treaty Rights Assessment and to extend this first stage of construction to Berens River had not been followed (WNO Minutes, July 14-15/05). As well, they reported that Manitoba Transportation was now concerned about the time it would take to do a detailed study of network options for the entire region before planning began for individual community-to-community or regional segments, again indicating a drive in government to simply forge ahead.

Instead of working with or through the WNO process or waiting for guidance from a BAP or affected communities' TALUPs, in the November 2008 Throne Speech the province

announced the establishment of a Crown agency, the East Side Road Authority (ESRA), with a mandate to undertake planning and construction of an all-season road on the East Side, and SNC Lavalin was immediately retained to head up the East Side Large Area Transportation Network Study, released in March 2011 (SNC Lavalin, 2011, p. 6). Prior to the network study's completion, construction was begun on the road upgrade and extension to Bloodvein, and in August 2010 the segment connecting Bloodvein and Berens River First Nations was approved. Some noted this was the epitome of development before planning (WG, HE interviews).

The network study did include limited public and stakeholder engagement, but was primarily an engineering study. 'Consultation' included one meeting with the WNO CoC in April 2009 where the consultants sought merely to confirm that there was consensus support among ESPA communities for the road building project, and two rounds of primarily information-out meetings in "the majority of" the affected communities (SNC Lavalin, 2011, pp. 9-10). This clearly did not represent the sort of comprehensive planning – with ecosystem level environmental considerations, integration of social, cultural and economic factors, meaningful public participation, and following protocols for Indigenous consultation and involvement – that was recommended by COSDI and that formed the backbone of the initial ESPI mandate. While it may be true that the majority of ESPA residents and communities did desire all-season roads, there was no unqualified support, and absent a BAP and without TALUPs in all but four of the First Nations, the road planning that has been done can only be described as fragmented and development-driven. This is in stark contrast to the initial ESPI vision that comprehensive, integrated planning would guide developments, especially ones with enormous impacts on the environment, economy, and society of the region such as the proposed road network.

While the ESRA and their all-season road planning and construction is outside the scope of this research, beyond its inexplicable disconnection from the ESPI and WNO it is worth noting that it was not described by First Nations research participants as in any way emblematic of the province's promised new and improved relationship with them. There was a distinct feeling that the road project was essentially following the historic pattern of paternalistic relations whereby the government was going to do whatever they wished, and Indigenous participation, while arguably more visible than in the past, was still token in the sense of control or influence over the project, and in the end they felt the road was as much or more about providing access for resource development companies as for the benefit of the local communities (AG, SL, NP, RL, BN interviews).

6.4 Government-to-Government Agreements and Legislative Developments

6.4.1 Protocol Negotiations and the *WNO Accord*

As described in the overview section above, protocol negotiations led to the *WNO Accord* that was signed between ESPA First Nations and the province in April 2007, and this subsequently led to negotiations for setting up RRMBs and to the *East Side Planning Act* that was passed in 2009. While frequently promised, protocol negotiations were never initiated with the Manitoba Métis Nation. Protocol negotiations in the WNO aimed to build on the 1999 COSDI report, which recommended collaboratively developing a consultation strategy and protocol to address how Indigenous peoples would be involved in land and resource planning, use and development, and on the 2004 MoU between the province and ESPA First Nations, which had failed to accomplish this goal. Over time in both the ESPI and early WNO processes, the idea of Protocols of Agreement became invested with responsibility for addressing an

increasing array of significant issues – within the context of land and resource planning and

development on or affecting ESPA First Nations' traditional territories, the Protocols were

expected or hoped to outline:

- general guidelines for Indigenous involvement;
- a framework and processes for discharging the Crown's constitutional Duty to Consult;
- the nature and functioning of the government-to-government relationship between Manitoba and First Nations, including developing governance structures for harmonizing First Nations Aboriginal and treaty rights with the interests of stakeholders and the general public;
- a specific strategy for First Nations' consultation and involvement in the ESPI and WNO processes, including an umbrella framework for resource sharing between the province and First Nations;
- guidelines for second level agreements under this framework addressed to specific land uses or developments, which would regulate and direct issues such as access, capacity building, revenue sharing, community benefits, and shared stewardship;
- binding provisions for shared management and royalty or revenue sharing for all resources extracted from traditional territories;
- the role and power of TALUPs in directing land use and developments on traditional territories;
- and procedures and processes for implementing all of the above.

Protocols of Agreement that achieved all of this would have been groundbreaking in

terms of First Nations rights and roles in resource management. It would have taken years for

all of the various components included in and suggested by such an agreement to be worked

out, but once in place it could have provided the certainty that resource development

proponents so desired; details in the resultant land use plans, consultation procedures, and

revenue sharing requirements would have provided companies interested in working in the

region with up-front clarity regarding exactly what rules and requirements they would be

working under. The implications of a strong version of what the WNO and First Nations hoped

to achieve via the Protocols of Agreement would have been truly transformative.

The protocol went through many drafts, and while they were intended to be kept confidential, four were obtained by Manitoba Wildlands and posted on their website, revealing that from spring 2005 to spring 2006 there were at least 22 protocol drafts. In March 2006 the Secretariat's project manager reported that the Conservation Minister hoped to sign the protocol, currently under review by the First Nations' legal advisors, by June, which would seem to indicate that negotiators felt they were close to achieving agreement (WNO Minutes, March 2/06). In June, draft 22 of the protocol was returned by the First Nations' legal counsel for discussion with the province.

The central principle in this draft was that future, new developments of any size in the ESPA would ordinarily only proceed with the express consent of affected First Nations (WNO Protocol Draft 22, 2006, June 9). Draft 22's broadly stated purpose was to guide the involvement of ESPA First Nations in decisions affecting their communities and traditional territories, to be accomplished via First Nations-developed land use plans (i.e. TALUPs) and resource management agreements (RMA) collaboratively reached with the province. Principles and guidelines for developing TALUPs were outlined, which would articulate the First Nation's vision for land use, provide for training and capacity building relevant to resource management, and ensure the First Nation would benefit from outcomes and decisions resulting from implementing the plan. At the request of First Nations, RMAs could also be established with the province that would in effect operationalize their TALUPs, address development activities and procedures, and provide for revenue sharing and consultation procedures. The province and First Nations would also agree to cooperatively take whatever steps necessary to ensure that TALUPs and RMAs would be given full legal effect. The end result would be legally established

co-management and natural resource sharing between the First Nations and province, development would require First Nations informed consent, and all developers would be required to establish benefits sharing with First Nations whose traditional territories were affected – in other words this draft contained at least parts of all the key elements First Nations had been hoping for since the early days of the ESPI.

Until such time as these TALUPs and RMAs were developed and implemented, protocol draft 22 outlined in considerable detail an interim process by which proponents would be required to first approach any affected First Nations and obtain their consent for development proposals, including any conditions of consent relating to the development, before the province would even consider the proposal for approval under existing licensing and regulatory processes, subject to the exceptions noted earlier. This interim process was significant as it would immediately empower the First Nations to assert some self-governing powers in taking the lead in land use and development decisions that affected them and their traditional lands, instituting in effect a form of interim co-management until such time as the full details were laid out in TALUPs and RMAs, which the ESPI and WNO processes had already demonstrated could take considerable time and require significant efforts. The interim process would allow for development before planning and affirmed existing provincial development approval processes, but it would have significantly altered the status quo in granting First Nations unprecedented power to give or withhold and impose conditions on consent.

Draft 22 of the protocol outlined a set of principles the parties would mutually recognize as governing their activities under the protocol, significantly including that:

- land use planning was to be for the benefit of First Nations;

- TALUPs and RMAs would be developed in light of "the traditional First Nations perspective" that all components of the natural environment, including humans, "are part of a single interrelated system;"

- sustaining the land and water would be a governing principle in all decision making;

- as the original inhabitants, First Nations peoples Aboriginal rights would be respected;

- the spirit and intent of the treaties would be honoured, nothing in the protocol would prejudice the First Nations' understanding and interpretation of their treaties, and all actions and decisions taken under the protocol would "seek to include understanding of the perspective of First Nations of the scope and meaning of Treaties;"

- the province would agree that ESPA First Nations should have infrastructure, including transportation, comparable to rural areas of the province;

- and, as above, developments in the ESPA would normally require the consent of affected First Nations

  (WNO Protocol Draft 22, 2006, June 9, pp. 7-8).

The emphasis placed on First Nations' understanding and interpretation of their treaties was at their insistence and was deliberately designed to affirm their view, as described in chapter 4, that their title to the land and resources in their traditional territories had not been ceded, they had merely agreed to share them, and they retained the right to govern these lands and resources at least as equals (NP interview).

The implications of all this were not lost on one member of the local media, who after receiving a copy of draft 22 wrote an article titled "Province might cede East Side" (Flood, 2007). The ESPI and WNO received surprisingly little media attention outside of the Bipole 3 and all-season road issues, but here the reporter, while acknowledging the rightness of First Nations being consulted about and benefiting from resource developments, lamented the overriding of the interests and opportunity of all Manitobans in East Side Crown lands and the unnecessary limiting of the government's powers and responsibilities in favour of granting total control to the First Nations. While perhaps an overreaction, it does demonstrate that what was

contemplated in the draft would have significantly rearranged power relations between the province and First Nations. The article also quite validly points out that the protocol, and much else about the WNO process, was being developed entirely in secret, which contributed greatly to the reporter's suspicions regarding what was going on and what the implications might be.

The principles, governance structures, and processes described in draft 22 were clearly aimed at recognizing the First Nations as legitimate governments that the province would need to partner with in land use planning that they would lead for their territories, and in establishing meaningful and sustainable co-management and resource and revenue sharing. However, the province would still retain their legal jurisdiction over the land and resources, and would be the government ultimately approving resource allocations and issuing licences and permits for developments to proceed – except now their exercise of this power would be contingent on the consent and under conditions negotiated with and approved by the affected First Nations. Of course, the provisions affirming the First Nations' understanding of the treaty may have led eventually to title claims disputing Crown jurisdiction. As well, draft 22 was clear in stating that nothing in the interim process nor under TALUPs or RMAs would replace or limit the Crown's Duty to Consult when any decisions or actions taken in exercising governmental powers under their jurisdiction may infringe on a First Nation's Aboriginal or treaty rights.

The agreement signed ten months later in April 2007, termed an accord rather than a protocol, was nearly unrecognizable as a derivative of draft 22 (see *WNO Accord*, 2007). Most significantly, the principle of First Nations' consent and any interim process for considering development proposals were both entirely removed. Gone too was the directive that the First Nations' understanding of the scope, intent, and interpretation of their treaties would be

included in decisions and actions taken under the agreement. The 'whereas' clauses and 'principles' in the *Accord* were in fact nearly identical with the disappointing 2004 MoU, with the only substantial differences being that the *Accord* added that the parties agreed to work to develop principles of land and resource co-management and revenue sharing and that sustaining the land and promoting economic development beneficial to local communities would guide decision making. But tellingly, the *Accord* failed to include the MoU's principle simply acknowledging that the Elders understand the treaties as agreements to share the land and power on it.

The given objective of the *Accord* was simply that the parties work together throughout the land use planning process, itself entirely undescribed, and in the implementation of *Promises to Keep*'s recommendations, via an unknown process, and to have the *Accord* form the foundation for ensuring ESPA First Nations are involved in decisions affecting their communities and traditional territories. No details, guidelines, or specific principles are provided for what this involvement might entail or what governance structures might be involved, other than that the province would support community-based TALUP activities and enter into negotiations for establishing RRMBs, which together were to eventually ensure this vague "involvement" in decisions. Until TALUPs and RRMBs were developed and implemented, the *Accord* specified that the status quo would remain entirely in place – the province would discharge its Duty to Consult and Accommodate the reasonable concerns of any First Nations whose rights may be adversely affected, and would conduct general consultation if no rights were affected, before it would decide on proposals for land use or resource allocations or developments according to already established procedures.

Oddly, the *Accord* did contain a few very specific provisions, such as the province

committing to support the World Heritage Site project, undertake a few select segments of

road building and a few airport upgrades, and initiate an energy efficiency project in the Island

Lake area, all of which had previously been announced and/or discussed in *Promises to Keep*.

From the province's perspective, including these specific projects in an otherwise extremely

general agreement demonstrated the seriousness of their recommitment to the WNO process

and represented some tangible examples of their listening to the expressed concerns and

wishes of the First Nations, while a member of the WNO PNT suggested that "a cynic would say

these are carrots," i.e. to induce the First Nations to sign a badly flawed agreement (TK

interview; Okimaw, 2007, April 30, p. 3).

The *WNO Accord* clearly fell far short of what the WNO CoC and participating First

Nations had expected, and, like the 2004 MoU, was considerably more vague and weak than

earlier drafts. However, it did include a few significant, if underdeveloped, provisions whose

implications could potentially be far reaching in the future. It affirmed a government-to-

government relationship between the province and First Nations respecting planning and

decision making for their traditional territories, something Canada and the provinces had

historically been hesitant to do, and it committed the parties to collaboratively develop

components of this new relationship, including meaningful consultation, principles of land and

resource co-management, and benefits sharing (*WNO Accord*, 2007, 'whereas' #1, article 1.1).

The government-to-government language certainly sounds like an official affirmation of self-

government, and when coupled with the *Accord's* explicit recognition that the ESPA First

Nations have "traditional territories," seems to imply that First Nations governments must have

some self-governance jurisdiction over these ancestral lands, which almost begins to sound like

Indigenous title (*WNO Accord*, 2007, article 1.5). One research participant noted First Nations

across Canada had fought for this for this sort of recognition for years, and having it rhetorically

affirmed by the province in the important context of land and resources gave the First Nations

something to build on and flesh out moving forward in ways that could potentially transform

their communities, their land and resource base, and their place within the Canadian social and

political landscape (NP interview). While a government-to-government relationship was not

new, having first been acknowledged in treaty making, the *Accord* can be seen as a restoration

or reinvigoration of it, and getting any government to commit to this was an achievement

(Okimaw, 2007, April 30). This yet-to-be-developed relationship was also distinguished by the

parties agreeing to "work together in a spirit of mutual recognition, respect and reconciliation,"

which, if achieved, would certainly stand in stark contrast to the long history of colonialism that

had characterized the relationship so far (*WNO Accord*, 2007, 'therefore').

The province's commitment to support the development of TALUPs and negotiate

RRMBs was also potentially significant. While the nature and legal strength of both, along with

processes for establishing them, were certainly left underdescribed, they did represent a

potential opportunity to establish meaningful co-management and clarify the level of self-

government First Nations could achieve over the land and resources on their traditional

territories. In order to ensure the TALUPs and RRMBs had meaningful force, the *Accord* further

promised that the province would, "with First Nations governments' participation *and*

approval," develop regulations under existing legislation to support their implementation

(*WNO Accord*, 2007, article 3.8, emphasis added). While the province was still taking the lead in

giving regulatory force to these planning and management instruments, the promise of doing

so with First Nations' participation, and especially approval, seemed to signal a welcome level

of seriousness regarding this new government-to-government relationship.

When it came near time for signing, the WNO CoC supported the *Accord*, but it was up

to individual First Nations to sign, and the WNO PNT had to work to convince some leaders that

it was worth signing, that "this is the first step, this breaks the usual" (NP interview). Some were

satisfied and considered the document a reasonable, if disappointing compromise that

provided a foundation from which to move forward in a positive way, while others felt they

should not sign an agreement that fell so far short of articulating their vision for managing their

lands and understanding of their rights, and that left so much of the status quo that had

historically marginalized them intact (NP interview). In the end, 11 of the 16 ESPA First Nations

signed the *WNO Accord*,[36] which the Conservation Minister claimed to be happy with, and the

province pledged to continue to work with the non-signatory nations through the WNO process

(WNO Minutes, Sept. 26/07). While the *Accord* failed to fully deliver on the hopes First Nations

had held for the protocols, neither did it entirely kill them, much now rested on the nature and

strength of the to-be-developed TALUPs and RRMBs to give meaning to rhetorical aspirations.

6.4.2 The *East Side Traditional Lands Planning and Special Protected Areas Act*

While the *WNO Accord* had promised that the province, with the participation and

approval of First Nations governments, would work to develop regulations under current

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[36] First Nations not signing were: Norway House, Berens River, Pauingassi, Black River, and Hollow Water. Norway House, under their Northern Flood Agreement MIA (see appendix E), already had cooperative land planning and resource management in place and did not wish to be involved with the WNO process. Other than the general misgivings voiced among First Nations chiefs prior to signing described above, no information was available as to exactly why the other First Nations chose not to sign.

legislation to give legal effect to TALUPs and RRMBs, a mere month after the *Accord* was signed

the governing NDP announced, during the 2007 election campaign, that they would be

introducing new legislation for implementing East Side First Nations' land use plans and

designated protected areas. Premier Doer stated this was needed because "our current

legislation does not fit the needs of First Nations communities who are eager to move forward

with land-use plans," but, perhaps betraying a politically motivated desire to feed easily

digestible, feel-good talking points to the party's environmentally conscious base, the

announcement focussed exclusively on how this would protect Poplar River First Nation's

designated Poplar/Nanowin Rivers Park Reserve and support the high-profile proposed World

Heritage Site, while failing to mention the more complex and arguably more development-

focused WNO planning process to which such legislation would also apply (Manitoba NDP,

2007, May 11). The announcement also promised that the legislation would be "drafted in

consultation with First Nations."

Nine months later, on February 22, 2008, the province invited the chiefs of the East Side

First Nations to review an outline of Bill 6, *The East Side Traditional Lands Planning and Special

Protected Areas Act* (*East Side Planning Act*) (God's Lake Submission, 2009, June 8). The

meeting was described as brief, and the chiefs were required to return their copies of the

government's presentation before leaving, which many felt was a paternalistic and distrustful

move (NP, AG interviews); however, the chiefs requested that the government work together

with them to jointly develop the bill on a government-to-government basis as described in the

Accord (WNO Cree Group Submission, 2009, June 8). According to presentations made later

before the legislative committee considering the bill, the province held no further meetings

with the First Nations regarding the bill prior to its first reading in the Manitoba Legislature on

December 1, 2008.

Following first reading there was correspondence between the Conservation Minister

and chiefs from the ESPA's northern region and Manitoba Keewatinowi Okimakanak (MKO), an

Indigenous political advocacy organization with whom their First Nations are affiliated. In this

the chiefs and MKO representative voiced a variety of concerns, especially regarding their lack

of involvement and consultation in the bill's development. With the personal intervention of

National Chief Phil Fontaine, a meeting was arranged with the Clerk and Secretary to Cabinet

and the chiefs felt they had been assured that there would be a "further process to examine

the principle and spirit of the bill, its specific provisions and mechanisms ... to amend the bill, to

modify it;" however, "there was no substantive consultation on the substance of the bill ... on

the principles of the legislation, on the processes that would be entrenched in the law and how

it would actually affect ... the planning objectives of the First Nation and whether it was

appropriate for the objectives of the east-side First Nations" (Anderson in Manitoba Hansard,

2009, June 4b, pp. 141-142). The province did give a presentation on the bill to the WNO

Council on May 6, 2009, and it was discussed by the CoC the following day, but meeting

minutes do not include any information regarding either. Less than a month later, on June 1st,

Bill 6 was given second reading and listed to be included in the current legislative session, with

consideration by the Standing Committee on Legislative Affairs scheduled for three days later,

giving stakeholders and especially remote First Nations little time to prepare submissions and

arrange for travel to present to the committee. In response to objections from MKO and

northern First Nations, a second day of committee hearings was added for June 8.

Four ENGOs, three of which had reviewed and submitted comments on the ESPI Phase 1 report, Phase 2's *Promises to Keep*, and had served on the ESAC, made presentations before the committee on June 4. The Canadian Parks and Wilderness Society, Western Canada Wilderness Committee, and Canadian Boreal Initiative all spoke broadly in support of the bill, while acknowledging that the region's First Nations were the ones directly affected and their concerns should be dealt with appropriately. Manitoba Wildlands supported the objectives and intent of the bill, but expressed concern that consultation with First Nations had been inadequate, that the bill did not include the progressive set of principles in the *WNO Accord*, that it lacked important specifics regarding how planning councils and resource management agreements would function, and that it seemed to amount to Manitoba directing how First Nations should conduct their own planning activities. Representatives of Poplar River First Nation supported the bill, describing how it would allow them to direct the protection and development of their lands according to their values and vision and in ways that would benefit their community now and in the future, and noted that the bill would allow them more flexibility and control in this regard than the Park Reserve status they currently had.

However, the remainder of presentations on Bill 6, from MKO and ESPA First Nations leaders and individuals, while fully supporting the overall intent of the bill were strongly opposed to its current form. Norway House First Nation wished to have their traditional territory explicitly excluded from the planning area the bill would apply to because they had not been properly consulted and because their implementation agreement under the NFA provided superior, 'co-decision' authority over land use planning and resource management (Chief Balfour in Manitoba Hansard, 2009, June 4b, pp. 125-129). Sagkeeng First Nation, who had

withdrawn from the *WNO Accord*, objected to the lack of adequate consultation and noted that

the province seemed to think that meeting with First Nations leaders was sufficient, whereas

time and effort was needed to ensure the grassroots community membership were consulted

as well (Chief Fontaine in Manitoba Hansard, 2009, June 4b, pp. 132-136). Representatives for

MKO and the three Island Lake and three Cree First Nations from the northern ESPA, along with

Moses Okimaw as a private citizen from Manto Sipi, shared many concerns and positions

regarding the bill in common, which taken together in summary were that:

- the bill was in direct violation of articles 1.1 and 3.8 of the *WNO Accord* because it had not been developed on a "government-to-government" basis nor with the "participation and approval" of First Nations governments, and so they could not accept it on principle;

- they rejected the province's claim that informal correspondence and the brief meeting to discuss the bill in February 2008 constituted joint development, which should have appropriately included joint technical and legal working sessions to develop the bill's principles, processes, and mechanisms, and neither did it constitute being "drafted in consultation with First Nations" as stated in the NDP campaign promise;

- the purpose of the bill was oriented towards the World Heritage Site nomination process without any reference to the *WNO Accord* or the WNO TALUP process;

- it would require First Nations to accept pre-existing permits, licences, and allocations and exclude these from review or revision in their TALUPs;

- the bill triggered the Crown's Duty to Consult, which had not been discharged, since its effects could infringe Aboriginal and treaty rights – for example, in asserting the primacy of provincial jurisdiction and authority over First Nations' traditional territories and natural resources it infringed the Aboriginal right to self-government;

- the bill did not establish effective co-management based on 'co-decision' authority as had been earlier committed to in the ESPI and WNO processes, and in that regard failed to measure up to the planning and management processes and mechanisms established years earlier under the NFA, which should be considered a minimum standard;

- and as a result of the above, they all requested that the bill be deferred to the fall legislative session to allow time for joint development and meaningful consultation.

    (see Manitoba Hansard, 2009, June 4b, Anderson, pp. 141-145; 2009, June 8, Chief Harper, pp. 174-177, Chief Andrews, pp. 177-179, Chief Andrews (for ESPA Cree First Nations), pp. 180-181, Okimaw, pp. 182-185)

Members of government on the committee did not ask substantive questions following these presentations nor provide direct responses addressing the concerns and objections raised. However, when multiple opposition members subsequently raised concerns about First Nations consultation on Bill 6 during the sitting of the legislative assembly, the Conservation Minister repeatedly responded with claims that the government had in fact consulted extensively during many meetings with ESPA First Nations leaders. For example, in one response he stated that government had held "over 80 meetings on the East Side," since then had met with chiefs and councils about setting up RRMBs, had "done a whole series of meetings in the communities," and concluded that "we've been there; we've done that consultation" (Minister Struthers in Manitoba Hansard, 2009, June 4a, p. 2652). But, the 'over 80 meetings' figure is taken from *Promises to Keep* regarding Phase 2 meetings from at least five years previous, RRMB negotiations were specifically about RRMBs and not the legislation, and a 'whole series of meetings' is clearly not reference to formal and direct consultation about Bill 6 – in other words no serious response was ever offered that could counter the claims that the bill had not been developed jointly and that First Nations had not been consulted meaningfully on its contents or effects. What was clear, was that the province simply was not prepared to consider the level of collaborative legislative development that the First Nations had expected. To the government, it was already unprecedented that they had allowed an affected group to see any details about draft legislation prior to it being presented to Cabinet or given first reading, and in this respect they felt they had gone above and beyond what was required because, after all, drafting provincial legislation was something that was the responsibility of the government of the province (TK, NE interviews). The objecting First Nations

leaders did recognize this, but they also believed that giving meaning to the rhetoric of a new

government-to-government relationship meant doing things differently, and they expected that

the implicit spirit, principles, and specific articles in a solemn agreement like the *WNO Accord*

that they had so recently entered into with the province would be honoured with courageous

actions that demonstrated meaningful respect for their rights, governments, and lands.

As mentioned above, Poplar River First Nation was generally satisfied with the bill, and

none of the other First Nations from the central ESPA provided comment. However, it is

significant that Berens River had never signed the *WNO Accord* and was not active in pursuing

planning, and the remaining central region First Nations were part of the Pimachiowin Aki

World Heritage Site project, which was strongly supported by the province and reasonably

positive working relations had been established, and in any case they required legal recognition

of their plans as part of the nomination process (SL, RL, SA interviews). Of First Nations in the

southern ESPA, Sagkeeng did speak in opposition to the bill, while Black River and Hollow Water

had not signed the *Accord* but had engaged in some prior planning and resource arrangements

with the province, for example establishing Traditional Area Advisory Committees, and so may

have seen the *Act* as less applicable to them (WNO Minutes, May 7/09).

After the final presentation was made to the committee on June 8, the Conservation

Minister introduced two amendments, which were subsequently passed. First, clauses were

added clarifying that the purpose of the Act was to develop a new government-to-government

relationship between East Side First Nations and the government arising out of the ESPI and to

implement the goals and objectives of the *WNO Accord*. Second, a standard non-derogation

clause was added stating that the Act was not to be interpreted as abrogating or infringing on

Aboriginal or treaty rights. On June 11, after opposition members registered grievances that substantial concerns of the affected First Nations had not been addressed, and in spite of a statement from MKO that the northern region ESPA First Nations may withdraw from the *WNO Accord* and planning process if the bill were not deferred until fall, the bill was passed into law (Manitoba Hansard, 2009, June 11, pp. 2972-2974; Owen, 2009).

The bulk of the *East Side Planning Act* addresses planning for land and resource use, with brief sections devoted to resource management boards and special protected areas designations. The process for plan development outlined in the legislation begins with a First Nation making request to the minister that an area of Crown land that they have traditionally used be designated as a traditional use planning area (sec. 5). Once so designated, Cabinet may make interim regulatory restrictions and prohibitions on land and resource use after affected First Nations, along with other stakeholders, have had opportunity to "consider and comment" on the proposed regulations (secs. 7-8). Next, the minister may enter into agreements with the First Nation who requested the planning area designation to establish a planning council, the form of which is determined in individual agreements, and for that council to develop a land use and resource management plan for the area (secs. 9-10).

The *Act* includes some specific directions regarding plan components, including that they must provide for the management and sustainable development of Crown land and Crown resources, identify zones and policies for the use of Crown land and Crown resources within each, and make recommendations about plan implementation (sec. 10(1)). Plans must also consider the area's natural resources, environmental considerations, traditional uses, social and cultural factors and priorities, Aboriginal and treaty rights, existing and approved land uses and

developments, provincial land use policies, public and stakeholder input, and the economic development needs of First Nations, surrounding residents, and the province as a whole (sec. 10(3)). In addition, the minister may require that the planning council seek input from specified parties, hold public meetings, follow timelines specified by the minister, and "comply with any directions from the minister about the form or content of the plan" (sec. 10(2)).

Once the planning council completes their land use and management plan, it is forwarded to the minister, who, after a public comment period, may require amendments before submitting it for approval (sec. 11). However, the minister may not forward the plan for Cabinet approval until receiving the written agreement of the involved First Nations (sec. 12(1a)). Cabinet then may approve the plan and subsequently provide for its implementation by making regulations respecting: the allocation of Crown land and resources; prohibitions or conditions on their use; prohibitions, restrictions, or conditions on development or classes of development; and the process for decision making regarding the allocation, use, and development of Crown land and Crown resources in the planning area (secs. 12(2), 14(1)). Plan amendments may be proposed by the minister, First Nation, or planning council, and are generally approved in the same manner as the plan, by Cabinet after public input and written approval of the First Nation or Nations involved (secs. 15, 16(1)). The exception to this is that plans may also be amended without the approval or even against the express objection of the involved First Nation or Nations if Cabinet "determines that the amendment is in the public interest" (sec. 16(2)).

It is not difficult to see from this that the *Act* vests all real power with the province. The terms 'Crown land' and 'Crown resources' are repeated so frequently as to make one wonder

what meaning is left for the titular 'traditional lands' the *Act* is addressed to, and in any case

they serve as signals that the province was concerned with marking its territory and jurisdiction

through and throughout the *Act*. As a research participant put it, "they had to re-establish their

dominance, legal dominance, otherwise we were marching to self-government … bilateral

nation-to-nation. We came pretty close, the rhetoric was there [in the *Accord*] but they said,

'oh, we gotta stop this,' and they passed their legislation to maintain and enforce their legal

dominance" (NP interview). Another participant, commenting on the legislation and the

inevitable concessions First Nations would have to make to get plans approved, added "What if

we're not willing to make those concessions? We're talking for the future generations, when

you say planning it's about the future, you're talking about our future generations. … But it's

about jurisdiction, it's about government-to-government, it's about nation building, and the

province wants to keep you under their thumb and their colonial rule, that's what it boils down

to" (AG interview). Given the widely held First Nations' perspective that the treaties did not

cede their land and resources, that 'this land is still ours,' some were clearly wary of accepting

or using a provincial legislative instrument, even one that may give them more effective say in

the management of their traditional territories than they presently had, but that may also

undermine future prospects for expanding their self-government and title (TK interview).

The principle of 'co-decision authority' that was repeatedly referenced by the northern

ESPA First Nations as needed in the *Act*, was taken from the example of the land use planning

and resource management provisions of a number of First Nations' implementation

agreements under the NFA. Using Norway House Cree Nation's implementation plan as an

example, it establishes a resource management board with equal representation from the

province and the First Nation, which is charged with developing and recommending a resource

management plan and a land use plan (*Norway House Master Implementation Agreement*,

1997, ss. 5.3.1, 5.5.2, 5.5.6). Developed plans are then forwarded to the province and to the

First Nation's government, who consider the recommendation and notify the board and each

other of their approval or rejection, and only when both the province and First Nation agree to

approve the plan is it adopted and comes into force (s. 5.6). In the absence of approval by both,

no plan or recommendation of the resource management board has any force or effect, and

this is precisely what the northern ESPA First Nations referred to as co-decision authority, and

what was conspicuously lacking in the *East Side Planning Act*.

At each significant step in the *Act's* process, First Nations are left following directions

and making requests of the province to consider their recommendations. The composition and

conduct of the planning council is left to an agreement negotiated with the minister, but even if

the First Nations were to have a dominant voice there, they would be following the province's

directions regarding the form and content of their plan, and in the end it is the province who

can require changes and who ultimately approves the plan. Particularly problematic for many,

the *Act* allows the province to unilaterally make changes to approved plans and regulations on

the vague and undefined basis of serving the public interest. What these aspects of the process

closely resemble are the provisions for rural municipalities to develop plans under Manitoba's

Planning Act, but they are themselves creations of provincial legislation whose administrative

jurisdiction is not rooted in an inherent right to self-government and whose land and resource

base is not defined by traditional use and covered by a unique set of constitutionally protected

rights held by their citizens. It is true that the *East Side Planning Act* requires plans, regulations,

and amendments be approved by Cabinet as opposed to the minister as is more often the case, and this provides a certain amount of added protection or strength to approved plans, but it is still firmly under the jurisdiction and authority of the provincial government (NE interview). In the judgement of several research participants with experience and knowledge of the subject, what is established under the *Act* falls far short of cutting edge or best practices for co-management or co-governance, and some questioned whether it counts as co-management at all given that all final authority rests with the province (HE, WG, AG interviews).

So in the minds of some, the *East Side Planning Act* was unacceptable on principle because it had not been jointly developed as they felt the *WNO Accord* had promised, and it was unacceptable on substance as well because it eroded their prospects for self-government and jurisdiction over lands and resources while solidifying the power and jurisdiction of the province. However, it is important to note that some leaders and planners from ESPA First Nations regarded it as a useful compromise, as an opening, a step along a path to more positive and productive relations with the province, as a pragmatic tool to actually extend their power and jurisdiction outside the boundaries of their reserves and over the lands that they did regard as theirs but where they acknowledged a shared responsibility for planning and management (BN, SL, RL, OS, interviews). As one research participant put it, the province could technically overrule the express wishes of a First Nation as articulated in a TALUP or recommendation from their planning council, but they would not because the negative publicity and push-back from First Nations would be politically damaging and they would fear a court challenge over infringed rights (RL interview). These differing perspectives notwithstanding, judging purely from a reading of what *Promises to Keep* and the *WNO Accord* explicitly and implicitly have to say

about the nature of a government-to-government relationship, respect for Aboriginal rights,

which include to self-government, and the appropriate role of Indigenous communities in

planning for and managing their traditional territories and the resources they contain, it is

difficult to see the *East Side Planning Act* as anything but disappointing and regressive on both

principle and substance, especially when considered against First Nations perspectives and NFA

implementation agreements reached over a decade earlier.

6.4.3 Regional Resource Management Boards (RRMB)

Promises to Keep had also recommended that the ESFNC, i.e. the WNO Council, be

empowered to act as an interim planning authority until the BAP was completed, but neither

the BAP nor interim authority were pursued as the WNO's planning focus shifted to supporting

local TALUPs. In the meantime, the province was continuing to allocate resources and issue

permits and licences in the ESPA under the existing regulatory regime. Some of the region's

First Nations wanted a moratorium on new allocations and licences until planning was finished,

while others wanted at least to have increased involvement in and influence over resource and

land use decisions that affected their traditional territories and economic development

opportunities (AG, HE interviews). TALUPs, once implemented, could provide for this but they

were taking years to complete and communities were at various different stages of plan

development, and thus there was a desire for an interim mechanism to provide this increased

First Nations involvement and direction, and RRMBs were suggested to meet this purpose

(WNO CoC Minutes, Jan. 27/10, 'RRMB update'). RRMBs could also provide a platform for

development proponents to engage with First Nations, which could potentially ease provincial

regulatory processes by allowing issues and concerns to be identified and addressed early on,

and this could provide more certainty to industry, who were left unsure as to prospects for development in the region as the ESPI and WNO had continued for some years with no clear planning or management outcomes (NE interview). The province also felt that, especially for the purpose of providing input on development plans and proposals, a mechanism established on a wider, regional basis would be more effective than having a different interim authority for each community's territory, which contributed to their belief that establishing RRMBs would be a good solution (TK interview).

Negotiations to set up RRMBs were underway at least by the summer of 2007 with the northern region First Nations, and by early 2010 independent legal reviews of draft agreements were completed or underway for three RRMBs – the three Cree First Nations (Bunibonibee, God's Lake, and Manto Sipi), the Island Lake First Nations (Garden Hill, Red Sucker Lake, St. Theresa Point, and Wasagamack), and three of the central region's Pimachiowin Aki First Nations (Bloodvein, Little Grand Rapids, and Pauingassi) (WNO Minutes, Sept. 26/07; WNO CoC Minutes, Jan. 27/10, 'RRMB update'). However, none of these agreements were completed and signed, and the idea of RRMBs within the ESPA was abandoned.

A government employee extensively involved throughout the WNO process described what transpired as the First Nations "unexpectedly" walking away from RRMB agreements that had been carefully crafted through years of negotiation, that had been reviewed by government and First Nations legal advisors, that provided significant authority to the First Nations to manage their lands, and that the government had thought the First Nations were prepared to sign (confidential). Others described it differently, suggesting that negotiations stalled because the province was unwilling to consider including the level of power and

jurisdiction that First Nations were attempting to achieve through the RRMBs, which included establishing true co-decision authority, and in some cases additional provisions such as entrenching revenue-sharing, clarifying water rights, and establishing policies for developers' access on traditional territories (AG, SL, NE interviews). It is interesting that following the signing of the *WNO Accord* in April 2007, the Secretariat's project manager and WNO co-chair met with ESPA First Nation leaders about RRMBs and distributed article 5 of the Norway House NFA implementation agreement, which sets out their co-decision authority for planning and resource management, and this understandably led some to assume that that was the sort of arrangement that the province had in mind for their RRMBs (Okimaw, 2007, Nov., pp. 1, 3).

An additional factor in the abandonment of the RRMB under development with the central region First Nations was that their TALUPs were complete or nearing completion by the time negotiations stalled in 2010-2011, and all were approved and regulated under the *East Side Planning Act* by the end of 2012, which meant a RRMB as an interim measure was no longer needed. The Cree and Island Lake First Nations RRMB agreements were abandoned after their final legal reviews had been completed. Confidential memos with legal commentary and advice regarding drafts of both RRMB agreements were obtained and reveal key issues and concerns that the First Nations had, including questioning whether the drafts:

- appropriately implemented the *WNO Accord* in ensuring "First Nations community involvement in decision making throughout the land use planning process;"
- effectively established "joint management of Natural Resources" between the province and First Nations;
- had effects on First Nations Aboriginal or treaty rights;
- provided for the sharing of revenues from resource developments in the area with the First Nations;

- and, established a "co-decision authority on a government-to-government basis with the province of Manitoba regarding the management of natural resources"

(Harper, 2010, April 9; 2010, April 30, pp. 1-2)

In answering these questions, the memos suggested the draft RRMB agreements did not provide the strength or jurisdiction that the First Nations were looking for in any of these areas.

An undated draft RRMB agreement was appended to each of the above memos. The first three "whereas" clauses of both RRMB drafts unequivocally establish the province's jurisdiction over the lands and resources that constitute the First Nations' traditional territories. These reference the 1930 NRTA as rightly transferring sole administrative control of Crown lands and natural resources to Manitoba and enumerate numerous provincial laws that enact this jurisdiction over resource and environmental management. Further down the "whereas" list are two that state the First Nations "assert" that they have "rights in respect of natural resources on Crown lands and waters" and that the NRTA was entered into "without effectively consulting with First Nations" who are affected by it insofar as it provides a basis for Manitoba to make laws regarding First Nations' use of Crown lands (Kee-Way-Ootinetan Kitaskiinaan RRMB Draft, 2009, Dec. 7, 'whereas' G, I; Paskonakosheeng RRMB draft, 2008, Oct., 'whereas' G, I). Thus, two opposing perspectives on jurisdiction and rights regarding resource management on Crown lands that are also First Nations traditional territories are recognized; however, the power imbalance is clear as the province's perspective is presented as backed by long established laws and governmental regulatory regimes, whereas the First Nations perspective is merely asserted but clearly has no more than rhetorical effect.

Under these RRMB drafts, the management board was to be made up of provincial and First Nations representatives, but unlike the Norway House agreement there was no

requirement that this representation be in equal numbers. The board was directed to develop

management policies to recommend to the First Nations and Manitoba for approval, and if

approved, each government would "take the necessary actions to give effect to the policy"

(Paskonakosheeng RRMB draft, 2008, Oct., article 7.3). There is no stipulation that both must

agree for a policy to be approved and no appeal procedures are included, so it would appear

that the province could freely take the boards advice or leave it. As well, since the First Nations

had no jurisdiction outside of their reservation boundaries, as the aforementioned whereas

clauses made explicit, it would always be the province taking the "necessary actions" to

implement a management policy that they had chosen to approve for First Nations traditional

territories, leaving them in full control of both which and how RRMB recommendations would

be given any effect, which, far from co-decision authority, is difficult to construe even as "joint

management" as the titles of the draft agreements claim.

For the First Nations leaders of the northern ESPA, these RRMB agreements were

ultimately something they could not agree to. However, there were some who felt that the

RRMBs, while imperfect, would have provided something better than the status quo – they

would have established a procedural body where First Nations and provincial representatives

would regularly meet to discuss land and resource issues and concerns, where, through ongoing

dialogue, the First Nations' perspective and interests would have a better chance of being

understood, where trust and capacity could be built, and which could serve as a foundation for

working towards achieving the First Nations' larger social, economic, and governance goals and

aspirations (AG interview). As has been the case throughout the history of Indigenous

resistance to Canada's colonialist assertion of supremacy, the *WNO Accord, East Side Planning*

Act, and RRMB negotiations all illustrated a certain tension between principled opposition in a quest to transform the unequal status quo on the one hand, and more pragmatic, incremental, approaches to meaningful reform on the other – between constitutive and functional political action orientations, each of which can be a legitimate path to similar goals (see appendix C).

6.5 Traditional Area Land Use Planning (TALUP)

6.5.1 WNO Preparation and Organization for TALUP

With the shift away from broad area planning, protocol negotiations that failed to meet the lofty goals set for them, and the abandonment of RRMBs, community-based land use planning for ESPA First Nations' traditional territories was all that remained to fulfill the ESPI and WNO's initial mandates to implement sustainable development via integrated land use planning that would provide for environmental protection, resource management, and meaningful public, and especially Indigenous participation. In addition, it was clear in research interviews that key among the goals that many ESPA First Nations leaders and planners had for their participation in the ESPI and WNO were to use the processes as opportunities and means for increasing their self-governance powers, for gaining recognition of some form of Indigenous title over traditional lands and resources, and for securing sustainable economic opportunities and benefits for their communities, which they saw as all being vitally interconnected (e.g., BN, NP, AG, HE, NE, SL, RL, OS interviews). This was quite a formidable list of objectives to set for the TALUP process, and would have been unrealistic to expect, especially if plans were to be completed relatively quickly and on a limited budget.

Once the *East Side Planning Act* was passed in 2009, it was apparent that in order for completed TALUPs to have legal force they would have to be approved and regulated by the

province under the *Act*, and as described above this would mean that First Nations' TALUPs would effectively affirm the paramountcy of Manitoba's jurisdiction and administrative power over the land and resources the plans applied to, and over the plans themselves. Thus, in terms of practical planning outcomes from the ESPI and WNO, at best the ESPA would be covered by individual TALUPs that expressed their respective First Nations' vision for their lands and aspirations for their future, and that made *recommendations* to government identifying areas within their traditional territories where they *wished* to see various levels of protection, different sorts of resource development opportunities under certain conditions, and how they wanted to be involved in *decisions the province would make* to authorize and regulate both. In other words, the WNO's TALUP process would not enable First Nations to achieve their more ambitious goals related to self-government and title.

The WNO Council, Secretariat, and the province's ideas of what TALUP development would entail, and of their roles in supporting it, evolved somewhat over time. The province noted, when presenting their budget for the new WNO process in July 2005, that funds were targeted at TALUP development, especially for training and capacity building at the community level to support First Nations in getting started with planning (WNO Minutes, July14-15/05). But as discussed earlier, the dream of completing a BAP did not die immediately, and by fall 2005 a framework to guide communities' TALUPs was prepared in order to ensure some consistency in format among them so they could later be assembled into a BAP (see Proposed CBLUP Framework, 2005, Sept.). The document provided a TALUP overview that suggested "planning is a fairly simple process" of identifying the community's desired future and then developing, evaluating, and selecting a preferred means for getting there (p. 4). It suggested this would be

greatly simplified because *Promises to Keep* had already identified guiding principles and

values, and had provided recommendations on key planning issues, and so community planners

would simply have to build on these and add locally relevant specific detail. The primary

planning tool suggested was mapping, which could be used to layer scientific data and local and

traditional knowledge, and from that options for different land uses in various areas would

emerge, and with further community and relevant expert consultation, their traditional

territory could be zoned for various land uses. Required scientific information and expertise,

along with technical help with mapping could be provided by or arranged through the

Secretariat working in conjunction with relevant government departments. Planning as

presented here would be quick and relatively easy, and could be undertaken without much if

any assistance from outside the local community, government, and the Secretariat. There was

discussion that this framework document needed to be simplified and taken to communities to

introduce leadership and local planning coordinators to the basic principles of TALUP initiation

and development, but this does not appear to have happened (WNO Minutes, Dec 1/05).

In March 2006, discussion at the WNO Council evidenced some serious concerns as to

their readiness for facilitating local planning in up to 16 different communities, with one

member observing "it seems like we are not organized to undertake such a large commitment"

(WNO Minutes, March 2/06). It was unclear to members how the WNO would assist

communities, how ready communities were to start planning, what framework, tools, and

approaches would be used to guide and complete planning, and while it was agreed that the

Secretariat could be a good resource it was noted that they lacked some vital expertise and

there was no money in the budget to acquire it – "government says community planning is a

priority; where are the resources to go with this focus?" (WNO Minutes, March 2/06).

As described earlier, WNO Inc. was set up to receive and manage funds to support

TALUP activities, and the fact that completing quality TALUPs for each community would

require more than the province's commitment of $500,000 per year for five years was initially

acknowledged. In fact, in the first year of the province's funding agreement with WNO Inc., the

province set a requirement that their contribution be matched by federal funds before any

money would be released, and informed the WNO that even with the province's and matching

federal monies a portion of their budget would still have to be fundraised (WNO Minutes, May

29/06). There was discussion of the ECoC and provincial ministers trying to arrange a meeting

with federal ministers to secure this funding, but no federal funding for TALUP activities was

subsequently secured and later in 2006 the province released its funds to WNO Inc. (WNO

Minutes, May 29/06; NE, TK interviews). There is mention at nearly every subsequent Council

meeting of the need for WNO fundraising to add to their and WNO Inc.'s ability to support

TALUP development, and several charitable foundations were approached and the federal

government lobbied, but neither were successful. At one point there was even a request for

proposals sent out to develop a fundraising strategy, and a winning proposal was identified

(WNO Minutes, Nov. 29-30/06), but a strategy was never developed and the only stable and

significant funding available throughout the WNO process for TALUP activities was the

provincial monies spent maintaining the Secretariat and provided through their contribution

agreement with WNO Inc.

Some of the above concerns regarding the WNO's level of organization and readiness to direct and support TALUP activities were addressed in a discussion paper, "Preparing for Community Based Land Use Planning...," developed by the Secretariat in advance of WNO CoC and Council meetings in August 2006 (Preparing for CBLUP, 2006, Aug.). The paper described the WNO's planning mandate as emerging out of *Promises to Keep*, which it suggested had identified three priorities – land use planning, transportation, and economic development – which, based on my reading of the status report, is a re-imagining of its recommendations in the direction of priorities held by the province from the start. Thus, the goal of TALUPs appeared to be enabling communities to participate in decisions related to land use, all-season road building, and resource developments. The paper suggested the first step, which was already underway, was to assess where communities were at and what their specific needs were regarding readiness to start planning. This would be followed by establishing local or regional (if multiple First Nations wanted to collaborate) planning authorities to manage the planning process, either following the previously developed general framework or taking their own approach, and to apply for and receive funding from WNO Inc. to undertake their proposed planning activities.

The August 2006 discussion paper also suggested roles and responsibilities for the various WNO bodies in the TALUP process, which describe how things did eventually transpire. The WNO Council would provide overall direction to the TALUP process, but WNO Inc. would manage the budget, assess and approve community proposals for TALUP projects, and monitor and evaluate communities' progress on their approved planning activities to determine ongoing funding levels. The Secretariat would refocus their work away from facilitating WNO Council

meetings or supporting their working groups, and instead would concentrate on supporting

communities' TALUP work, which would include:

- establishing and maintaining direct links with community leadership to ensure an effective flow of information;
- linking community planning teams with technical support, resource and geographic data and information, etc. that could be obtained from government departments;
- providing for communication among communities regarding their ongoing TALUP work and progress;
- and, supporting WNO Inc. by maintaining financial and other records and, significantly, by receiving, evaluating, and making recommendations on community-submitted funding proposals to the WNO Inc. board, who would then make decisions regarding what TALUP work was funded and within what parameters.

While the WNO Inc. board would develop guidelines for TALUP funding proposals and identify

overall funding priorities, given that the board was made up of chiefs and councillors and not

land use planners or resource managers, it is more reasonable that research participants were

accurate in suggesting that it was in fact the Secretariat who developed the guidelines for

planning authorities to follow in their proposals and who were the decisive voice in what

aspects of which proposals were funded (2 interviews, confidential).

With this arrangement of responsibilities between the WNO Inc. and the Secretariat, it is

difficult to see exactly what space would be left for the WNO Council to provide "direction" to

the TALUP process. In fact, over the remaining years of the WNO, the Council was effectively

removed from a meaningful role as protocol negotiations were directed by the CoC and its

negotiating team, RRMB negotiations were held directly between the province and the involved

First Nations, and the TALUP process was overseen, supported, and directed by WNO Inc. and

the Secretariat. Since the only documents from the WNO process made publically available

were from WNO Council meetings, this also means that the bulk of the most significant work

from this phase, although funded entirely by the province, was not done transparently and subject to public scrutiny, including from within ESPA First Nations.

6.5.2 TALUP Supports, Activities, and Challenges

WNO Inc.'s first work plan, for the 2006-07 fiscal year, indicated that funds would be disbursed to communities for approved TALUP proposals by February 2007 at the earliest, so while the funding agreement with the province was for $500,00 per year for the five years spanning 2006-07 to 2010-11, funds were actually paid out under this agreement through 2011-12 (WNO Minutes, Aug. 30/06, 'WNO Work Plan 2006-07'; WNO Cree Region, 2010, Oct. 19-21, 'TALUP contributions, Oct. 18/10'). In August 2009, the chair of WNO Inc. wrote to the province requesting an extension of the current or arrangement of a new funding agreement because "it will not be possible for communities to complete planning by 2011" (WNO CoC Minutes, Jan 26-27/10, 'Chief Colon letter Aug. 31/09'). The province did provide an additional $500,000 of 'bridge' funding for the 2011-12 year, and this, together with funds remaining from the five year agreement, continued to fund approved TALUP projects through 2012-13. In 2012, the Conservation Department conducted a "portfolio review" of the WNO initiative, which resulted in a significant cut in funding for the Secretariat and all related activities, and WNO Inc. received no further funds and ceased to function (TK interview; Manitoba Conservation, 2013, p. 30). Starting in 2013, some TALUP projects have continued with funding negotiated directly between the First Nation and the province, but by 2016 the Secretariat had dwindled to two, the project manager and an administrative support position (TK, NE interviews). As such, I consider the WNO process to have effectively ended in 2013.

The Secretariat did arrange for training sessions for community coordinators, who were the local individuals hired by their First Nations to head up their TALUP projects. A workshop was held in Winnipeg in June 2008, facilitated by two local consulting firms, to "provide the community coordinators with an introduction to the steps to starting their Traditional Area Land Use Plans and activities associated with each step" (WNO TALUP Workshop, 2008, June, p. 4). So, by mid-2008 the TALUP process for most communities had not yet started or was just beginning.

In early 2009, the province hired a consultant from an ESPA First Nation with expertise in resource management and traditional land use studies, who was to conduct an assessment of community needs and progress in the TALUP process, develop initial GIS databases with them, and train the planning coordinators in traditional land use mapping (WNO TALUP Report, 2010, June). His initial assessment found that the majority of coordinators lacked basic equipment necessary to their task, including office space, computers, and internet access. A wide range of needed training was also identified, including basic computer skills, proposal and report writing, budgeting, map reading, GIS database management, and understanding relevant federal and provincial land and resource laws and policies. To address the equipment issue, the Secretariat successfully applied to Environment Canada's Aboriginal Funds for Species at Risk program and funds were used to purchase computers, GPS units, and other basic hardware. A workshop was then held with the coordinators to provide training on the new equipment. The workshop included an introduction to the Woodland Caribou National Recovery Strategy in order to satisfy requirements of the funding program, which highlights the absence of federal funding options actually relevant to planning needs.

From July to December 2009, the consultant held a series of three day training sessions

for small groups of community coordinators where they were trained in a methodology for

traditional land use mapping, including interviewing Elders and local land users and creating

map overlays to record traditional knowledge and land use. The coordinators were also

introduced to the various government departments and branches that they might work with in

their future planning work. The WNO was able to secure further funding from the same federal

program to provide three weeks of training for ten community coordinators that led to them

achieving GIS certification from the Environmental Systems Research Institute of Canada in

2012, which was the only certified training obtained through the WNO and the last coordinator

training offered (Manitoba Conservation, 2012, p. 28).

The consultant's report included a sequential framework of key TALUP components

leading to a completed plan, which was to serve as a guide for the community coordinators and

to help gauge progress along the way. What is apparent is that by mid-2010 most of the First

Nations were, at best, only in the initial stages of their TALUP development, and that the

training that coordinators had received would, at best, take them only so far beyond that –

outside expertise would be needed for much of the formal and technical study components,

and coordinators and their planning teams would need further training and capacity

development to work effectively on community engagement, traditional knowledge studies,

and plan coordination (WNO TALUP Report, 2010, June, pp. 7-9). A primary conclusion of the

consultant's final report was that to make the TALUP process work, significantly more resources

would be needed by communities – in the form of funds to carry out planning activities and

retain needed expertise, training and capacity development for planning teams, and technical

support and expertise. To ensure appropriate and independent-of-government TALUP support, the report recommended that a Technical Advisory Group be formed external to the Secretariat to provide guidance and assistance to community planning teams on the various technical issues they faced. This could have led to a common approach, mutual learning among communities, and would have been more economical than each community hiring their own specialist expertise, but this concept and significant additional training were not pursued due to insufficient funds (WNO TALUP Report, 2010, June, p. 8; AG interview).

Despite early and frequent observations from the WNO Council and First Nations leaders and planners that funding levels were inadequate to the TALUP task, provincial funding remained constant throughout the TALUP process, and apart from the limited funds for training just mentioned, the federal government provided nothing. The federal government is responsible for First Nations, but their view was that since this project was about planning for provincial Crown lands and resources, funding it was a provincial responsibility. 14 of the 16 ESPA First Nations did access funding from WNO Inc. and did undertake some planning activities, but for most of them this was done in a piecemeal way as funds were only available for taking on small components of planning each year.[37]

Insufficient funding was given as the number one reason for the lack of success in the TALUP process by each research participant with experience in or reasonable knowledge of the WNO process. The province frequently touted that in addition to a Secretariat and in-kind support, they dedicated $2.5 million to directly support TALUP on the East Side. However, for

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[37] Norway House and Sagkeeng First Nations did not participate at all for reasons previously given. Berens River appears to have only accessed funds for two years, but the remaining 13 First Nations undertook some planning each of the years funding was available.

most of the years WNO Inc. was disbursing these funds there were 13 First Nations doing

TALUP work, and because they were concerned to keep a level playing field among the

communities, this means that on average there was roughly $38,500 allocated per community

per year. Everyone interviewed, including members of the Secretariat and government, agreed

that given the starting point in the communities and the training, capacity, and public

engagement challenges faced, this amount is far short of what would be needed to run a robust

planning program capable of producing even a marginally acceptable plan within the six years

funding was available. Research participants pointed to being able to work with qualified

consultants and relevant experts consistently over the life of the planning project as the most

significant way that additional funding could have led to increased planning success (e.g., AG,

HE, NE, SL, SA interviews). The TALUP process was simply too large and too complex for

individual First Nations to take on without experienced project leadership, management, and

technical and subject matter expertise, which these same research participants pointed out are

regularly required for this sort of integrated land use planning by any government from

municipal to federal levels.

The importance of adequate resources is strongly reinforced by considering the relative

success of the four Pimachiowin Aki communities.[38] They were able access the same level of

funds from WNO Inc. as the other ESPA communities, as well as additional provincial, federal,

and charitable foundation funds dedicated to the project through the Pimachiowin Aki

corporation. The high profile nature of the project also meant that they were able to have some

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[38] The Pimachiowin Aki World Heritage Site project, issues that it faced and the full range of ways that it intersected with or overlapped the ESPI and WNO processes could add another chapter to this study. However, its presence did not change the nature or conduct of the ESPI and WNO apart from the four ESPA communities involved in it, and as the ESPI and WNO constitute the case being explored here, it has, for the most part, been scoped out of this research.

success in fundraising on their own. With this level of funding they were able to retain consultants throughout their planning process and to access relevant expertise as needed. Pimachiowin Aki and the UNESCO World Heritage Site nomination process also provided a framework to help structure their planning work and oversight to help keep them on track. But even with this, a participant with considerable experience working with First Nations and resource and planning issues suggested that the plans the ESPA Pimachiowin Aki communities produced should be considered the bare minimum of what a TALUP could be – "if I were a First Nation who was considering trying to get a land use plan done ... I would look at those plans, and those plans would be the absolute minimum. I would reach higher than what those plans are, and what those regulations are, and what that process was" (confidential).

Part of the reason for the 'minimal' quality of these plans is related to the timeframe they had to meet for the nomination process, but it was suggested that the government of Manitoba also exerted influence on the communities to limit the extent of and generally simplify their plans, both through the *East Side Planning Act*'s relatively narrow approach and directly through negotiations where communities had to make concessions in order to gain provincial approval (AG, SL, HE, NP, interviews). While the plans do briefly describe the community's vision and identify objectives and guiding principles for the plan, the 'action' component of the plans is devoted to zoning their traditional territory into protected, commercial, and enhanced management areas, and the regulations under the *Act* are a list of prohibitions on various sorts of development in the different zones – so they are essentially plans for directing resource development. Each community also entered into an implementation agreement with the province, which sets up their resource management board

and operating procedures, but the bulk of specific policy details – for example, regarding

economic development and local benefits sharing, forestry and wildlife management, water

protection, and transportation infrastructure – are not in the plan but are left to be developed

by the management board in collaboration with the province, and the board, under the *Act*, can

only recommend policies for the government to consider and potentially approve. According to

a participant with direct knowledge of one of the communities' planning process, the plan

prepared by the community was originally broader in scope and deeper in detail, including

some of the specific policy details just mentioned, but the province required them to narrow it

to the development and protection zoning described above and to generally simplify and

generalize its contents before it would be approved (confidential).

Of the 12 non-Pimachiowin Aki First Nations in the ESPA, ten accessed money for TALUP

development from WNO Inc. Many of them were only able to take on components from the

pre-planning and introductory TALUP stages, such as identifying and reviewing existing data

and previous planning activities, establishing the local planning team, initiating early

community engagement and visioning exercises, and beginning traditional knowledge and land

use interviews and mapping (AG interview). Each community worked at their own pace, and

some were able to accomplish more than others, but none were able to approach their TALUPs

in a comprehensive and integrated fashion. The COSDI report had stressed that planning should

be approached holistically where environmental, socio-cultural, and economic considerations

were integrated, and the EBM pilot project from nearly a decade earlier had demonstrated just

how complex, costly, and time consuming it would be to do this properly in the context of the

East Side. Yet the way the TALUP process unfolded meant that communities could take on

planning only one small piece at a time, but when approached in isolation the importance and relevance of each piece to the overall plan was difficult to see and making consistent progress with what money was available was a challenge. However, the province seemed to think responsibility for slow progress was principally on the communities:

> They kept saying [to communities], "you're not producing enough, these coordinators are supposed to be producing," and to a certain degree that's true, but what are they supposed to do? They produce all these maps and then don't have any money for GIS analysis or to hire a consultant. ... [The province was] trying to fund a piece of the process and expecting the whole process to work, that never works, if you want something done you're going to have to fund the whole process, not just a piece of it, and that's what they were doing" (AG interview).

Another research participant said of the TALUP task, "it's complicated, it's a huge ball of wax, or twine, or rubber bands, and looking at it is a huge job, getting it done is just bonkers," and went on to note the wide range of specialists, such as anthropologists, lawyers, geographers, planners, environmental scientists, and traditional knowledge specialists who ought to have been available to communities to help work through the various components of this complex task, but such expertise was inaccessible for most due to their lack of funds and the absence of appropriately qualified personnel on the Secretariat (HE interview). So in the end, communities without completed plans were left with bits and pieces of various plan components that were sometimes unconnected, which perhaps can be built on and contribute to a future plan, but with even less access to resources for planning now this will be difficult indeed.

There were of course further complicating factors that contributed to the TALUP process' lack of success, some of which, like inadequate resources, were foreseen in the ESPI Phase 2 executive coordinator's "ten challenges" document described earlier. The comments below are drawn from research interviews, with each being mentioned in at least two and in

most cases more; however, since a number of participants were concerned about being identified, even by code, with observations that could be seen as negative or critical of individuals involved in the planning process, no attribution is given.

Consistent leadership and focus was a challenge for many First Nations for a number of reasons. Chief and council are under pressure to confront very real and immediate issues in their communities, as one participant put it "from doors and windows to community crises," and time and energies to devote to long-term projects like planning were difficult to maintain over the years that it would take. Compounding this, under the *Indian Act* most communities have elections every two years and some yearly, meaning that chiefs and councillors frequently change, and with them the few paid positions in communities, such as that of the planning coordinator, frequently change as well. This meant that political and practical leadership often had to be reintroduced to the planning process, and in the case of coordinators, training achieved was often only available to the planning process for a short time. Many coordinators, trained or not, were not confident in heading up the TALUP project on their own, yet they were often left to do just that – "they didn't have anybody to encourage them or kind of mentor them, so basically they didn't really produce anything when they went back into the community … there was nobody to guide them or give them support." But research participants were also clear that this was not a uniquely First Nations problem, that lack of ongoing support and guidance often bedevils staff taking on new projects in industry or municipal governments, but it was especially conspicuous here because the First Nations were starting from a point of almost no infrastructure and institutional or personnel capacity.

Leadership and focus were also lacking from the province, as evidenced by the insufficient resources and supports dedicated to the TALUP process described above. The province appeared to continue to think that planning could be done quickly and cheaply, and many felt that all they really wanted were traditional zoning maps that would tell resource development companies where they could go. As a research participant involved in local planning said, "we were trying to take a community-based approach, we're trying to take a holistic view, but then what they want is lines on a map." The more complex and contentious issues of First Nations sovereignty, socio-cultural health and wellbeing, and local benefits from economic development, all originally part of the vision for holistic, integrated sustainable development planning, were just not possible to address within the parameters of the TALUP process available to First Nations.

Several senior government employees involved in the ESPI and WNO observed that learning and capacity building needed to happen within government, and the administrative system in particular, in order to properly understand and support holistic sustainable development planning, to comprehend the culture, perspectives and lived experience of the area's First Nations, and to build the trust and develop new ways of operating as needed to establish and maintain the promised government-to-government relationship. As one of these research participants shared:

> I think that we have to come to understand the [Indigenous] communities better than we do ... as a means to bridging relationships through trust and reconciliation. Without that awareness, I don't see how reconciliation can happen. [But] you develop this feeling that 'I know,' when I go out to the community, 'I know, because I know my job and I go out to the community and I know.' See, and that's one of the problems, is that what we know often ain't so (confidential).

However, it is not clear that this learning and capacity for operating in line with this new relationship has been embedded within the provincial government's institutional structures: many of the individuals involved in the ESPI and WNO have retired or moved on to other departments within government, internal policy directions can be reversed under new administrations, and, as witnessed in some of the behaviour of the ESRA and of the province after the wind-down of the WNO as they took over direct control of evaluating and funding a greatly reduced number of TALUP projects, there seems to be a tendency to revert to older patterns of top-down relations with First Nations.

It was also suggested that once the complexity of planning on the East Side became apparent, the province was primarily interested in seeing the high profile Pimachiowin Aki project succeed. A World Heritage Site within the province's boreal forest would be very satisfying to their party's environmental base and would stand as a legacy project for the long reign of the provincial NDP under the popular leadership of Premier Doer, as on participant suggested, it would be "a feather in his cap." This may be overstated, but along this line it is interesting to note that initiation of the departmental portfolio review of the WNO process and subsequent slashing of its funding and staffing coincided with the submission of the World Heritage Site nomination package to UNESCO in January 2012. This timing also coincided with the end of the five year funding agreement and additional one year bridge funding to WNO Inc., which would be a reasonable time to do a project review, but while the Pimachiowin Aki process appeared complete, the WNO TALUP process was far from it, yet funding that had supported both was severely cut. It is certainly true that in press releases about the East Side Pimachiowin Aki often featured more prominently than the WNO process, that the *East Side*

Planning Act was initially announced as in support of the World Heritage Site, and that significant provincial funds were repeatedly dedicated to the project in addition to funds the involved communities were able to access via WNO Inc. For example, in 2009, when only three ESPA First Nations in Manitoba were working on TALUPs for Pimachiowin Aki, the province provided $340,000 as its annual contribution, up from $260,000 the year before, and in addition announced a $10 million contribution to establish a trust fund for Pimachiowin Aki to "demonstrate to UNESCO that there is financial and public support for the site" (MB News Release, 2009, May 11, 2009, Oct. 13). The remaining 10 ESPA First Nations developing TALUPs would no doubt have welcomed such a demonstration of support for their work.

There were also criticisms of support provided through the WNO Secretariat. While training that was provided was generally considered good quality, deeper and a wider range of training for community coordinators and planning teams was necessary. There was also a need, as indicated above, for more ongoing support and guidance for planners in their communities, to keep them on track and to ensure that training was effectively used and capacity continuously built. It is possible that a greater investment in training and ongoing support may have resulted in lower turnover in community coordinators and planning teams, but this would have required the Secretariat to hire more staff or retain more consultants, which the province seemed unwilling to do.

There were also criticisms of the expertise the Secretariat did provide. The planners and policy analysts available to assist First Nations and to evaluate and make recommendations on their planning proposals to WNO Inc. were described as not especially well suited, by training and experience, to the task of First Nations TALUP activities, which research participants

suggested required particular training and experience that the Manitoba government simply

did not have. As one person put it, "the people spearheading it inside government were going

at it from a 1970s approach," and another suggested that First Nations perhaps did not want

help from the experts the Secretariat had to offer because they had backgrounds in 'regular'

economic development and parks and municipal planning contexts, and not in integrated land

use planning nor in working collaboratively with First Nations.

Questions were also raised regarding the legal and regulatory context for TALUPs under

the *East Side Planning Act*, beyond the issues regarding Indigenous self-government and title

under the *Act* discussed above. It is unclear exactly how the *Act* relates to other provincial

legislation and regulatory regimes, for example if it is paramount to the *Water Resources*

Administration Act or *Parks Act* should a conflict arise, or if a regulation under the *East Side*

Planning Act prohibiting mining in a designated area overrules the *Mines and Minerals Act's*

provisions for exploration if the minister has not explicitly withdrawn the regulated area's

mineral rights (WG, HE interviews). One research participant observed that planning under the

WNO and *East Side Planning Act* was not explicitly tied into the provincial system of

environmental standards and that nothing in the *Act* requires plans to implement ecosystem-

based management or sustainable development principles, leading them to wonder if the area

could become a sort of regulatory backwater where measures for environmental protection

could actually be lower than elsewhere in the province (WG interview). It is curious that an *Act*

developed to enact and regulate plans that arose out of an initiative explicitly aimed, initially at

least, at implementing sustainable development does not incorporate or reference sustainable

development principles, does not link to or mention the province's sustainable development

policy, and does not clearly connect to established environmental standards or the provincial environmental regulatory regime.

From the perspective of the critiques offered above, there were serious capacity issues on all sides, and that, together with the lack of financial and institutional resources and appropriately qualified personnel to provide ongoing support for First Nations planners, all but doomed the WNO TALUP process from the start. The context within which the TALUP process unfolded was also problematic in principle – there were issues with how it affirmed provincial authority and jurisdiction at the expense of First Nations self-government rights and title, with how it narrowed the focus of planning away from a holistic approach and towards resource development, and with the lack of clarity regarding environmental standards and regulation. As such, it is essentially up to the individual First Nations making use of the *Act* to ensure that their plans are conceived holistically, that they look after their own social, cultural, and economic interests, that they seek to protect their rights, and that they ensure sound environmental management is established, because based on the *Act* and experience with TALUP in the WNO process it is not clear that the province will encourage them to achieve a high standard on any of these. Of course, in the absence of completed, approved, and regulated plans, which characterizes most of the ESPA, the old status quo that the ESPI and WNO were supposed to transform remains in place.

6.6 Summary

The WNO process saw a quick movement away from the concept of broad area planning that had been central to the ESPI mandate, and instead planning efforts were directed at supporting local TALUP activities. As a result, focus was lost on broader, cross-cutting issues,

and, for example, resource allocations and development licensing, as well as decisions and

planning related to the all-season road, Hydro's Bipole 3, and the World Heritage Site

nomination, all took place outside the purview of the WNO. These examples instead

represented elements of a government directed, top-down approach and development-driven

planning, both of which the ESPI and WNO had been initiated to avoid.

The WNO's new organizational structure, where the First Nations were clearly leading

and stakeholder and general public representatives were in, at best, a supporting role, was in

response to the ESPI status report's recommendation and First Nations pressure throughout

the ESPI. This new focus and structure did represent at least the potential for building the new

government-to-government relationship between the province and Indigenous peoples that

had been promised from the start. The foundation of this was to be detailed Protocols of

Agreement, and the First Nations and WNO Council had high expectations for their contents.

While late drafts were promising and contained provisions that would have bolstered First

Nations power in planning and development contexts and transformed provincial-industry-First

Nations relations, the *WNO Accord* that was eventually reached in 2007, like the ESPI MoU,

promised the new government-to-government relationship but provided little detail as to its

nature or effects. The *Accord* did commit to continued TALUP support and envisioned RRMBs to

ensure First Nations involvement in resource management until their plans were in place.

The *Accord* also promised the province would work, with the participation and approval

of the First Nations, to develop measures to legally enact their TALUPs and resource

management arrangements. Instead, the province unilaterally developed new legislation, the

East Side Planning Act, that was completed without consulting the First Nations regarding its

specific contents. Numerous of the First Nations objected strongly, especially to the fact that the legislation reserved all final power for the province, affirmed that First Nations' traditional territories belonged to the Crown, and left First Nations only able to make recommendations in land use plans and resource management bodies. First Nations leaders were clear that they desired at least co-decision authority over the management of their lands. Nonetheless, the bill was passed without addressing these issues in summer 2009, and is the only legal basis for ESPA First Nations to enact TALUPs.

The province proposed establishing RRMBs to facilitate First Nations participation in resource management until their TALUPs were complete, but after several years of negotiations with regional groupings of First Nations, none were signed. First Nations objections again centred on the RRMBs' failure to establish co-management that granted them co-jurisdiction over their lands and resources or to clearly establish that benefits from development would be shared. While legislation and agreements reached and proposed between the province and First Nations did contain progressive rhetoric that pointed towards a new relationship, details tended to affirm the status quo and reinforce the province's jurisdictional dominance.

The TALUP process encountered serious capacity issues on all sides – from government through the Secretariat, WNO Inc., and local planning teams – and the funding and expertise available was never sufficient to the complexity and breadth of the task. As a result, communities (apart from those in the World Heritage Site project), were able only to take on small components of planning at a time, which undermined their ability to take their desired holistic and comprehensive approach to planning. The parameters of the *East Side Planning Act* and approach of the government and Secretariat had the effect of narrowing planning to a

focus on zoning for protected and development areas. Thus, the original ESPI vision for sustainable development planning was not supported nor evident in the WNO's TALUP process. By the close of the WNO in 2013, some planning work had been begun in nearly all of the ESPA communities, but only four had completed TALUPs and the idea of a BAP for the area had been abandoned entirely.

The First Nations were clear from the start that they wished to use planning to address pressing concerns in their communities, and to do so by exercising some meaningful control over their traditional territories and resources – in essence to exercise self-government and extend some form of jurisdiction over their lands. While this was not accomplished, the government did commit to working with First Nations in a spirit of reconciliation to establish a government-to-government relationship, which remained to be done. Some leaders felt that this provided a foundation from which to continue working, step by small step, towards their larger goals, while others argued for a more oppositional approach in the hopes of transformational change. In any case, after years of work through the ESPI and WNO, little substantive planning or change was achieved, and this in itself has led to some increased distrust and cynicism among those involved, and especially for Indigenous peoples who witnessed yet again that the government's lofty rhetoric and promises were not met with the courageous and imaginative actions needed to achieve them.

Chapter 7: Discussion of Findings from Examining the ESPI and WNO

7.1 Introduction

My findings from examining the ESPI and WNO processes, presented in chapters 5 and 6 respectively, are discussed in this chapter, organized around four themes. The first three are drawn from the conceptual framework for deliberative democratic NREM developed in chapter 2, section 2.5, and presented in section 2.5.4. Each of these themes relates to one of the dimensions of the framework, and is described as one of "the tasks of deliberative democratic NREM" in section 2.5.3. Each of these three sections below begins with a brief overview of the theme, followed by an exploration of the operations, achievements, and challenges of the ESPI and WNO, as described in the two previous chapters, in relation to the theme. The final thematic section relates to First Nations self-governance and rights in the context of NREM. This theme is informed by the general historical background presented in chapter 4, section 4.3.1, and by section 4.3.2, which explores some normative implications of looking at this history. This thematic exploration also takes account of the specific history of Indigenous peoples and resource development in Manitoba, outlined in section 4.4.1, and implications of the 'dilemma of development' faced by Indigenous communities that is briefly discussed in section 4.5.2. This final theme begins, as with the first three, with a brief overview of this material that describes the theme, followed by an examination of the ESPI and WNO in relation to it.

The broad aims of this discussion section are to further understand the ESPI and WNO, to explore the usefulness of my conceptual framework for NREM in analyzing and describing actual NREM processes, and to understand what can be learned from my case study that can be applied to refining and elaborating the framework. In accomplishing this, I raise what I see as

key questions and points relevant to each theme that are informed by theoretical and contextual material from chapters 2 and 4 respectively and supported by my case study findings in chapters 5 and 6; however, the discussion is not intended to be exhaustive or definitive, but rather is conditioned by my research theory and purposes and by the insights and emphases of my research participants. Key conclusions drawn from this discussion are presented in my concluding chapter 8.

7.2 Internal Operation and Discourse of Processes

This theme was introduced in chapter 2, section 2.5.3.1. The basic idea is that the NREM process should provide a certain communicative rationalization function, meaning that it should pick up issues or problems from various sources, for example from public or political-administrative discourses, examine and evaluate alternative responses, and communicate some form of results, be it recommendations or decisions, to the public and/or relevant administrative system. To be communicatively rational, as much as possible this is all done on the basis of complete and sound information, attending to alternative perspectives and expressions of interests, and considering the validity bases of positions taken and arguments offered, including their supporting reasons and embedded assumptions. Communicative rationality also implies some structuring idealizations that the NREM process should strive towards in its constitution and practice, namely: inclusivity, publicity and transparency, communicative equality, honesty and authenticity, absence of coercion, and recognition of the better argument (see Cooke, 1994; Habermas, 2008a). The suggestion is that if the NREM process is more inclusive and maintains a focus on honestly striving to understand the nature, implications, and supports of interests articulated and positions advocated by the participants

or public presenting them, then significant progress will have been made towards enabling the better ideas, arguments, and positions to be more convincing to more people in the public and in the political system (Parkins & Mitchell, 2005).

7.2.1 Inclusivity

Inclusivity is perhaps the most visible and frequently referenced, but also frequently contested, of the aspects listed above, because it is clearly fundamental to a NREM process' claims to democratic legitimacy and to rationality – it cannot consider voices and arguments that are not included. Yet there is a tension between being maximally inclusive and being pragmatically effective, between hearing all potentially valid perspectives and providing timely advice and decision outcomes, and obviously a balance must be struck. In the ESPI Phase 1, the approach taken was that the government panel could appropriately identify relevant groups to include in its consultations, and while they did consult the directly affected and general public and the obvious stakeholders, it would appear that the perspectives and interests of government departments, branches, and agencies were 'more' included in that they were consulted more in depth and were more influential over the Phase 1 recommendations, especially regarding priority planning issues. However, recommending a separate advisory body composed of First Nations representatives was in response to consultations with First Nations, and reflected an effort to ensure their perspectives and interests were included, which was seen as democratically appropriate as they comprised over 96% of the area's population.

The ESPI Phase 2 was structured in a fashion common for such NREM processes, and which had been successfully used in the COSDI process, with a core group of stakeholders and representatives of directly affected publics, and larger advisory bodies to include other relevant

stakeholders and representatives of the general public and public interests. However, members

on the ESRT were mandated to represent the public interest and not the interests of the

respective organizations or constituencies they were drawn from, and as a result the core

group was, in a sense, not inclusive of any specific stakeholder, sectoral, or affected public

interests. The ESAC, which was intended to represent stakeholder and public interest groups,

was not used effectively, leaving the organizations on it included primarily via the scant general

public participation opportunities, in particular by providing written submissions regarding their

interests and concerns with what they were able to see of the process. Some representatives of

organizations on the ESAC were invited to participate on the regional working groups that

developed recommendations for the *Promises to Keep* status report, and reported that they did

feel they were generally able to successfully communicate their particular interests and

perspectives in that venue, although some were less sanguine about how effectively some of

these were communicated in the report's recommendations (ON, HE, WG interviews). In the

WNO, the ESAC was never revived, and stakeholders and the general public were to be

represented by the WNO 5, i.e. the five non-First Nation members of the WNO Council, but as

was described in chapter 6, the Council itself was not particularly effective and was effectively

marginalized in favour of the CoC and WNO Inc. as they, along with the Secretariat, directed the

TALUP process that became the sole focus of the WNO. As a result, industry groups and ENGOs

were not effectively included in the ESPI or WNO, although some would argue that the interests

of industry were represented effectively by government. The FNC was reasonably effective in

representing the interests of the area's First Nations in the ESPI Phase 2, and managed by the

end to raise their stature to the level of the ESRT within the ESPI structure, which did ensure

that the interests and concerns of First Nations were consistently present in ESPI deliberations.

There was a consistent problem with meaningfully including the Métis Nation as

Indigenous peoples in the ESPI and WNO processes – which has become even more germane to

NREM given recent court decisions. There was a Métis representative on the ESRT and the ESPI

mandate included building positive relations with the Indigenous population, but it soon

became clear that 'Indigenous' was being interpreted principally in reference to First Nations. In

the ESPI Phase 2, the main foci of work with Indigenous peoples were protocol negotiations to

outline principles and procedures for Indigenous involvement in the planning process, and

consultation, both general consultation of the Indigenous public for input into the BAP and

developing an understanding or framework for approaching the Crown's constitutional Duty to

Consult. All of these were also relevant to the Métis Nation, who had members resident in the

ESPA and who had traditionally moved through and used much of the area; however, no

protocol negotiations were ever initiated with the Métis Nation, there was never mention of a

Duty to Consult in relation to them, and no consultation activities were specifically held with

the Nation's governmental institutions. They did not feel their perspective and self-

understanding was grasped by the ESRT or FNC, in particular regarding their historic and

ongoing ties and Aboriginal rights in relation to land within the ESPA (SB interview). For

example, there are frequent references to engaging with "the Métis Nation resident on the East

Side" in *Promises to Keep*, but this makes little sense for a nation defined by a shared culture

and history rather than people living within discrete, bordered lands. As also witnessed in the

federal government's attempts to implement their Inherent Right Policy for Indigenous self-

government, the usual approach to governance mechanisms was seemingly incapable of appropriately dealing with "Métis off a discrete land base" (Canada, 2011), and the ESPI was not able, or seemingly motivated, to innovate so as to effectively include the Métis Nation in their efforts to build new relationships with Indigenous peoples.

As the WNO turned exclusively to First Nations planning and protocol negotiations, the Métis were even more explicitly excluded, to them at this point the process "disappeared into a black hole" that they felt they could get nothing out of (FN interview). Again, despite renewed promises, protocol negotiations that could have outlined how they would be involved were not initiated. So long as planning was conceived as covering the broad area, then all those affected, or at least all rights holders, including the Métis, could have been included in plan development, but once the BAP focus was abandoned for TALUP, and First Nations divided the entirety of the ESPA into their various traditional planning areas, there was literally no geographic space for the Métis to participate.

However, a normative First Nations perspective was evident in the research, and in the ESPI and WNO, that has significant implications for how to think of inclusion in this case. In the minds and hearts of many of the area's First Nations peoples and leaders, the notion that their traditional lands yet belong to them is not nostalgic or merely rhetorical. To them, *aki* or *aski*, the land, is not something to be owned, people belong to it and it to them, the two cannot be separated – "the Elders have told us this land, the soil, the air, the plants and animals, all the medicinal plants, this is our sustenance, this is our life" (RL interview) – so it was never something their ancestors could cede to the Crown, and as they are the people on the land it belongs to them as before, meaning it is theirs to care for and benefit from. From this

normative perspective, the treaties were agreements between sovereign governments, each

representing their citizens, to share this responsibility for and the fruits of the land, and so

when the government approached them to talk about planning for the land they had

traditionally used, they saw this as an opportunity to practice this equal government-to-

government relationship that had been historically acknowledged and then immediately

denied. From two former chiefs of ESPA First Nations: "the opportunity for First Nations to get

involved would be an opportunity for them to start practicing some self-governance, that's how

I see it ... we have to start practicing our sovereignty or we'll get left behind," and "we were

marching to self-government ... we tried to displace, to minimize the dominance, the

jurisdiction of the province – in everything we do we try to minimize the jurisdiction over us, to

strengthen our jurisdiction, to actualize it" (confidential). From the province's side, although no

doubt understood differently, this was also articulated in the language of a government-to-

government relationship between First Nations and the province, which was explicitly

referenced in the 2004 MoU, in the 2007 *WNO Accord*, and the 2009 *East Side Planning Act*.

The implication of this perspective for inclusion is substantial – if planning for the East

Side lands, as simultaneously Crown land and the traditional territories of the area's First

Nations, is conceived as undertaken on a self-governing-First-Nations-governments-to-

Manitoban-government basis, then why should a forestry company, or mining interests, or

environmental groups be at the table alongside First Nations government representatives? The

First Nations did not see themselves as stakeholders in the planning process, but rather as

rights-holders and as legitimate governments representing the interests of their citizens. On

this view, stakeholders and the public would be represented by their duly constituted

governments – the province has a responsibility to represent the general public interest, including in environmental protection and economic development, and First Nations leaders were clear they would consider their governments' responsibilities to include their citizens' interests in environmental protection, economic development, socio-cultural health, and community wellbeing. This approach would also make it easier, at least in principle, to include the government of the Métis Nation, who also have the inherent Aboriginal right to self-government. Inclusion might look something like involved governments establishing their planning teams to cooperatively work on plan development, each with their own, or possibly shared stakeholder and public advisory bodies, and each responsible to consult their publics and represent their members. From this perspective what transpired in the ESPI and WNO looks less like simply the progressive marginalization of legitimate stakeholders and the general public in favour of First Nations interests, and more like an unsteady movement towards an actual government-to-government approach to co-planning, albeit one that also tended to increasingly exclude meaningful participation from the Métis, as well as stakeholders and the general public.

7.2.2 Transparency and Publicity

Following the description of "conditions and venues for internal discourse" in section 2.5.3.1, NREM processes should also strive to conduct themselves transparently and invite public scrutiny of their operations. As was seen in chapter 5, ESPI Phase 1 was heavily guided by inter-governmental consultations that were entirely opaque to the public, while notes of the review panel's public and stakeholder meetings were recorded and published, as were written submissions. The draft phase 1 report was widely circulated and feedback sought, and the final

report was structured as to explicitly show responses to each draft recommendation and resultant changes, if any, in the final recommendation; however, the initial panel recommendations were often pre-figured by government perspectives and priorities, and this basis was obscured.

ESPI Phase 2 relied heavily on a dedicated website and public registry to make meeting minutes and other relevant documents available, but there were issues with sometimes long delays in documents being posted, not all relevant documents, such as presentations and discussion papers distributed at meetings, were made available, no minutes of working groups or other committees were posted, and nothing from protocol negotiations that led to the 2004 MoU was reported. The development of recommendations leading to the *Promises to Keep* status report was particularly dark, with even members of working groups not seeing how their recommendations were taken up, modified, and eventually found their way into the report. During this period Manitoba Wildlands, a local ENGO involved on the ESAC, received a number of anonymous packages of documents, which they archived and made available to researchers and posted many on their website, and these included some of the missing documents indicated above as well as ones that made possible some tracking of recommendations from working groups through modifications by the FNC and ESRT, as well as recommendations introduced by the FNC and ESRT. However, the fact that some participants had to resort to clandestine actions to ensure some transparency does not speak well for the process itself, and invites speculation as to who was trying to hide what.

The WNO was even less transparent: publically posted minutes of WNO Council meetings cease in September 2007, while I was able to locate minutes from at least two more

meetings; the quality of minutes posted was generally quite poor, making it necessary to supplement them with interviews for a fuller sense of what was being discussed; no minutes or even records of meetings by the WNO CoC or WNO Inc. were made available; no public reporting or summary description was provided of the processes followed, issues considered, positions taken, arguments made, etc., at meetings or in the protocol negotiations leading to the *WNO Accord* or work on RRMBs; and development of the *East Side Planning Act* was done entirely in secret within government with extremely limited input from the First Nations to whom it applied. While it is true that protocol and RRMB negotiation would need to maintain confidentiality while in progress, the WNO Council, to a lesser extent the ESRT before them, and the province in news releases and presentations to the WNO had all discussed what these agreements would include and how vital they would be as part of the planning process, and as such there should have been some reporting back so that those involved could learn from them, especially since neither series of negotiations yielded what many had hoped. The province took the position that developing legislation is their responsibility, owed to the Manitoban public, and that it would have been inappropriate to open the creation of the *East Side Planning Act* up to or to draft it bi-laterally with the First Nations, but this left many of the First Nations wondering what government-to-government meant if it did not include open collaboration on laws that would apply to both governments' lands and people. Finally, it was particularly problematic that WNO Inc., in dispensing public funds that, while insufficient to the task were still considerable, operated entirely without any public scrutiny and with accountability only to the province – not even the First Nations public were made aware of how

and on what basis they distributed funding, which enabled some hearsay speculation, related in

several interviews, about conflicts of interest and patronage in approving some funding.

7.2.3 Discursive Quality

Following Habermas' notions of communicative action and democratic discourse,

factors affecting the quality of discourse in the various bodies comprising the ESPI and WNO

processes would include communicative equality and the recognition and favouring of better

supported arguments and positions (e.g., Benhabib, 1994; Habermas, 1996a, 1998a).

Communicative equality can be seen in the freedom to speak and to be heard, to question and

be questioned, which also implies a level of mutual trust and the absence of coercion that

would constrain speakers or topics. The recognition of better arguments and positions is made

more likely when a diverse range of different interests and social identities are included, all

have access to relevant information, including science and traditional knowledge, and when

procedures create the freedom and opportunity to discuss and explore reasons for and

underlying assumptions and interests in people's positions and arguments (e.g., Benhabib,

1996; Cooke, 2000; Hendriks, 2006; Young, 1997).

Research participants generally spoke positively about the ESRT and FNC in these

regards. Especially in the first year of the ESPI Phase 2, both bodies devoted a significant

amount of time in each meeting to hearing presentations on a variety of relevant topics, which

provided a foundation of sound information. However, much of this specialized information

was not directly applied by members to planning work, which did not really start until working

groups were formed and began developing recommendations. Members did report feeling free

to share their ideas and reasons for perspectives and positions during ESRT meetings, but there

was also some frustration expressed that these meetings often remained exploratory and lacked focus on getting down to planning, although in the process members were getting to know one another and trust was being built (WG, ON, BN, GN interviews). In contrast, the Métis did not feel they were heard or their position and interests understood throughout the ESPI and the failure to actually work with them reflected a certain lack of interest (SB, FN interviews).

The working group experience in winter and spring 2004 was singled out by several members as the most productive working time and as most closely resembling quality discourse as described just above (HE, ON, WG interviews). These meetings were described as lively and with participants speaking freely and sometimes passionately, but ultimately maintaining a constructive focus and exhibiting a desire to understand one another's positions and work towards consensus. Participants from the ESRT and FNC brought and shared the information base from their earlier meetings with them, and participants also freely brought new information to share with fellow working group members. However, the quality of discourse was undercut by the extremely rushed timelines that meant some groups met only three times, which is shocking given the complexity and wide range of issues they were to consider, and by poor organization and facilitation, meaning, for example, that detailed notes were not kept so that developing thinking could be tracked and built on meeting to meeting, professional facilitation was not provided, and group members were discouraged from communicating with other working groups who were considering the same issues and meeting in the same venues.

In the WNO, Council meetings again spent a good deal of time with presentations from government on topics like hydro and mining, and hearing updates on budgets and protocol negotiations and meetings between First Nations leaders and ministers. For the first year and a

half there was also good discussion of issues connected to broad area planning, such as public

consultation and setting up working groups, but as focus shifted away from the BAP these

discussions led to no action. By the end of 2006 it was clear that issues outside of direct

relations between the province and First Nations, such as protocol and RRMB negotiations or

TALUP work, were not going to be pursued, and as issues specific to First Nations were under

the purview of the CoC, the WNO Council and any discourse it had was largely ineffective.

Perhaps the aspect of quality discourse most challenging to examine in the ESPI and

WNO was the existence of some evaluative framework or process by which to examine various

positions taken and arguments given, to weigh supporting reasons and normative

underpinnings, and ultimately to help determine what would be most decisive in determining

the course of action taken. In large part this is because key decisions and directions taken were

often at least partially obscured from view, making the process of coming to them difficult to

understand. In ESPI Phase 1, the initial decisions about the structure and focus of the proposed

planning process were taken within government, and informed in part by government policy

commitments that were visible, especially related to sustainable development as discussed in

section 4.4.2, but these decisions were also shaped by internal government perspectives,

priorities, and discourse around the planned initiative, which were hidden from view. The

recommendation to create the FNC alongside the ESAC was taken in response to arguments

made in consultations and feedback, in particular by First Nations peoples, that emphasized

Aboriginal and treaty rights and the overwhelming majority of First Nations people in the ESPA.

While there may have been political factors involved as well, this is a nice example of the

validity of an argument made having decisive force in actions taken, and in this case the

normative rightness aspect of the argument, related to unique rights and democratic

representation, appears to have been the most convincing.

In ESPI Phase 2, the most obvious example of a change in direction was the rise in

prominence and influence of the FNC, which by the end was routinely acknowledged as equal

to the ESRT while its prior equal, the ESAC, was thoroughly marginalized from the process.

However, how this came to be, on the basis of what arguments, and decided by who, are all

questions very difficult to answer, even by those intimately involved during the time. The best

anyone could suggest was that the FNC consistently exerted pressure, a sort of moral

persuasion, that the communities and interests they represented ought to be decisive in the

ESPI process, and that the government of the day was amenable to this point of view (NP, TK,

GN interviews). However, this did not appear to be a matter that was considered, weighed, and

decided within the ESPI itself, but rather one that was dealt with primarily behind the scenes in

direct meetings with government staff and ministers, who clearly then had considerable ability

to bend the process to their new understanding. It does appear that the ESRT was amenable to

the increased power and position of the FNC and although they still regarded themselves as the

central body of the ESPI they were satisfied to share power, and this indicates that they also

saw the normative force of the argument for increased First Nations influence and leadership.

However, what is more generally noticeable throughout Phase 2 is that issues and

concerns were often raised and discussed in ESRT and FNC meetings that were not followed up

on, that did not seem to have an effect on actions taken, but it is not clear that this was

because any counter-arguments were offered and found to be more valid. For example, there

were frequent arguments made that public consultation needed to be improved, in particular

that ESPA communities needed to be visited in multiple rounds in order to constitute effective

engagement and to generate quality feedback, and despite apparent wide agreement, this was

not done. Similarly, there was agreement that First Nations community coordinators needed to

be hired, trained, and engaged in facilitating planning work at the grassroots level, but this was

not done. So even when the process' internal discourse was effective in raising well supported

ideas that garnered consensus support, this did not always inform actions taken, which again

makes it difficult to examine the quality of discourse in the ESPI. In the case of the two

examples mentioned above, as well as others, the deciding factors in not taking complete, or

any action on arguments or recommendations widely regarded as convincing to ESPI

participants were the lack of sufficient time and money, with timelines mandated by and

budgets in the hands of the province. In this sense the parameters of the process controlled by

the province served to undercut the outcomes of quality discourse.

In the WNO, there was an obvious change of direction away from developing a BAP and

towards community-based TALUP. While difficult to see in the WNO Council minutes, where

talk of the BAP and means for developing it were regular features for the first two years,

participants were consistent in identifying essentially the same arguments and reasons for the

shift, indicating that it was the product of some evaluative discourse, which some suggested

would have been within the WNO CoC, who met in camera and left no public records (NE, TK,

SL, AG interviews). Arguments that seem to have met with wide acceptance centred around

practical and normative points. Practically, there was a lack of basic information to base a BAP

on, including ecological and resource data, traditional ecological knowledge, and traditional

land use and occupancy information, but which TALUPs would generate due to their more local

and specific foci. There was also discomfort with the basic notion of broad area planning from some First Nations because of their normative perspective regarding their sovereignty in relation to the land – one First Nation should not be in a position of telling another how to manage their land, and, more fundamentally, the entire exercise of being 'involved' in broad area planning amounted to affirming provincial jurisdiction and that their traditional territories were merely Crown land, whereas TALUPs were regarded as staking a claim to First Nations traditional lands. Again, while other factors were no doubt also involved, the shift from broad area to traditional area land use planning seems to have been in acknowledgement of the validity of at least some arguments made to do so.

Other important decisions taken related to TALUP funding processes and priorities were taken among the CoC, WNO Inc., the Secretariat, and provincial staff, and any discourse in these bodies was obscured from view. Meanwhile, the WNO Council's discourse around work on the BAP, especially arguments and practical suggestions brought forward by the WNO 5 and the PCC for its continued development alongside TALUP activities, did not seem to be challenged or countered in meetings, but nonetheless had no influence on the general direction or specific actions taken by the WNO. Relevant to these unchallenged arguments from non-First Nations WNO Council members, in informal conversation a participant observed that directly challenging another's expressed opinion is considered culturally inappropriate for some Indigenous people, making it uncomfortable for them to engage in the sort of argumentation this notion of discourse implies, and so leaving something unchallenged does not equate to supporting or being convinced by it. This is of course not intended as a cultural stereotype, and many First Nations leaders, for example, are powerful debaters, skilled in argumentation. It

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does suggest however, that some upfront work should have been undertaken in designing the

ESPI and WNO's structures and operating procedures to ensure that they were culturally

appropriate and that all members could freely and comfortably participate, which would have

made them more inclusive and improved the quality of their discourse.

So while difficult to examine in depth for reasons just described, it does not seem that

discursive quality, in the sense of evaluating and taking direction from the best supported

arguments or positions offered, was necessarily decisive in determining many of the foci or

actions taken in the ESPI or WNO. As discussed more in sections below, it seems that interests

and priorities in the province, Secretariat, and First Nations representative bodies were more

decisive in this regard than was discourse in the more public venues established to ostensibly

provide direction to the ESPI and WNO processes.

7.2.4 Connecting with Expert and Traditional Knowledge Complexes

As a final comment on this theme, a significant part of a NREM process having a

rationalizing effect on the issues under its purview is its ability to connect with and interpret or

demystify 'expert knowledge complexes' that have been largely cut off from public discourses,

and often from political-administrative ones as well (e.g., Baber & Bartlett, 2007; Bocking, 2004;

Fischer, 2009). In this case, relevant expert knowledge complexes would include: traditional

knowledge, especially ecological and spiritual-cultural; Western science, including ecology,

geography, and economics; and legal-moral, related to Aboriginal and treaty rights, and

provincial legislative and policy instruments. To the extent that the ESPI and WNO could make

these connections to inform their own discourse on planning issues and concerns and then

communicate the results back to the public and the political system, they could contribute to

enriching understanding and discourse at these levels as well, and this could be a powerful outcome regardless of what quality of planning was achieved. Unfortunately, these connections were not deeply made, and as discussed below, communication back to the public was very limited.

During the ESPI Phase 2, the ESRT and especially FNC did talk about the importance of involving Indigenous Elders in a meaningful role, but apart from an Elder usually being present for meetings, this only resulted in one Elders' gathering, which was clearly insufficient engagement to constitute connecting with them as a community of expert knowledge holders. Traditional knowledge did inform some of the thinking and perspectives of Indigenous participants in the ESPI, especially regarding the land and attachment to or constitution within it, and traditional cultural understandings and teachings from the Elders were sometimes referenced by them as guiding their understandings and actions, but this is an indirect connection to this rich body of knowledge. Some scientific information was shared in the aforementioned background presentations, but there was no significant engagement with the information nor was it directly applied to inform planning work. The Ecosystem-Based Management Pilot Project undertaken in the East Side area just prior to the ESPI amply demonstrated, and explicitly stated, that appropriate inclusion of both ecological science and traditional knowledge demanded extensive focus and time devoted to them so they could be approached in a comprehensive and integrated manner (Manitoba Conservation, 2002; Northern Lights Heritage Services, 2000), and neither time nor focus on either were achieved or attempted in the ESPI.

Legal knowledge and discourse from within the provincial government was certainly formative in Phase 1, and came into play in protocol negotiations and was cited as a prime reason for the MoU reached in 2004 being, from the perspective of First Nations, so weak and general. However, protocol negotiations were kept confidential, and so arguments made and positions taken on rights and their implications were not available for others in or outside of the ESPI process to learn from. There were some presentations made on Aboriginal and treaty rights and the Duty to Consult, and from these and ensuing discussions it is certain that participants were aware to varying degrees of the evolving legal discourse on Aboriginal rights and implications for NREM, and this knowledge was influential, together with the arguments mentioned above, in confirming the normative validity of arguments for increased Indigenous involvement and power within the ESPI (NE, NP interviews). In consequence of this legal knowledge, the FNC worked to ensure that the ESPI officially acknowledged their rights and that First Nations participation did not abrogate the Crown's Duty to Consult regarding future actions or decisions that may infringe their rights.

In the WNO, these expert knowledge complexes would have been directly relevant to TALUP work, and legal-moral discourses were particularly relevant to protocol and RRMB negotiations and responses to the *East Side Planning Act*. As in ESPI Phase 2, consultations with legal experts in negotiations had the effect of limiting what was accomplished – in both cases the province's legal experts objected to the extent of the rights and jurisdictional powers sought by First Nations, resulting in a compromise *Accord* seen as a relative, if disappointing, success by First Nations negotiators and some community leaders, while an acceptable compromise could not be reached on RRMBs, whose rejection was supported by advice the

First Nations obtained from legal experts. In their written submissions and presentations

delivered before the legislative committee in response to the *East Side Planning Act*, First

Nations leaders made direct reference to legal principles and relevant provincial planning and

resource management agreements, and clearly articulated their position on and understanding

of the nature and implications of their rights. So again it was clear that time had been spent

consulting with legal experts and discussing legal issues amongst themselves. These issues and

legal learning may have been shared within the WNO CoC, but, as in the ESPI Phase, what was

gained from this connection with legal experts was not directly passed on to others involved in

the WNO process, which was evident in research interviews where numerous participants

reported being unsure as to why, for example, the RRMBs failed or why some leaders were so

vehement in their opposition to the *Act*. This legal knowledge and the normative arguments

made could also have greatly enriched public knowledge and discourses if an effort had been

made to effectively share it.

As discussed in chapter 6, the extremely limited budgets did not allow for relevant

scientific experts to be retained for TALUP work in most cases. In many communities traditional

land use studies were at least begun, which tapped some of that aspect of Elders' knowledge;

however, the elicitation and inclusion of spiritual and cultural knowledge was beyond what

most communities were able to achieve. For the four communities that completed TALUPs,

their level of engagement with traditional knowledge holders was more extensive, but as with

other aspects of these plans, it constitutes a bare minimum, and research participants involved

in this planning reported that greater depth regarding traditional land use and especially

spiritual and cultural knowledge was yet needed for their plans to provide appropriately holistic

guidance towards a healthy future (OS, RL interviews). Should communities be able to continue working on developing their TALUPs, deepening the meaningful inclusion of traditional knowledge will be especially vital.

Recalling the discussion in sections 4.3.2 and 4.5.2, scholars have argued that for economic development and self-government to deliver on the promises of improving Indigenous social and community health and wellbeing, they need to be guided by socio-cultural institutions informed by Indigenous values, which many feel requires a reconnection with and revitalization of traditional cultural knowledge and practices, itself a long-term process (e.g., Alfred, 2009; Ladner, 2009; Newhouse, 2000; Slowey, 2009; W. Wuttunee, 2004). From this perspective, TALUP work could hold much promise to meaningfully transform communities' future prospects if planning is under their direction and informed by relevant traditional knowledge and values, and this demands a focus quite different from that favoured in the WNO, which, when push came to shove, became more about planning for development under the simplistic assumption that economic development equates to social and community improvement, which has historically proven unfounded much of the time. Instead, this suggests that planning should begin with a focus on decolonization at the spiritual-cultural and social levels before, or at least in conjunction with, proceeding to engage the forces of capitalism and state power in planning aimed at extending the First Nation's administrative reach in implementing the community's vision for land use that supports their values and understandings, including economic development that leads to real and lasting benefits.

7.3 Relations with Public Spheres and Discourses

Following Habermas' model of deliberative democracy, in my framework for deliberative democratic NREM, NREM processes serve a democratic function of acting as sluices or gateways facilitating the communication of concerns, interests, opinion, and will from 'the affected' public to the political-administrative system (Habermas, 1996a). This is accomplished by picking up signals from relevant public discourses, for example, often through consultation and public participation programs, and then working via its discursive processes, as discussed in the previous section, to rationalize this input, identify preferred alternatives and action choices, and pass the results on to the political system in the form of decisions, plans, recommendations and the like. This is the most often referenced relation between public discourses in public spheres and political systems in models of deliberative democracy, and is the foundation for their claims to democratic legitimacy in the form of marshalling legitimate public opinion and will to steer governmental action (e.g., Bohman, 1998; Cooke, 2000; Dryzek, 2001; Roberts & Crossley, 2004).

However, I also argued that an additional vital democratic function is NREM's ability to enrich the quality of public discourses by transparently communicating discursive 'products' back into the public sphere and civil society (e.g., Brookfield, 2005a; Hendriks, 2006). These products include the same advice delivered to the political system, but could also include: sound information it has evaluated and validated; input gained from expert knowledge cultures; various alternative arguments and positions considered, along with some critical assessment of their supporting reasons and embedded assumptions; and developing thinking, tentative judgements, and emerging points of consensus. High quality feedback into public

discourses could serve to correct misinformation and uncover distortions that inevitably circulate within public spheres and thus could contribute to learning at a societal level, which in turn could provide improved public input into future NREM processes. Civil society organizations could play a key role here as they function as nodes where public opinions are distilled and refined, which is why they are frequently consulted as stakeholders to provide input in NREM processes, and thus they are well placed to receive and consider new information and arguments in their ongoing public discourses and distribute outcomes through their established communication networks (Hendriks, 2006; Welton, 2001). This feedback function into public discourses could be especially useful in instances where new approaches are being tried, and when the NREM process fails to produce a 'final product' outcome could yet make the experience a worthwhile part of democratic learning. The ESPI and WNO were both taking new approaches to planning in the area, and the ESPI ended with an interim status report while the WNO sort of withered away with only a few concrete outcomes, and so this feedback to public discourses presented a significant opportunity for learning and for enriching democratic functioning.

7.3.1 Involving Civil Society

NREM processes most often pick up content from public discourses by: consulting or involving civil society organizations, as they are already active in public discourses and as just mentioned represent sites where particular clusters of public opinion can be identified; and by providing opportunities for public participation and input, both passively, through things like surveys, inviting comments, or holding open houses, and actively by engaging and consulting the public through interactive meetings, discussion forums, or workshops (e.g., Diduck, 2004;

Innes & Booher, 2004; Parkins & Mitchell, 2005). As described above in discussing inclusion,

civil society organizations were directly involved on the ESAC, but as seen in chapter 5, section

5.3.1, little meaningful input was obtained from the few meetings this advisory body had. While

there was talk of holding a specific consultation meeting with ENGOs in Phase 2, this was not

done. Civil society organizations, and ENGOs in particular, did attempt to be as involved as they

could, and this included providing written submissions in both ESPI phases and having

representatives serve on the Phase 2 working groups. In the WNO, the lack of opportunities and

dearth of information made it exceedingly difficult for civil society to be involved or provide any

input. Because of this, civil society organizations that did participate, or who were close

observers, had limited information or engagement opportunities to offer their constituents, so

while ENGOs in particular often have public education or information mandates, this was made

extremely challenging in the ESPI and especially WNO processes (KS, HE interviews).

In discussing this aspect of my conceptual framework earlier in section 2.5.3.2, I

suggested that it is especially important for NREM processes to connect with discourses in the

'green public sphere' that often emerges in response to the issues or problems the process is

addressing (Bohman, 2004b; Torgerson, 2000). This is because in the context of resource

management, where the desired goal of sustainability is generally understood as upheld by the

'three pillars' of economic, social, and environmental considerations, it is often the case that

economic imperatives dominate in public and political discourses and as a result end up being

the dominant drivers of NREM outcomes. Deliberately seeking and nurturing input from green

discourses, which generally focus on social and environmental considerations and see them as

interrelated, can help develop a more balanced approach. In the case of the ESPI and WNO,

there was a strong green discourse eager to be involved, represented by a large number of local

and national ENGOs who were strongly supportive of both boreal ecosystem protection and

Aboriginal rights and interests (KS, SA, HE interviews). For a small province and a NREM process

looking at an area with sparse population and little economic development, this was a truly

impressive array of green public voices, and failing to engage them in a meaningful way

represents a great missed opportunity. While members of these groups did try to be involved

as much as possible, looking back, even while recognizing that there were some positive

outcomes of the ESPI and WNO, what they feel most is a sense of frustration for what could

have been accomplished, for how they could have helped (3 interviews, confidential).

7.3.2 Public Participation and Community Consultation

ESPI Phase 1 public consultation did involve a number of meetings in East Side

communities and with relevant stakeholders, but the review panel conducting meetings was

admittedly not expert in public consultation, and was particularly lacking in training and

experience with effective consultation with Indigenous communities (confidential). Community

meetings were not particularly interactive as attendees were just being introduced to many of

the issues and concepts involved and multiple rounds of information sharing and interactive

activities would have increased the quality of public engagement and input into the process. As

seen below, this is a recurring theme as most of the public participation opportunities in the

ESPI and WNO were passive, such as inviting written comments, and the majority of

participation activities were largely 'information-out.' While this approach to public

involvement is common in NREM contexts, it is not considered meaningful public participation

and does not facilitate deeper levels of learning nor what Habermas describes as legitimate

public opinion and will formation appropriate to democratic steering of the political system

(e.g., Arnstein, 1969; Diduck, 2010; Diduck, Sinclair, Pratap, & Hostetler, 2007; Habermas, 1996a; Innes & Booher, 2004; Sinclair & Diduck, 2016).

The ESPI Phase 2 public participation program was discussed in some depth in chapter 5, section 5.3.4, and clearly it did not come close to achieving the level of consultation and engagement initially hoped for. The ESPA community visits were conceived as the cornerstone of public consultation, but the initial round consisted of providing information about the ESPI, and while multiple follow-up rounds were intended in order to obtain quality public input, due to time and budget constraints only one round was done. Input from the general public was obtained passively through open houses that occurred very late in the process, after the development of recommendations was already well underway. The lack of adequate transparency and public communication described above meant that written public and stakeholder submissions were based on limited knowledge of what the ESPI was considering, and the majority of these were received far too late in the process to have influence over the status report and were not explicitly considered by the WNO process that replaced the ESPI. It is not clear that this public input received towards the end of the ESPI was ever considered by anyone.

In the WNO there was initially consideration again of making rounds of community visits, and there was talk of engaging the ESAC for stakeholder input as relevant to the WNO's work, but neither was done. General public interests and opinions were expected to be represented on the WNO Council by the WNO 5, but as the focus shifted exclusively to TALUP work, input from the general public was not sought and the Council itself became less

influential. In the TALUP phase, public input related exclusively to communities where planning was being done. The 2008 TALUP workshop for community planning coordinators did stress the importance of community engagement, but research participants involved in or with knowledge of TALUP processes in a various communities reported that this proved extremely challenging for local planning teams (SL, RL, OS, AG interviews). Identified challenges included:

- a lack of funding for community engagement specialists to design and help carry out programs;
- low levels of initial community knowledge about and interest in planning processes and some planning issues, especially technical ones;
- lack of experience with being meaningfully consulted and listened to, and relatedly a distrust of 'official' processes;
- the absence of existing social institutions or infrastructure to tie into or make use of for consultation activities;
- competing local priorities, especially during times of crisis in communities;
- and, confusion created by the overlapping of information and consultation programs from the earlier ESPI and Hydro processes, occasional visits from provincial ministers and officials, and activities of the East Side Road Authority that included general information meetings, wildlife studies, vegetation surveys, etc., which all competed for attention in some communities.

Clearly, for public participation in ESPA communities to be meaningful, long-term programs were needed that would build the individual and institutional capacity for the deep and sustained engagement that would enable high quality input and guidance to be provided to TALUP processes, and this would require consistent and adequate funding and considerable attention from planning teams that were often already struggling to manage basic aspects of planning. One participant involved in local planning described deep and sustained community engagement as needed for generating input into plan development and for creating a sense of ownership that would support ongoing plan improvement and implementation. To achieve this

they suggested the planning team should focus on working with the youth, for example by developing educational programming and activities on the land related to traditional ecological knowledge, cultural practices, and basic ecological science that could be delivered through the school and summer programs, so that in twenty years they would have an appropriately informed and motivated cadre of young adults committed to the protection and sustainable use of their traditional lands (OS interview). This is in line with the scholars discussed earlier who argued that management and planning for land use and economic and community development should start with and incorporate revitalized Indigenous values and (re)connection to the land (e.g., Alfred, 2009; Ladner, 2009; Newhouse, 2000; Slowey, 2009; W. Wuttunee, 2004); however, the participant felt that such an idea, no matter how sound and important in the long term, would not be possible because it was not something the province would consider part of planning, the federal government was already underfunding education programs, and the community lacked the capacity to do it themselves and had no ongoing funding from any other sources to retain relevant educational and traditional knowledge specialists to develop such programming and capacity with them.

7.3.3 Feedback to Public Discourses

The second aspect of relating to public discourses, that of providing quality feedback to the public, was particularly underdeveloped in the ESPI and WNO. There was talk of the Secretariat developing a communications plan early on in the ESPI Phase 2, and in August 2003 when the Secretariat's new executive coordinator was introduced it was noted that a communications officer had also been hired, but there is no further mention of a communications plan or of the communications officer (ESRT Minutes, May 31/02; Aug. 8/03).

The Secretariat did produce several pamphlets or newsletters – I was able to find copies of three – one from November 2000, introducing the basic concept of East Side planning, one that appears to be from the start of ESPI Phase 2, which introduces the basic goals and components of the BAP and promises that the ESRT will be consulting broadly, and the third from 2008, which provides an overview of WNO activities and contains supportive messages from Ministers Struthers of Conservation and Robinson of Culture and Heritage. A short video was also produced and translated into Ojibwe, Oji-Cree, and Cree and used in the ESPI Phase 2 community visits to introduce community members to the planning process, and this was intended to be adapted into a radio spot as well, although I was unable to confirm if this was done. There was also mention of work to translate portions or a summary of portions of the ESPI Phase 2 status report, *Promises to Keep,* as well, but there is no mention of the success of this project. This appears to be the extent of efforts taken to communicate with the public outside of the limited public engagement activities discussed above.

At most, these efforts were aimed at informing the public of what activities the ESPI and WNO had and were planning on doing, and do not attempt to provide information on specific planning issues or to delve into some of the nuances and complexities of planning approaches and topics they were confronting in their work. This approach to communications was not designed to stimulate public reflection or discourse about or engagement with the planning processes, nor did it invite feedback. There were frequent references in ESRT, FNC, and WNO Council minutes to the realization that they were faced with a daunting and complex task, far more so than many had expected at the outset. It was even more so for members of the public who were kept largely in the dark, hearing rumours and the occasional public announcement

from the government and infrequently from the ESPI and WNO themselves that there was some massive planning effort afoot. There were members of the public, especially from the environmental community, ESPA residents, and those with a stake in resource and economic development, who were keenly interested. To be fair, the ESPI and WNO were not mandated to perform the sort of public communication and education that I am advocating, but a significant opportunity was missed to at the least provide these publics with sound information, or even better, with summaries of some of the main positions, concerns, and controversies, along with an evaluation of supporting evidence and arguments, that were considered around the planning tables.

7.4 Relations with the Political-Administrative System

As described in section 2.5.3.3, the relationship between NREM processes and the political-administrative system is generally thought of in terms of the process providing rational steering of the system by communicating the outcomes of its internal discourse into the system in the form of decisions, recommendations, plans, etc., that the political system then responds to with appropriate decisions and policy actions. My examination of the ESPI and WNO processes underscored the importance of another face of this relationship, that of the system steering the NREM process, which could range from simply mandating the process to consider certain issues or problems the political system is grappling with, to interfering with or forcefully directing the process to arrive at certain ends predetermined as in the systems own interests. At its best, this steering of the process represents the system behaving democratically in seeking publically-informed guidance before taking action, while at its worst it can undermine

democracy by essentially manufacturing falsely-claimed democratic cover for politically

motivated, self-interested power moves.

Before discussing these two faces of steering, some general comments about the

relationship between the provincial government and those involved in the ESPI and WNO. As

discussed in chapter 4, sections 4.3.1 and 4.4.1, Indigenous peoples regarded the federal and

provincial governments with suspicion and distrust, which, as a senior provincial employee

noted, was "certainly historically well-earned" (confidential). Yet, especially at the beginning,

the new NDP government was viewed more favourably, as the chief of an ESPA First Nation put

it, "the government was friendly ... they were responsive to what we wanted" (confidential). As

a result of the tension between these two perspectives on the Manitoba government, First

Nations leaders were willing to participate, but were wary of government motives, especially

that the ESPI and WNO would be used as vehicles to legitimate further loss of control over their

traditional lands and resources, so to a large extent effective participation on an ongoing basis

hinged on trust being built (GN, TK, NE, NP, SL interviews). As described in chapter 4, sections

4.4.2 and 4.5.1, the environmental community similarly tended to be suspicious of

government's development agenda, but was energized by the previous decade of sustainable

development policy work in the province and the NDP's stated environmentally progressive

agenda (HE, SA, ON, KS interviews). Industry stakeholders had had a reasonably successful

relationship with the previous Progressive Conservative government and were cautious of what

approach the NDP might take towards development, especially regarding tougher

environmental protections that could limit development options (GN interview; see Manitoba

Prospectors & Developers, 2003, June 4). In contrast to this, Tembec, the primary forestry

player in the ESPA, had already embraced the concept of sustainable development and had established relationships with local First Nations and anticipated being able to continue and to expand their operations in and through the planning process (see Tembec ESPI Comments, 2001, Dec. 20).

It is also worth noting that the ESPI began with high level support from within government. As described in chapter 5, section 5.3.3, Oscar Lathlin and Eric Robinson were both Indigenous Cabinet Ministers through the course of the ESPI and WNO who were involved in the processes and advocated for them and for Indigenous interests in general at the cabinet level. As seen in various places in chapters 5 and 6, other provincial ministers, particularly of Conservation and those responsible for transportation and Hydro, also attended and presented at ESPI and WNO meetings and were regularly briefed by the Secretariat, and in the ESPI Phase 2 there were oblique references to FNC members meeting privately with government ministers while in the WNO the ECoC was formed expressly to meet with the Conservation Minister. This contact seems to have been somewhat haphazard and the lack of transparency means it is not entirely clear who was providing what information or in which direction political pressure was being exerted, but the point is that there was a direct connection between First Nations leaders and high levels of government. As described in chapter 4, section 4.5.1 and chapter 5, section 5.2, relevant government departments were highly supportive of the all-season road, of opening the ESPA to resource development, and of planning for these, and as seen in chapter 6, section 6.5, the province was visibly behind the World Heritage Site project, all of which meant that the ESPI and the issues it was mandated to deal with were known to be a high priority within government from the start and the process proceeded with numerous direct

connections to high levels within the political-administrative system. It was thus expected that the resultant planning would address multiple government priorities, which was seen in the identification of planning issues in the government-shaped ESPI Phase 1 report.

7.4.1 Systems Steering

The ESPI and WNO processes were mandated to develop a plan, or plans, first a BAP and later TALUPs, that the provincial government would take up and, if approved, implement. As such they were explicitly designed to deliver systems steering as described above. However, no BAP was produced and out of 14 communities that began work on TALUPs only four were completed. Those four plans were approved and are regulated under provincial legislation, and so, together with the management boards also set up under the legislation, continue to have a very real effect on provincial actions and decisions within their boundaries. There was a negotiation process between the First Nations planning teams and the province regarding the plan contents and later again to develop an implementation agreement, and in these the communities did have to make concessions that, in their view, weakened the plans, but nonetheless in those four instances the WNO process did produce tangible results, agreed to by the First Nations and the province, that do actively steer the land and resource use decisions and actions of the political-administrative system.

The resource management and planning boards established as part of implementing these TALUPs consist of equal numbers of community and provincial government members, and it was observed that working relations have been generally positive and respectful, and that this is in large part due to time spent working collaboratively and building trustful relationships (SL, RL, OS interviews). However, the steering power of these boards is still only

advisory, and recommendations they make about development proposals and policies developed as they work to further flesh out and implement their plans could be unilaterally rejected or amended by the province. So far this has not happened, in large part because the boards work collaboratively with provincial representatives included who can help ensure that the boards' advice is acceptable to government, but community board members also felt that their First Nations had gained a certain amount of political power, if perhaps as only unofficial moral persuasion, by which they could also pressure the province to see their perspective and move towards their positions. They also suggested that if pushed by the province into a position they simply could not accept, or if they took a position they could not compromise on and that the province objected to, then they would be prepared to take a stand and fight with the tools at their disposal, including the media, the courts, and direct action if necessary (3 interviews, confidential).

The ESPI process produced *Promises to Keep*, with over 100 recommendations, as a step on the way to a BAP, and this too had some steering effect on the government. Most notably acted upon were the recommendations to continue a reconstituted version of the ESPI, which became the WNO process, to restart protocol negotiations with First Nations, and to continue with planning and construction of the all-season road. As described in chapter 6, section 6.2, while they were not intended to be implemented in isolation, the government claimed to be following other select recommendations from the status report, stating by 2009 to be making progress on 97% of "relevant" recommendations, but with no details offered, progress tracked, or explanation of which were relevant, this appears more like cover for government following its own priorities and picking and choosing to do what it considered in its interests. Still,

Promises to Keep did arguably constitute some level of steering of the political-administrative system as a result of ESPI work, although as discussed in chapter 5, section 5.3.6, some felt the report was itself shaped, at least in part, by political priorities and influence from within the political-administrative system.

The *WNO Accord* that resulted from years of protocol negotiations could also be argued to have had a steering effect on government action. It was clearly less than it could have been, but the official acknowledgement of basic concepts such as the existence of traditional territories, that land and resource management was a shared responsibility, and that the First Nations and province ought properly to relate on a government-to-government basis did begin to define the contours of a new context for relations between them regarding land and resource use planning and management. This may have had only limited effect to date, but as an Elder pointed out about the *Accord*'s promise of relating government-to-government, "it's only on paper, but it's on paper too ... waiting to be given life, our leaders and us breathing life into it:" "this is the first step, this breaks the usual ... we have the document, that's an accomplishment ... we've laid the foundation, it's up to the chiefs and the leadership to use that" (confidential). It was observed in chapter 6, section 6.5.2, that learning needs to happen and capacity developed within government to support trust-building and the new way of doing things demanded by this new government-to-government relationship, and this takes time and a concentrated effort, so potentially some of the steering effects of the ESPI and WNO processes will continue and be strengthened with time. However, it was also noted that the extent to which relevant learning has been embedded within the system's institutional structures is questionable and that some more recent actions reveal a tendency to revert to

paternalistic patterns of relating to First Nations. It is also uncertain to what extent the First

Nations who were able to only make a start on planning will be able to retain the learning

achieved and momentum established, especially given the rapid turnover in community

leadership and planning coordinators, institutional capacity still to be developed, and everyday

pressures of community governance. In this respect, the steering potential of the ESPI and

WNO remains ambivalent, and as observed above, it may be up to the First Nations to hold the

government accountable for doing their part to give life to the promise of a new relationship.

7.4.2 Process Steering

The ESPI and WNO were also steered by the political-administrative system in a variety

of ways. In the most basic sense, the commitment to do planning featuring meaningful public

participation before making decisions about protection and development was fundamentally a

democratic move, and it was in this context that the government decided to make broad area

planning on the East Side a central feature of its sustainable development strategy in 2000.

However, the choice of region was made unilaterally, and the choice of the broad area

approach, although recommended by COSDI, was also made without consultation with the

area's residents or stakeholders to see if it addressed their needs and interests, which, as was

seen in chapter 6, section 6.3.1, the local First Nations ultimately felt it did not. In this sense it

was a top-down approach from the start, and this orientation was reinforced through Phase 1

where government, via the review panel and intra-departmental consultations, largely

determined the ESPI's mandate and scope, basic organizational structure, and issues and

opportunities to consider, and thus the overall approach and direction were set according to

government understandings and priorities that were slanted towards development planning

(see chapter 5, section 5.2). Phase 1 was responsive to public and stakeholder input in a few important ways, but the chance for real collaboration in process design was undercut by timelines and budgets insufficient to build awareness and develop capacity for meaningful consultation. This initial top-down orientation was directly reflected in the ESPI organizational chart used in Phase 1 presentations that showed the Ministers of Conservation and Aboriginal and Northern Affairs at the apex and the plan itself to be drafted by a governmental working group reporting to the ministers, and with the public and stakeholders directly involved only via a round table that would advise this government group.

During ESPI Phase 2, steering from government was less direct. In fact one ESRT member commented that during this time the process was so ungainly that "no one could steer that process" and it mostly followed its own path (SB interview). Yet, it was the province who established the ESPI bodies, appointed their members, and approved their terms of reference, and in that respect it clearly was an initiative of the provincial government. There were also suspicions that the Secretariat, staffed primarily with members seconded from government and who met regularly with ministerial staff, was strongly influenced by and reflected government perspectives and priorities (see chapter 5, section 5.3.6.1). The Secretariat did certainly help shape the course of the ESPI, for example, by setting the agendas and preparing background and guidance documents for meetings, organizing and recording consultations, and preparing *Promises to Keep*. As a result, to the extent that claims of government influence were accurate this would constitute significant steering of the ESPI by the political-administrative system. The province was also in control of the ESPI's budget, which meant that not all that the ESRT and FNC wanted to undertake was possible, most notably taking the extra time and spending the

money necessary for additional rounds of community consultations and properly resourcing the working groups and giving them the time necessary to fully develop their recommendations for the status report.

The lack of transparency around the development of *Promises to Keep* raises questions about the extent to which it was shaped by government influence and reflected its perspectives and priorities as opposed to those of ESPI participants and the public and stakeholders they consulted. The report was written by consultants retained by the Secretariat, and some of the recommendations do not appear to have originated with any of the working groups, the ESRT, or the FNC, although the bulk of these groups' recommendations do appear in some form in the report and constitute the majority of its contents (see chapter 5, section 5.3.6.1). What is less clear is if the reported recommendations from the working groups accurately reflect their actual deliberations and decisions, and there was some suggestion that select individual opinions were cherry-picked and reported as group recommendations while some more consensual ones were not reported at all. It is true that some of the sections of the report seem slanted towards directions preferred by government, for example, recommendations regarding road, forestry, and mining development, but it is also true that there is much in the report that, if implemented, would have pushed the government beyond what it desired. For example, recommending that the protocols between the province and Indigenous governments include a resource-sharing framework and provide for revenue/royalty sharing for all extracted resources and that proponents be required to negotiate impact benefit agreements with affected communities before any development would be approved, were both seen in later protocol and RRMB negotiations to be beyond what the province was willing to even contemplate. There

was doubtless at least indirect government influence on *Promises to Keep* via the Secretariat,

but it was also a product of the work of the ESRT, FNC, and working groups, and did reflect

some of what was heard during the inadequate public and stakeholder consultations.

As discussed in section 7.2.2 above, the entire WNO process was characterized by very

limited transparency, leaving it even more open to external steering, both by First Nations' and

the provincial governments. However, the First Nations governments were included inside the

WNO process, with their leadership constituting the CoC, which directed the PNT, ECoC, and

WNO Inc., and relevant First Nations were of course directly involved in RRMB negotiations and

local TALUP activities, so by virtue of how the WNO was organized and what directions it

pursued they were supposed to be steering much of, and once the BAP was abandoned, all of

its work.

The province, on the other hand, was supposed to support the WNO process, financially

and by providing data and expertise, but to remain external to it. They were of course directly

involved in much of the work, being the 'other side' in protocol and RRMB negotiations, and

they understood themselves to be planning partners with First Nations in their TALUP work, but

the First Nations were to take the lead. Through this involvement in negotiations the province

was able to exert influence over the final outcomes, which resulted in the *WNO Accord* and

RRMB drafts offering significantly less governance power and jurisdiction to First Nations than

they had pushed for (see chapter 6, sections 6.4.1 and 6.4.3). And with their unilateral

development of the *East Side Planning Act*, their choices of what aspects of TALUPs would be

more supported, and their actions in narrowing the scope of what approved plans would

address, the province significantly steered the TALUP process towards their interests in

development zoning and affirming provincial jurisdiction (see chapter 6, sections 6.4.2 and 6.5). Further, as noted above for the ESPI Phase 2, the province was able to exert some control over the direction taken by the WNO via their influence over the Secretariat, who again set meeting agendas and prepared background presentations and planning guidance documents, and also vetted TALUP proposals for WNO Inc. and arranged training for local planners. There were also several examples of using the process to further what was arguably more of the government's agenda – the ESPI and WNO were used as cover for the unilateral decision to move Hydro's Bipole 3 away from the East Side, the province's considerable support for the World Heritage Site nomination was rhetorically tied into and supported through the WNO process, and the all-season road project was presented as legitimated by and in accordance with the years of East Side planning despite the ESPI and WNO having no control over nor providing specific direction to it (see chapter 6, sections 6.3.2-3 and 6.5.2).

The most significant provincial steering of the direction and actions of the WNO was accomplished through its control of the budget. From the early days of the ESPI through the TALUP phase of the WNO, there was always talk of the need to raise additional funds from the federal government and charitable foundations, but this was not successful apart from a few small federal grants, and in fact significant fundraising does not appear to have ever been attempted. It was suggested by research participants that the federal government essentially took the position that they already provided funding for First Nations concerns within their jurisdiction, and since land and resources were provincial responsibilities, the ESPI and WNO should be the province's to take on just as it would for planning with rural municipalities (AG, NE, SA interviews). As a result, the ESPI and WNO were entirely reliant on provincial funding for

all of their activities, making them highly malleable under provincial budgetary directions and

constraints.

As described in chapter 6, section 6.2, at the very start of the WNO the WNO Council

chair noted that the province had reduced Secretariat staffing, the PNT observed that the

province's budget allocation for their work was insufficient, and the First Nations threatened to

withdraw from the process if the province failed to meet their budget request that was more

than eight times what the province was offering, all of which demonstrates that in the minds of

participants the WNO was underfunded from the outset. Starting in 2006, the province's

budget for the WNO was directed at supporting community-based planning, and despite

repeated promises, funding was never provided for community consultations or the work of the

half-dozen working groups that had been formed to work on BAP issues, so in a sense the BAP

was killed not because the WNO abandoned it but because the province decided to leave it

unfunded (see chapter 6, section 6.3.1). Even apparently available provincial funding was

selectively spent by the Secretariat – throughout the TALUP phase of the WNO, from 2006

through 2012, the province budgeted an average of just over one million dollars annually for

the WNO, and on average $154,000 was left unspent each year. Yet, insufficient funding

continued to plague the WNO and constrain activities and supports participants considered

vital to the TALUP process (see chapter 6, section 6.2). Research participants repeatedly noted

that the Secretariat failed to provide some of the appropriate kinds and range of expertise, for

example consultants with knowledge of community socio-cultural and needs assessments and

planners with experience working with First Nations and doing comprehensive, integrated

planning, or to deliver the depth of training, for example in community engagement and plan

coordination, that First Nations desired and needed to support their TALUP work. The need for

this was highlighted by the consultant hired to assess the TALUP process and provide

introductory training to community planners in 2009-10, and while the Secretariat stated they

wished to retain him further as additional training was needed that he could provide,

insufficient funds was claimed as the reason his contract was not extended (see chapter 6,

section 6.5.2). As further noted in section 6.5.2, several research participants suspected the

Secretariat's selective spending was the result of pressure from the province and was designed

to ensure robust and comprehensive TALUPs were not developed, as that might limit future

options for development in the area, and while there is no concrete evidence of this it does

reveal that at least some WNO participants believed the province was directly steering the

planning process and that serious distrust of government motives persisted.

The considerable impact of insufficient funds provided through WNO Inc. for TALUP

development was discussed above and in detail in chapter 6, section 6.5.2. It is true that initially

the province expected the federal government to match their funding to WNO Inc. and for First

Nations to raise some of their own funds, neither of which transpired to any significant degree,

but it is telling that even in the case of the four Pimachiowin Aki communities where

significantly more funding was available, the province seemed to prefer basic plans that

primarily outlined protected areas and areas where different sorts of resource developments

could be pursued. The kind of comprehensive sustainable development planning, with equal

focus on social, environmental, and economic factors that was envisioned at the outset of the

ESPI process was effectively off the table for TALUPs, and this was reinforced by the narrow

parameters for planning established in the *East Side Planning Act*. One research participant, in

commenting on First Nations' attempts to use the WNO and TALUP processes expansively, to

pursue their own interests and goals via a self-government approach to planning, said, "I think

the government knew what was happening and then they said, 'oh, we better stop this, and we

better pass this legislation,'" and went on to note that for plans to be approved the province

would "do whatever they needed to do to cut it down ... they have criteria in the legislation,

and the plan would have to follow those criteria" (NP interview).

A senior government employee familiar with the ESPI process from the Phase 1 days

explained that the initial conception of land use planning within government was "like a typical

land use plan that says, 'no development zone, forestry zone, mining zone, utility corridor...,'"

basically planning to direct resource development, but then they came to understand that

planning would be much more participatory and integrated with a wide range of social and

cultural concerns and interests, and that economic development interests would not be driving

planning as it had usually done previously (confidential). But research participants familiar with

TALUP activities described the province as pushing for precisely the former sort of land use

planning, where traditional knowledge and land use studies were fine to do, but at the end of

the day they wanted plans that were "not so detailed, simpler," that instead of being

comprehensive and integrated were basically "lines on a map" that showed protected areas

and development zones (SL, AG interviews). It is unclear how deliberate this steering was, and

research participants did not point to any individuals or conspiratorial group within government

strategically manipulating the ESPI and WNO, rather there was the sense that absent strong

leadership within government pushing in new and innovative directions, existing administrative

procedures and inertia would tend to channel power towards maintaining and reproducing the

status quo, which favoured development planning. In any case, the effects of underfunding and insufficient supports for holistic, integrated planning, an *Act* that conceived of planning and First Nations jurisdiction narrowly, and the province's influence as a planning partner all combined to push TALUP activities in a direction of preserving much of the existing underlying power relations, of seeking to provide greater certainty for developers while preserving maximal authority and flexibility for the province regarding the management and regulation of future development activities.

Wellstead and Rayner (2009), in the only peer-reviewed article to directly examine the ESPI and WNO, describe 1993-2008 as a period of sustainable development and land use planning policy experimentation and evolution in Manitoba. Starting with a focus on defining and implementing sustainable development in the 1990s, the concept of integrated broad area planning that was introduced through COSDI was layered atop existing land and resource use planning and management policies, and this layered policy approach informed the ESPI from 2000-2004. They then identify a policy "conversion" process from the ESPI to the WNO where the range of actors, interests, and aims were all narrowed into a process that was focussed on First Nations and enhancing their governance capacity and economic opportunities via TALUP development. On their analysis, up to and including the ESPI this was primarily a government driven initiative aiming to achieve their mix of policy goals, whereas they describe the WNO as a government-established quasi-autonomous non-governmental organization that took on some of the government's traditional functions, in this case regarding land use planning. This suggests that they regard the ESPI as having been more top-down and directed, or steered, by government priorities, whereas the "post-conversion" WNO was more community-based and

steered primarily by First Nations interests. However, my analysis above suggests provincial steering was fundamental to what the WNO was and was not able to accomplish.

While they do not develop this in any depth, Wellstead and Rayner identify discourse as playing a decisive role in determining the nature and direction of this policy conversion leading to the WNO, by which I presume they mean discourse within the political-administrative system and the ESPI and WNO. Based on my research and given the direction and nature of the shift observed over the first two years of the WNO, this decisive discourse clearly was not that of the environmental community, the general public, or industry stakeholders, who all yet favoured completing broad area planning. First Nations groups and leaders on the other hand had been pressing for greater involvement and influence, as well as a greater focus on their concerns and interests, from the ESPI Phase 1 on, and there were those within government, including senior Cabinet Ministers, who supported this as well. There were pragmatic and normative elements within this discourse that argued against broad area planning – from First Nations who were uncomfortable planning for others' lands and who desired the opportunity to stake out their own territories and enhance their jurisdiction over them with an aim to preventing harms and ensuring benefits; and from provincial staff who had come to realize that integrated broad area planning was simply too complex, time consuming, and costly for the province to take on, along with their growing realization that for legal reasons the province needed to meaningfully engage with First Nations before planning and development proceeded on their territories. However, as the WNO unfolded, its narrowed focus and aims were apparently still too much for the province to fully support, or perhaps as some participants suggested they came to realize that they stood to lose more power and jurisdiction than they could accept, and the aims and

focus of the planning process were shrunk yet again and directed back towards the

government's control. So on my analysis, the relationship between the ESPI and WNO on the

one hand, and the provincial political-administrative system on the other was characterized by

push and pull, by steering and being steered, but in the final analysis it was the provincial

government who had and retained the greater power, and while they did give up some of this,

especially initially to the WNO, there were narrow boundaries beyond which they were not

prepared or able to go.

Bowie (2013) describes two general streams of scholarly analysis of the role of

Indigenous peoples in environmental and resource management – one that focuses on power

relations, state management techniques oriented to insinuating Indigenous peoples into its

institutions and mindset, and Indigenous resistance to state management systems; and another

stream that highlights collaboration, learning, and the transformation of state management

systems from reductionist command and control towards holistic and collaborative approaches.

In the narrative of the ESPI and WNO, there are elements of both. The ESPI began as a

government management initiative that sought to involve Indigenous peoples within it on the

province's terms, and from 'within' First Nations participants[39] resisted some of the structural

parameters, increasing their power within it, and bent the initiative towards their interests as

they continued to work with the province to the point where the WNO became exclusively

about First Nations-led planning for their traditional territories. This was not resistance in the

pure refusal and denial sense, nor was it collaboration in the sense of egalitarian joint design of

process, identification of priorities and interests, and choice of means, instead it vacillated

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[39] I move deliberately here from "Indigenous" to "First Nations" participants as a reminder, as described numerous
times earlier, that the Métis were quickly marginalized in the ESPI and especially the WNO processes.

closer to the middle between these extreme ends at different times and in relation to different issues. Yet, when First Nations resistance was at the fore and they seemed on the verge of achieving significant alterations or transformations of governance and management options, power within the system pushed back in favour of the status quo. This resulted, for example: in the weakened and general 2004 MoU and 2007 *WNO Accord* in place of detailed Protocols of Agreement that would have ensured meaningful consultation and laid the groundwork for self-governance underwritten by resource and revenue sharing; and in the narrow conception of planning slanted towards clarifying opportunities for resource development and affirming provincial sovereignty over First Nations traditional territories and resources articulated in the 2009 *East Side Planning Act* and experienced in the TALUP process, instead of the desired holistic planning including social, cultural, and community development considerations and establishing at least co-jurisdiction over traditional lands.

As described in chapter 2, section 2.4.3, Habermas (1996a, pp. 379-384) observed that even in his model of deliberative democracy, under "normal" conditions when conflict potentials are low and matters relatively straightforward, political power in the form of decisions and policy directions will follow an "unofficial" path and flow from the centre to periphery, from the top-down, from the political system to the public. But in a deliberative system of democracy, when conflict potential is high or matters are complex and public will uncertain, this circulation of power can be reversed to the "official" circulation pattern, and decisions and policy directions steered according to legitimate public political opinion and will. In my conceptual framework, a primary task of NREM processes is to generate this opinion and

will and to act as sluices and filters that deliver it in a refined form to the political-administrative system.

In the case of the ESPI and WNO, the above analysis makes clear that while the province ostensibly recognized the need to take direction from the public via the planning processes, the circulation of power was not completely reversed to the "official" bottom-up pattern. It more closely resembled what Habermas referred to as the "mobilization" model of top-down democratic governance, where issues and parameters or characteristics of potential solutions are introduced from within the system, and those driving the initiative seek a mobilization of public participation to generate support and provide limited guidance to help ensure a successfully implemented outcome can be arrived at that still satisfies political-administrative interests and broadly fits within the parameters set at the start. This was seen, for example, when the ESPI, and especially the WNO, began to seek legal and administrative agreements too far outside of what the system desired and which were subsequently denied or watered down significantly, and was apparent again in the narrowing of the TALUP process when communities tried to do much more than plan for development and protection zones. To the extent that the ESPI and WNO were able to provide steering only within boundaries and in terms acceptable to the government they were never really able to reverse the circulation of power, and thus outcomes would be either acceptable to government or simply not achieved, which helps explain how and why so relatively little of substance was accomplished despite the years, dollars, and efforts spent at it.

7.5 Planning and NREM in the Context of Indigenous-Canadian History

It's not enough to see the roots of the problem, you gotta understand the path that leads to those roots, and that's essentially what has to be done in the case of the [Indigenous] communities. There's been so much damage over 200 years, you can't overcome it in a short period of time. And sometimes we're not even trying to understand it, what we're doing is we're trying to ignore it. ... That's not a road to reconciliation. (NE interveiw)

7.5.1 The Nexus of Self-government—Land—Sustainable Economic Development—Socio-cultural and Community Health and Healing

The nature and experience of Aboriginal and treaty rights especially relevant to NREM at the outset of the ESPI, and the long history leading to it, were explored in chapter 4, section 4.3.1, and Indigenous involvement in NREM in Manitoba was discussed in section 4.4.1. Overall, this has been a history of dispossession of and disconnection from the land and resources on it, of political disempowerment, economic marginalization, and socio-cultural disruption and disorientation – in short it is a genocidal history drawn out over hundreds of years and driven by dominating Euro-Canadian interests, political and economic systems, and cultural institutions (see also section 4.3.2). Some of the consequences of this history are seen in social dysfunction, poverty, and a deterioration of community health and wellbeing, such as are reflected in the general conditions described for Indigenous communities in the ESPA in section 4.2. Yet this history is also a story of Indigenous resistance and resilience, of an ongoing struggle to maintain distinct cultural identities while adapting to changes largely out of their control. When opportunities were afforded or could be created, Indigenous communities articulated and advanced their interests and aspirations, and especially since the 1970s, this has included making use of the political and legal tools and institutions of the dominant society to hold governments to their treaty promises and to safeguard and expand their unique rights, including to self-government and control of their traditional lands and resources (see chapter 4,

sections 4.3.1.3-5). As a result, the latter part of the last century saw a considerable clarification

and protection of these rights in federal government policy and judicial rulings, but this has

been, in fact, less expansive and empowering than is generally perceived in Canadian society,

leaving Indigenous peoples in the position of yet needing to press to convert this progressive

rhetoric into meaningful realities, to preserve and strengthen their cultural identities, and to

work towards healing from the effects of a colonial legacy and of presently lived inequities.

A significant site of this struggle has been the management of the land and resources

Indigenous groups have traditionally occupied and used, which have vital cultural-spiritual,

political, and economic implications, all of which are also intertwined and interdependent. As

discussed in chapter 4, section 4.3, Indigenous cultural and spiritual understandings and values

developed rooted in connection to the land, which conditioned economic and political norms

and practices, and the argument was made that for the economics of resource development to

facilitate progress towards holistic health and wellbeing for Indigenous peoples and

communities, as is so often assumed, it needs to be informed and directed by their values and

interests, which requires reconnection with their lands and achieving meaningful levels of self-

governance capacity and authority (e.g., Alfred, 2009; Ladner, 2009; Slowey, 2009, 2013; W.

Wuttunee, 2004). Indigenous leaders have also argued since the 1970s that meaningful self-

government requires a degree of jurisdiction over traditional lands and resource bases

adequate to enable progress towards economic self-sufficiency. However, even if self-

government agreements and meaningful jurisdiction over land and resources were in place,

given the decimation of Indigenous political norms and governance institutions, there is

significant capacity yet to be (re)built, and in many cases the Indigenous values argued

appropriate to guide and direct the management of economic and resource development need

revitalization as part of socio-cultural healing that many regard significantly tied to a

reconnection with the land and cultural practices on it.

Further complicating these issues, Indigenous involvement in NREM frequently invokes

the 'dilemma of development' discussed in section 4.5.2., which frames Indigenous choices in

stark, dichotomous terms: embrace resource development, the capitalist economy, and the risk

of environmental damage, or maintain and revitalize traditional cultural values and practices

and respect the land and nurture right relationships with it. What is needed is to navigate

between these extremes, to reject them as false choices, to recognize that "development is not

about choosing one or the other but rather about how to secure the best of both worlds," and

that the actual dilemma of development Indigenous peoples increasingly face is to "choose to

be part of development or have it done to them" (Slowey, 2009, pp. 229, 232). As well, while

some form of decolonization is clearly needed given the history and legacy effects described in

chapter 4, how communities choose to approach this, what mix of values and interests they

choose to pursue, and the continued development of their cultural self-understanding cannot

be prescribed from without.

Within this complexity, what has become clear from my reading of scholars[40] attending

to the nexus of economic development, Aboriginal rights, and social, cultural, and community

health and wellbeing, and from my research interviews with Indigenous leaders, Elders, and

planners, is that clarifying and experiencing Aboriginal and treaty rights, developing self-

government capacity, management of resource development, jurisdiction over traditional land

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[40] E.g., Alfred (2009), Ladner (2009), Newhouse (2000), Simpson (2002), Slowey (2000, 2009, 2013), and Wuttunee (2004).

and resources, realizing local benefits from economic development, achieving spiritual and

cultural renewal, nurturing right relationships with the land, and building social and community

health and wellbeing are all bound up together, and are appropriately understood as

fundamentally integrated and approached holistically in planning contexts. From this it would

follow that land use planning that includes traditional Indigenous lands, as the ESPI did, and

especially community-based land use planning explicitly for traditional Indigenous territories as

was undertaken in the WNO, ought to be conceived broadly and strive to integrate these

considerations in its articulation of a vision for and normative and practical principles governing

the use of the traditional territory planned for. A part of this would be the initiation and

support of ongoing discourses within involved communities where cultural understandings,

values, and self-identity are developed and explored as part of the visioning process so that the

plans themselves can articulate and implement the aspirations and will of the community, so

that they can rightly be thought of as democratic expressions, as part of nascent self-

governance. This holistic understanding of planning is not precisely what the ESPI or WNO were

charged with implementing, but they were mandated to be in accordance with Aboriginal and

treaty rights, which include the right to self-government, to meaningfully involve Indigenous

communities, and to consider environmental, health, social, and economic factors, and taken

together this does imply a comprehensive and holistic approach as just described.

7.5.2 Jurisdiction and Governance of Land and Resources in the ESPI and WNO – Perspectives and Realities

The First Nations involved in the ESPI and WNO did see planning through the lens of

self-government and jurisdiction over their traditional territories, which reflected their

normative understanding of history and of their rights, and this stands in stark contrast to the view taken by the province and the majority of involved stakeholders that this was planning for Crown lands in the public interest, which reflected the factual reality. The difference between these two perspectives is rooted in differing tellings of history that have different normative implications. As described in section chapter 4, section 4.3.1.2, directly expressed in research interviews, and recognized in the *WNO Accord*, First Nations Elders teach that the historic treaties were solemn agreements between sovereign nations in which their ancestors promised to share use of the land with the newcomers, and this is also supported by extrinsic evidence from treaty negotiations and cultural understandings and traditional teachings regarding the nature of the land and appropriate human relations to it. According to this perspective, sharing of land implies sharing of power and jurisdiction. The legally prevailing counter-perspective holds that the First Nations voluntarily gave all of their land and the resources on it, save for their tiny reserves, to Canada in the treaties, and thus First Nations title to and sovereignty over their lands did exist but it was extinguished in the treaty and, after the 1930 NRTA, the province of Manitoba has total and sole jurisdiction over the land and resources that ESPA First Nations refer to as their traditional territories. The province, stakeholders, and majority of the Manitoba public do not generally think in historical terms about their perspective, but rather simply recognize the facts of how Crown land is defined and of provincial jurisdiction over it. Many First Nations people do think historically about this, and beyond reference to treaty interpretation as mentioned above, simply know that they, as a people, have existed on the land since before the European colonizers arrived, and understand that the land belongs to them and they to the land. The difference between these two perspectives is also that one

articulates a normative understanding, the other a fact. As an Elder and former chief of an ESPA

First Nation put it:

> Still, it is the case that in our heads and our hearts we're, "this is our land," and then that's how we relate, in everything we do. Even though factually, or actually, legally, lawfully and all that it's not, the Crown is able to impose, but still there's some sort of resistance either through rhetoric or activity... And that's how we came into that broad area planning, with that perspective (confidential).

From the history described in chapter 4, section 4.3.1, and my exploration of Aboriginal

rights and the courts in section 4.3.1.5, I find much support for the rightness of the norm

expressed in the First Nations perspective. Specifically, the Supreme Court has directed that

treaties are not to be interpreted legalistically and must acknowledge the First Nations culture,

perspective, and intentions at the time of signing, which as just described do not align with the

province's perspective. Further, the Court has stated that treaties are to be regarded as a

means for managing ongoing relations between First Nations and the Crown and are not

finished blueprints for governance or land use, meaning treaty interpretation was quite

relevant to the ESPI and WNO context. And directly to the point, in their *Van der Peet* ruling the

Court held that the fundamental purpose of the constitutional protection of Aboriginal and

treaty rights is to reconcile prior Indigenous sovereignty and title with the later assertion of the

same by the Crown. So I would argue that in respecting the rights of the ESPA First Nations in

the context of land use planning, the ESPI and WNO ought to have worked to reconcile these

two conflicting perspectives.

The fact that participating First Nations in the ESPI and WNO understood planning as

about self-government and authority on their traditional territories was apparent from the

actions they took and discussions they had, as described in chapters 5 and 6, and was explicitly

articulated to me in interviews with First Nations leaders and planners. It is why they took exception to being treated as stakeholders around the table and why they insisted from the beginning on the 'government-to-government' language, which they subsequently sought to give meaning to. There were differences of opinion regarding how closely to cooperate and how hard to push back, on how much to compromise and when to take a principled stand, as was seen in some communities refusing to sign the MoU and *Accord*, and some speaking out strongly against the *East Side Planning Act* while others have made use of it, but establishing some control over the management of what they regard as *their* lands via planning was a goal held in common. It was seen as an opportunity to make their rights real and meaningful, especially to give some shape and substance to the elusive concept of self-government, to take a step breaking out of the usual cycles and towards developing the power, institutions, and capacities to progress in the direction of a future of hope and health for their communities. The legacy of paternalism and distrust loomed large, but their participation signaled that they were willing to take the chance that this might be different, after all, the government was coming to them upfront, asking them to be involved, and promising to hear them.

As seen in chapters 5 and 6, there were some early developments that seemed to augur well for recognizing the First Nations perspective and moving towards self-governance, for example, the ESPI Phase 1's addition of the FNC, Phase 2's MoU affirming a government-to-government relationship, and some of *Promises to Keep*'s recommendations that included resource and revenue sharing and what would have amounted to a strong form of co-management. The WNO similarly had elements pointing in this direction, for example: the shift of focus to facilitating First Nations-led TALUPs; drafts of the Protocols of Agreement that

would have recognized and implemented the Elders' understanding of the treaties as

agreements to share land and power by establishing NREM for traditional territories as co-

jurisdictional and requiring First Nations approval for developments to proceed; and the *WNO*

Accord that reiterated the government-to-government language and promised the joint

development of legal mechanisms for implementing First Nations plans and resource

management agreements. Taken together, these provisions could have formed a foundation on

which First Nations could build their self-governance capacity for managing their traditional

lands and resources, on their terms and guided by their values and interests, which I suggested

above, in recognition of history and the nature of Aboriginal and treaty rights, was the direction

the ESPI and WNO ought to have taken.

However, the ESPI and WNO did not match these largely rhetorical developments with

the meaningful actions needed to establish such a foundation. Regarding recognizing Aboriginal

rights, while First Nations do account for over 96% of the area's population, it must again be

noted that the Métis were effectively excluded from the ESPI and especially from the WNO. For

the First Nations, compared with the promising directions referenced just above, the *WNO*

Accord, *East Side Planning Act*, RRMB negotiations, and the way the TALUP process unfolded all

combined to narrow the effect and range of First Nations jurisdiction and authority for planning

for and management of their traditional territories while strengthening that of the province

(see chapter 6, sections 6.4 and 6.5, and chapter 7, section 7.4.2). In particular, the *East Side*

Planning Act, in reinforcing the province's exclusive jurisdiction over First Nations traditional

territories, was a rejection of the normative bases of the First Nations perspective, the very

perspective I suggested in section 7.4.1 above that had bent the ESPI and WNO towards

government-to-government relations and First Nations TALUP in the first place. Further,

TALUPs as resourced and their scope understood and directed by the province were unable to

undertake the sort of in-depth community engagement and visioning discussed earlier (see

section 7.3.2), nor to develop and present a holistically conceived, comprehensive vision for the

future where cultural, social, and economic development considerations were intertwined and

mutually supporting in accordance with community values and plans for land use.

Looking at the ESPI and WNO from the perspective of First Nations history, needs, and

rights, what is most conspicuous is how great an opportunity was missed. Reflecting back on

the discussion in section 4.3.2 regarding the gulf between social facts and normative

understandings that obtained for Indigenous communities in the ESPA at the outset of the ESPI

and WNO, the need and potential for appropriately rationalized democratic governance to

provide direction, even for the first small steps, towards the realization of greater justice and

wellbeing for Indigenous communities was considerable. From a basis of self-governance and

co-jurisdiction for managing traditional territories, the ESPI and WNO could have begun to work

out how to pursue resource development oriented towards community benefits instead of

external corporate profits, and could have supported First Nations in outlining and navigating

their own paths towards socio-cultural health and community wellbeing. Doing so would have

further begun to establish a renewed, honourable relationship with the Crown in place of the

legacy of betrayal and distrust. For the Métis, their consequential involvement, an appreciation

of their historic use of land and resources, recognition of the nature and implications of their

Aboriginal rights, and meaningful consultation could have begun to replace the consistent

history of being ignored, especially by the province, the nature of their nationhood

misunderstood, and having their rights effectively denied.

Following through on the implications of the First Nations normative position regarding

their rights, treaty, and land would have required the province to give up its totalizing control

over First Nations' traditional territories and the resources they contain, to relate to First

Nations as Crowns within the Canadian federation with whom they must equitably share power

and jurisdiction, in other words to move "courageously and imaginatively" towards supporting

First Nations self-government as the Manitoba Indian Brotherhood had urged decades earlier

(Manitoba Indian Brotherhood, 1971, p. 162). In addition to being the appropriate response to

the normative force of the First Nations position on sovereignty and title, as Simpson et al.

(2007) observe, ceding power to First Nations as self-governing partners is also pragmatically

necessary for creating a sustainable, just, and equitable economy in Northern Manitoba.

However, the province's exclusive and complete jurisdiction over First Nations'

traditional territories is itself a normative position that is entirely based on a narrow and

Eurocentric reading of history and interpretation of the treaties, and for the province to give up

some power to First Nations would be to recognize at least some validity in the First Nations

position, and some problematic assumptions in theirs. And this demonstrates the potential of

discourse to upset power relations and factual conditions, because were the province to

officially acknowledge the validity of the First Nations position the implications could be

groundbreaking. What if treaty First Nations retained title, exclusive or shared, to their lands

and resources? Would this mean they would have legal jurisdiction over them as Crowns in the

Canadian federation, and that Manitoba would need to negotiate with First Nations to figure

out how the province would share in the resources and use of their land? These are questions

the province, or at least its lawyers, apparently did not wish to see explored given the actions

taken that denied any co-jurisdiction in the *Accord*, *East Side Planning Act*, and RRMB

negotiations. But in doing so, a potential for reconciliation was thwarted and instead a

fundamental disconnection was reinforced. In the end, the ESPI and WNO represented more

continuity with Indigenous-Canadian history than the welcome break they seemed to promise –

for many in the Indigenous community distrust of the province has not been lessened, the ESPA

First Nations have no more legal power or jurisdiction than they had before the ESPI was

launched, and the majority of them do not have plans to articulate or provide any added profile

to their interests and aspirations – as one research participant put it, they are still under the

province's "colonial thumb" (AG interview).

Bowie (2013) concludes that in the context of resource management, Indigenous

communities are best able to achieve the broader normative goals I have been discussing when

they enter NREM processes with their own self-governance capacities established and are then

able to build and extend these capacities through their participation in collaborative

management processes where they have meaningful roles. In the ESPA, however, meaningful

self-government was not an existing reality, and just beginning to assert the right and develop

basic capacity were necessary first steps for the majority of the First Nations. As such, even

small gains were significant. Getting a provincial government to commit, in a legal agreement,

to establish and practice a government-to-government relationship with First Nations was a

breakthrough. Having the *WNO Accord* with the province include guiding principles affirming

the existence of "traditional territories," even if undefined and simultaneously described as

Crown land, and acknowledging that the Elders' understand the treaties as sharing the land and

power on it, even if not agreeing with it, was a first in Manitoba and more than most other

provinces had done. And funding the beginning of a process of planning for land use on their

traditional territories, along with passing a far from ideal *Act* that nonetheless provided for the

legal recognition of provincially approved TALUPs did allow communities to lay some of the

groundwork and initiate some of the public discourse that may yet be built on and whose

potential future implications remain open. However, what can be considered progress is at best

tentative and much of it could be undone. As an endpoint, the ESPI and WNO do not represent

much achievement, if any, in advancing self-government, increasing community wellbeing, or

establishing a new, trustful, government-to-government relationship between the province and

First Nations. But as a beginning or a step along a path, they do perhaps point in a progressive

direction, offer lessons learned, and thus offer some hope for meaningful achievements in the

future.

7.6 Summary

The first theme considered in this chapter dealt with the internal operation and

discourse of the ESPI and WNO processes, focussing on their inclusivity, transparency and

publicity, discursive quality, and connections with relevant expert knowledge complexes. The

ESPI was intended to be fully inclusive of the immediately affected and general public, relevant

stakeholders, and Indigenous peoples. Métis interests and perspectives were not effectively

considered, and the failure to make effectual use of the ESAC meant that stakeholder

perspectives, especially from the environmental community, were not appropriately developed

and integrated into the ESPI's work. The region's First Nations were perhaps the most 'included'

by virtue of the FNC whose position within the ESPI soon rose to a level alongside the ESRT. During the WNO, focus was turned exclusively to local First Nations planning and the rest of the public, the Métis, and stakeholder groups were not included in any direct way. However, from the First Nations perspective, as a government-to-government process it would have been inappropriate to include representatives of the public and stakeholder organizations around the table with them, and instead these interests and perspectives ought to be included via their provincial or First Nations governments. Numerous problems were identified with the publicity and transparency of the ESPI and especially WNO, and as a result, the ability of the public to provide useful input or to hold the processes or their leaders accountable was greatly reduced.

A key aspect of 'discursive quality' considered was decisions and directions taken on the basis of arguments and positions whose assumptions and supporting reasons were examined and considered more valid and convincing. Few examples were found where this was clearly the case, in part owing to the lack of transparency. Research participants reported that discussions around the ESRT and on the ESPI working groups did reflect some of the characteristics of quality discourse, such as communicative equality and freedom and an honest exchange of perspectives and positions on issues, which sometimes also included the offering and exploration of supporting reasons.

In considering the ESPI and WNO's connections with relevant expert knowledge complexes, a connection with legal discourses was evident, particularly as relevant to the evolving implications of Aboriginal and treaty rights, but much of this was done in the context of negotiations between the province and First Nations that were kept confidential and hence some of this legal knowledge was unavailable to others involved in the ESPI and WNO. In

general, traditional Indigenous knowledge and scientific expertise were not effectively sought out nor included in the processes' work, although beginning to gather traditional land-use knowledge was a starting point for many communities in their TALUP work.

The second theme discussed in this chapter dealt with relations between the ESPI and WNO and public discourses in the public sphere. This involves two aspects: picking up input from relevant public discourses, for example from public engagement and consultations with civil society; and feeding 'rationalized' positions, arguments, and information back into public discourses, thereby helping to enrich them and facilitating learning. Connections with civil society via the ESAC were ineffective. The public participation program in the ESPI was rushed, late in the process, largely information-out, and hence far from meaningful, and in the WNO the only opportunities for input from public discourses was in the context of individual communities' TALUP work, where community engagement was regularly identified as a challenge. I identified the nearly total absence of attempts to provide feedback to the public as a significant missed opportunity. Had the processes effectively sought out and 'demystified' relevant expert scientific, legal, and traditional knowledge, this feedback into public discourses could have been particularly rich and served a valuable public education function that could have then led to more informed participation and more effective planning in the future, which is a fundamental part of the iterative learning embedded in notions of deliberative democracy.

The third theme related to connections between the planning processes and the political-administrative system. This also had two aspects. First, the processes were expected to provide some democratic steering of the system in the form of recommendations and completed land use plans. However, clear evidence of such steering was most apparent in

restructuring and reorienting the processes themselves, for example in turning the focus of

planning from broad area and the public interest to traditional area planning and First Nations

interests. Some steering was also arguably provided via select recommendations from *Promises*

to Keep that the province chose to begin to implement, and in the four completed TALUPs.

The second aspect of the relationship between the ESPI and WNO and the provincial

political-administrative system relates to the province steering the course of the planning

processes according to political and/or administrative interests and priorities. This was most

starkly seen in the ESPI Phase 1 where the organizational structure, scope, and key issues and

opportunities to consider were largely determined within government. Process steering was

also accomplished via the Secretariat and through the province's control of the budget for the

ESPI and WNO, which constrained what could and could not be undertaken. The TALUP process

in the WNO was further shaped by the province's influence over the *WNO Accord*, unilateral

drafting of the *East Side Planning Act*, and funding levels, all of which served to narrow the

scope and power of plans.

The final theme explored in this chapter dealt with the implications of Canadian-

Indigenous history relevant to Aboriginal and treaty rights related to NREM, in particular self-

government and title or jurisdiction over traditional territories. Two conflicting perspectives

were at play: the First Nations viewed planning as part of building jurisdiction and capacity to

exercise self-government over lands they regarded as theirs but where power would be shared

with the province; the province regarded it as planning for Crown lands, with final authority

exclusively theirs, and in this the larger public interest demanded consideration at least

alongside that of the First Nations. The ESPI moved towards greater focus on First Nations

interests and involvement, and the WNO's TALUP process seemed poised to be an empowering exercise but, consistently, when it came time for approval or implementation the province drew back from taking bold or innovative steps. The TALUP process under the problematic *East Side Planning Act* does present an opportunity for an increase in involvement in and influence over the management of traditional territories and resources and a platform for ongoing collaboration with the province; however, when it comes to jurisdiction over land and resources, the province clearly demonstrated that it is not prepared to regard the First Nations normative perspective regarding shared title and jurisdiction as valid, nor to give up its exclusive power in the face of mere influence or moral persuasion. As a result, the First Nations were unable to meaningfully reconnect with their land in pursuing holistic and comprehensive planning, informed and guided by their values and interests, which has been argued is necessary in order for economic development on Indigenous lands to provide a foundation for both effective self-government and community wellbeing.

Overall, considering all that the ESPI and WNO set out to accomplish and what ended up transpiring, I am left with an overwhelming sense of half measures taken and opportunities missed. As with the province's work on sustainable development in the 1990s, there was a desire to take on an ambitious initiative and to be seen as a leader, but then there was pressure to do it quickly and cheaply that did much to undercut chances for success. While there have been some positive outcomes, participants have also felt some betrayal, and some members of the Indigenous and environmental communities in particular stated they would be wary of participating in such an initiative again, unless it were on different terms, especially being

independent of government, responsive to Indigenous perspectives, and sufficiently funded

and resourced.

Chapter 8: Conclusions

8.1 NREM, Democracy, and Sustainability

This research was motivated by the ubiquitous observation that the health and functioning of ecosystems that sustain life on earth are being degraded by human activity, and particularly by economic ones such as natural resource development. As resource and environmental management, which includes functions of planning and decision making (Mitchell, 2002), lies at the interface between human and biophysical domains (Johnston, 1983), it constitutes a valuable platform for governance with the potential to identify and guide us along pathways towards sustainability (Paehlke, 2004). Newer approaches to NREM have emerged and begun to mature over the last several decades that are increasingly integrative and emphasize the importance of public participation, collaboration, discourse, and learning as key to better management outcomes and to supporting a transition to sustainability (e.g., Armitage, Berkes, & Doubleday, 2007; Sinclair et al., 2008; Slocombe & Hanna, 2007). However, these more communicative or deliberative approaches have often not been grounded in corresponding democratic theory or clarified the role and position of NREM within a deliberative governance system (J. O'Neill, 2002; Parkins & Mitchell, 2005). Green political theorists have argued that NREM functions should be understood and exercised within the context of a broader democratic system, one reformed such that sustainability can form a basic guiding principle for governance, and frequently their ideas for reform towards a greener state are informed by deliberative democracy theory, especially that of Jurgen Habermas (e.g., Dobson, 2007; Dryzek, 2000, 2005; Eckersley, 2004). Thus, there should be significant potential

for progress towards sustainability in considering NREM through the lens of deliberative democracy.

8.2 Research Purpose and Objectives

Based on the line of thinking above, my research set out to develop a conceptual understanding of deliberative democratic NREM where management practice would carry the potential for fostering learning in democratically legitimate processes and outcomes that enhance social-ecological sustainability and contribute to increasingly rational public discourses. To accomplish this, I set four objectives.

My first objective was to develop a preliminary conceptual understanding of deliberative democratic NREM. This began with an exploration of literature on deliberative democracy, which was focussed especially on the work of Habermas (e.g., Habermas, 1990, 1992, 1996a, 1996c, 1998a, 1998b, 2008a) and scholars who critique and build on his theory (e.g., Benhabib, 1996; Bohman, 2004b; Brookfield, 2005a; Cooke, 2001; Niemi, 2005; Rehg & Bohman, 2002; Shabani, 2003; Young, 1996), and included examining some of his social and communicative theory on which his influential model of deliberative democracy is based. I also explored literature on participatory NREM (e.g., Diduck, 2010; Leeuwis & Pyburn, 2002; Mitchell, 2002; Parkins & Mitchell, 2005; Sinclair & Diduck, 2016; Sinclair et al., 2008; Slocombe & Hanna, 2007) and green political theory (e.g., Baber, 2004; Dryzek, 1996, 2005; Eckersley, 2004; Goodin, 1996; Torgerson, 2003, 2005; Vogel, 1997), and from these literatures developed a conceptual framework that situated NREM within a model of deliberative democracy and described organizing conditions and a set of tasks that would inhere in such NREM practice.

This literature is reviewed in chapter 2, and my conceptual framework in presented in section 2.5.4.

The second objective set for this research was to select, explore, and describe an instance of NREM practice, which was done with the ESPI and the WNO that succeeded it. These were initiated and supported by the Manitoba government, both pursued land use planning, and the ESPI led directly to the WNO, but they had different organizational structures and aims. The ESPI was intended to be broadly inclusive of the affected and general public, stakeholders, and civil society, and was mandated to develop a broad area land use plan for the entire region, whereas the WNO was led by the area's First Nations and focussed on developing local plans for communities' traditional territories. The ESPI did not produce a plan and ended with a status report, *Promises to Keep*, and of the 16 First Nations involved in the WNO, four developed complete TALUPs that, while significant simply in their existence, were described as minimal. In the end, the holistic sustainable development planning, integrating social, cultural, economic, and environmental considerations that was envisioned at the outset was not accomplished, and First Nations' attempts to use the processes, especially the WNO, to establish a level of jurisdiction over their traditional territories via legal agreements, legislation, and planning was met with resistance from the province and achieved minimal gains. The findings from my exploration of this case are presented in chapter 5 (ESPI) and chapter 6 (WNO).

The third research objective was to analyze and discuss the NREM case using broad themes and concepts drawn from my conceptual framework along with key perspectives that emerged in exploring the case. This was not pursued primarily as an assessment of the ESPI and

WNO, as they had not been designed or mandated according to the structures or tasks outlined in my framework, but rather was intended to explore the usefulness of applying the theoretically informed framework analytically to understand actual NREM processes and describe areas of strength and weakness, and to identify where opportunities exist to push existing NREM practice towards the potentials for enhancing democracy and sustainability described in the theory underlying the conceptual framework. While not all aspects of the framework could be applied equally due to the nature of the planning processes explored, the discussion in chapter 7 demonstrates that the framework was helpful in conceiving of the ESPI and WNO as democratic exercises and identifying some areas where they were constrained from and some where untapped potential existed for achieving more of the positive potentials described in my discussion of the framework in chapter 2, sections 2.5.3 and 2.5.4.

My final objective was to reflect on what had been found in accomplishing objectives one through three and identify some ways my initial conceptual framework could be refined accordingly. In this way my research process returned to the theory and conceptual thinking that informed it, allowing me to build conclusions informed by the relation of theoretical and empirical research. Work for this objective was informed primarily by the discussion in chapter 7, and my key conclusions and refinements are described in the section below.

8.3 Refining the Framework for Deliberative Democratic NREM

As is apparent from the full discussion in chapter 7, there are numerous comments that could be made regarding the application of my framework to my case study and details of the concepts it includes; however, in this section I briefly discuss conclusions drawn from three areas highlighted in my examination and analysis of the ESPI and WNO that were either lacking

or underemphasized in my initial conceptual framework for deliberative democratic NREM. I do

not directly focus on the framework component of the internal organization and discourse of

NREM processes, discussed in chapter 2, section 2.5.3.1, not because the concepts implicit in it

are less important nor because my case study failed to yield material on which to base

comment, but rather because the related weaknesses found in the case, for example regarding

inclusivity and transparency, tend to support the claims and relationships already articulated in

my conceptual framework. As well, this is an area where analyses and guidance in the literature

is frequently focussed, for example, related to deliberation and discourse, inclusivity and

diversity, equality, public participation, learning approaches, transparency, involving experts,

consensus processes, and so on (e.g., Baber & Bartlett, 2007; Diduck, 2010; Hendriks, 2006;

Innes & Booher, 2004; Keen et al., 2005a; Lidskog & Elander, 2007; Parkins & Mitchell, 2005;

Petts, 2001; Sinclair & Diduck, 2016; Sinclair et al., 2008; Wiklund, 2005). The three subsections

that follow present my key conclusions, highlighted in italics, and include a brief discussion of

each.

8.3.1 NREM and Steering from Above

The nature, extent, and means of the political systems' real and potential steering of a NREM process should be made clear and explicit from the start as part of its basic description, and transparency needs to be maintained throughout so that all participants and any members of the public are able to see exactly how governments are shaping the process' course and outcomes.

I observed in chapter 7, section 7.4.2, that the ESPI and WNO were, in the end, not

successful in reversing the usual flow of political power into the bottom-up direction that

Habermas described as the "official" pattern of circulation in democracies and the direction

appropriate to conflictual, uncertain, and complex governance contexts, such as often

characterize NREM (see Habermas, 1996a, pp. 379-384). However, NREM processes are frequently initiated and supported by and proceed in cooperation with governments, and as such they work within certain limits that are determined by political-administrative systems, and this ensures there will be some steering of NREM processes from above. In my initial framework there was no strong indication of this, in large part because my thinking was that such basic steering was inevitable and was simply part of what would characterize particular instances of NREM practice. However, my case study demonstrates that even if inevitable, this flow of power is far from trivial, and if it is overly strong and/or if it is unacknowledged or masked it can serve to undermine the democratic legitimacy of the NREM process for those participating in or observing it. As a result, in my revised conceptual framework presented in figure 8.1 below, I have included a broad arrow from the political-administrative systems to the NREM process to indicate this effect.

NREM processes operate within existing policy and regulatory contexts and work to accomplish particular mandates according to terms of reference and so on, and so participants and the public understand from the start that there are certain boundaries on what the process can and cannot examine, assess, recommend, etc. Understanding what these parameters are and what power the process will have to effect change in what areas is a significant consideration in public and civil society decisions to devote their limited time and resources to support or participate in them (Diduck & Sinclair, 2002), and the ability of governments to influence the range of topics, limit options for action, shape the nature of outcomes, and so on is part of this. In the ESPI and WNO, some participants stated that they would not participate again in a process structured and run as these were, primarily because they saw their
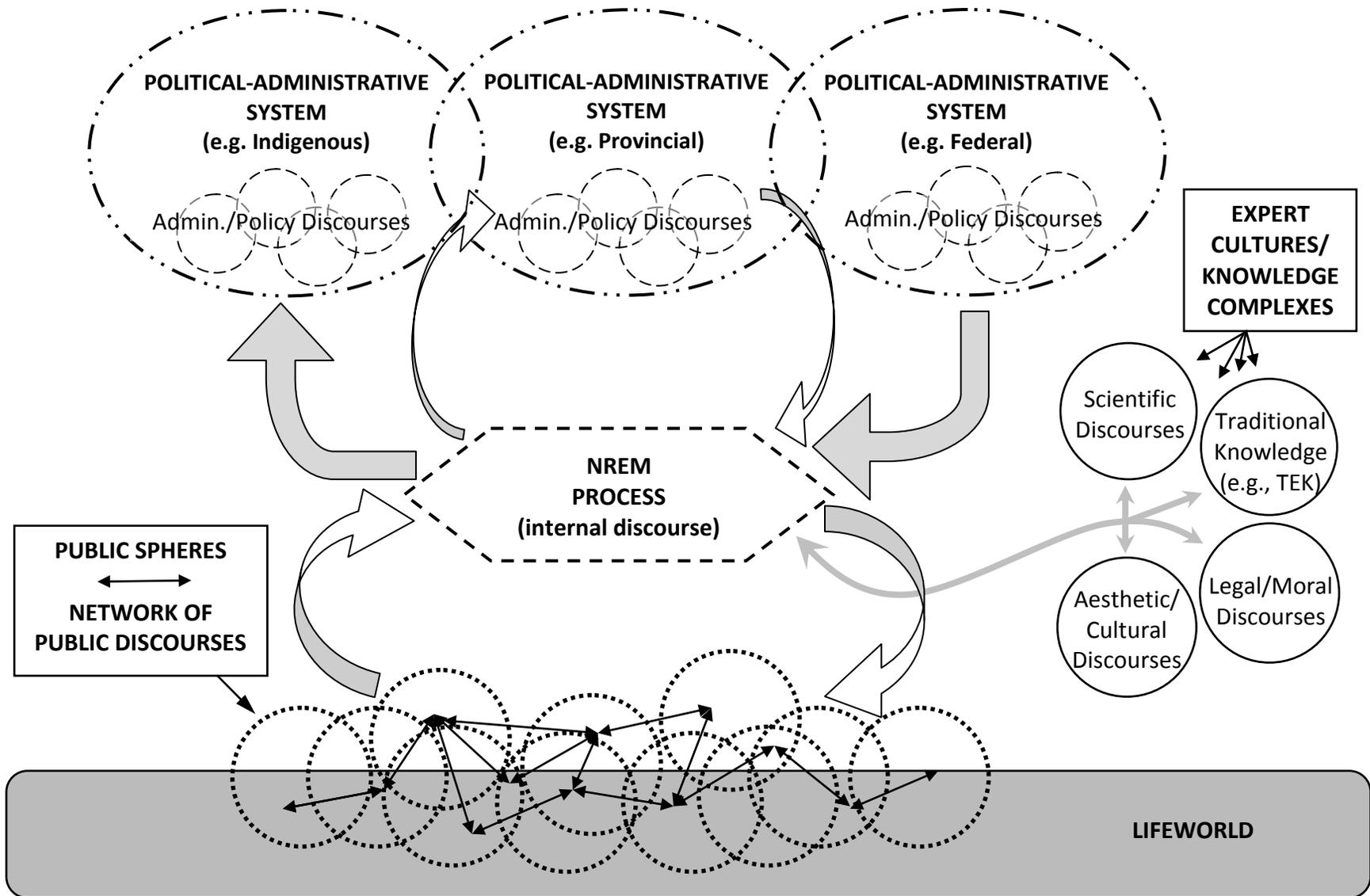
Figure 8.1. A Conceptual Framework for Deliberative Democratic NREM Revised.

perspectives and input to have had little actual effect and suspected that government was directing the process behind the scenes towards what it had wanted from the start. As well, a right and responsibility that citizens and civil society have in democracies is to monitor the actions of their governments and hold power accountable (Keane, 2009), and clarity regarding the extent of NREM process independence and the means by which the government will exert its steering is necessary to enable this public oversight.

Failure to clearly and honestly disclose the shaping influence of the political-administrative system on NREM processes can thus undermine democratic legitimacy in a number of ways. Based on my case study research, it can most obviously do this by: leading to some affected stakeholders and publics not participating, thus reducing the process' inclusivity, diversity, and rational potential; generating push-back, power plays, and a lack of cooperation within the process; creating suspicion regarding government motives and actions; contributing to opaque processes that bedevil public oversight and input; and by raising doubt or leading to outright rejection of outcomes claimed to reflect the will and opinion of the public. Making the role and influence of government clear at the outset, as part of the basic description of the NREM process alongside, for example, what topics it will be addressed to and what scope it will examine, could go a long way towards avoiding these outcomes that are corrosive to democracy. It is also arguable that in making the nature of their steering explicit upfront, governments will be motivated to minimize this influence in an effort to avoid undermining the legitimacy of the NREM process and of themselves.

8.3.2 NREM and Feedback to Enrich Public Discourses

NREM processes should be structured and mandated to actively provide feedback from their internal deliberations to public discourses in public spheres.

(This feedback could include, for example: sound information developed or accessed by the process; a diversity of (validated) perspectives and positions taken on key issues, together with reasons supporting them; input received from experts, including traditional knowledge holders, in 'demystified,' publically accessible formats; descriptions of the problem/issue at hand and potential solutions considered; and input generated from public participation programming, thematized and summarized for public consumption and understanding.)

The notion of viewing NREM as a platform for individual and social learning is well established (e.g., Diduck, 2010; Fitzpatrick & Sinclair, 2003; Jha-Thakur et al., 2009; M. Keen, V. A. Brown, & R. Dyball, 2005b; Sinclair et al., 2008). Most often the focus is on learning for participants directly involved in NREM processes or engaged by their public participation or consultation activities, and this learning is seen to carry the potential to improve process outcomes and facilitate social learning for sustainability. What I have in mind with the above conclusion regarding feedback to public discourses is the ability of NREM processes to contribute to the communicative rationalization of public discourses and lifeworld understandings, which carries the potential to undergird social learning and action in areas addressed by the NREM processes and to build capacity within society for participating in future governance processes, thus serving to strengthen democracy by facilitating what Brookfield (2005a) termed "learning democratic reason."

As described in chapter 2, section 2.5.3.1, I envision NREM processes functioning as sluices and filters by which the democratic will of the public is passed on to the political-administrative system, and in their filtering function they evaluate the validity bases and reasons supporting the various perspectives and positions taken on the issues at hand and

develop well-supported solutions or action responses informed by this. Certain conditions for NREM processes, such as being inclusive, free of coercion, and oriented towards recognizing the better argument, were described in the aforementioned section and were argued to facilitate accomplishing this rational filtering optimally, and thus these conditions are clearly important to the quality of information, arguments, and so on that are available for a process to feed back to public discourses. In addition, as discussed in chapter 2, section 2.3, Habermas argued that the lifeworld that public discourses draw upon has been impoverished due to its largely cognitive-instrumental rationalization, colonization by systems logic and forms of integration, and by its effective separation from increasingly specialized expert knowledge cultures, in which I include traditional knowledge holders. To the extent that NREM processes employ communicative rationality, their deliberations and conclusions can help remedy some of the effects of the first two causes of lifeworld impoverishment, and they are especially well placed to address the third as well as NREM is generally understood as appropriately informed by expert and traditional knowledge, which my framework identifies as a key part of their internal disourse.

While this is true of all that NREM communicates to the public, it is especially vital that expert and traditional knowledge be 'demystified' or rendered understandable to the lay public, otherwise it will not be actually available to public discourses. Part of this ought to already be happening within the NREM process as necessary for participants to grasp the information and perspectives being considered and evaluated, but members of the public will not have access to the full deliberations and background learning of participants, and so some further work will usually be needed to make information and perspectives more sensible to the

public. And this leads to the conclusion, as stated at the start of this subsection, that feedback

to public discourses should not be an afterthought or incidental to NREM's 'real' job of

providing steering to political systems, but rather should be part of its central mandate, and it

should be understood as an active duty where material to be communicated is developed,

shaped, and delivered for this express purpose as opposed to passively posting existing

documents to websites or merely holding open houses. Civil society organizations could play a

significant role in this as they represent sites where information and arguments feeding into

and issuing from public discourses are already present, they will often have some expertise in

the demystification of material related to their area of interest, and they frequently have access

to extensive communication networks.

      This feedback function is especially relevant to NREM contexts as they frequently

involve complex social-ecological characteristics and interactions that are difficult to

understand and untangle, and environmental problematics can provoke intense conflict among

those holding differing positions, and understanding why others think and feel differently is key

to de-escalating conflict, arriving at outcomes that all can live with, and to maintaining social

integration in general. Further, NREM in Canada frequently involves Indigenous participation,

and Aboriginal and treaty rights in relation to resources and self-government, as well as

Indigenous perspectives on these rights, are poorly understood within Canadian society, which

constitutes another vital area where NREM feedback can inform and enrich public discourses.

When NREM is approached as adaptive management the intent is to learn from and revisit

decisions and management arrangements (Berkes, 2007), and I argued in chapter 2, section 2.4,

that democracy in general is best thought of as an ongoing, iterative governance process, and in

both cases this means that learning achieved in one governance instance needs to be widely

distributed so as to be available to feed the next. In chapter 2, section 2.4.2, discourse in the

public sphere was described as, ideally, a process of 'ongoing reasonable contestation' among

citizens of differing identities, experiences, and opinions, and the reasonableness of this

discourse is reliant on, among other things, access to quality information and the arguments

and reasons undergirding the perspectives and positions of others (see Rehg & Bohman, 2002),

which NREM could help provide relevant to the issues and contexts they are addressed to.

Green political theorists have similarly argued that working at the level of public discourses is

the best way to move towards a 'green democracy' where sustainability is taken as a

fundamental guiding principle for governance (e.g., Dryzek, 2000; Eckersley, 2004; Torgerson,

1999). Part of this involves engaging and nurturing the green public sphere that frequently

emerges around NREM processes and problems (Torgerson, 2000), and this was amply evident

in the ESPI and WNO where numerous local organizations and individuals were as active as they

could be and wished for more meaningful opportunities to contribute.

   If Finger and Verlaan (1995) and the many scholars who have echoed this since them are

correct in identifying learning throughout our societies as necessary to approaching the

sustainability that our very survival ultimately depends on, then the importance of the NREM

function of enriching public discourses with sound information and validated positions and

perspectives on sustainability issues can hardly be overstated. And taking this function on as a

core task further means that even in situations where, like the ESPI and WNO, NREM processes

fail to produce high quality, or any, final outputs as directed by their mandates, or if that output

is not adequately implemented, they can still succeed in building democratic capacity and a

foundation for societal learning for sustainability.

8.3.3 NREM and/as Indigenous Self-Government

NREM processes whose scope include Indigenous traditional territory need to recognize the Aboriginal right to self-government and be structured to engage Indigenous political-administrative systems alongside relevant provincial and federal ones, and title to and jurisdiction over traditional territories ought to be recognized as residing with the Indigenous governments, shared with the province, or at least as contested and not merely Crown land.

(In cases where comprehensive land claims and/or self-government agreements exist, they will provide direction regarding how to engage Indigenous governments and clarify the nature of title to land and resources, although this may still be contested. In contexts where historic 'land surrender' treaties have officially extinguished Aboriginal title or where it has never been effectively recognized, as for much of the Métis Nation, NREM should proceed from a normative position that acknowledges the injustice of both circumstances and, regarding treaties, NREM should affirm the First Nations' original intent to share their lands and resources and proceed from that basis.)

The normative perspective underlying this conclusion was developed based on the

history and rights explored in chapter 4, sections 4.3 and 4.4.1, an examination of literature on

interrelated issues invoked in Indigenous resource, economic, and community development

(e.g., Alfred, 2009; Ladner, 2009; Newhouse, 2000; Simpson, 2002; Simpson et al., 2007;

Slowey, 2009, 2013; W. Wuttunee, 2004), and research interviews with Indigenous leaders and

planners involved in the ESPI and WNO. Canada's colonial history is replete with racist injustices

towards Indigenous peoples, from the earliest days when European settlement and dominance

was underwritten by medieval notions of *terra nullus* and the Doctrine of Discovery, through

historic treaty processes where Indigenous interests and understandings were deliberately

ignored in favour of Canadian interests in settlement and resource extraction, decades of

assimilitionist law and policy that ensured social, political, and economic marginalization and

that aimed to extinguish Indigenous identities, and to the present where advances in recognizing Aboriginal and treaty rights have yet to lead to much meaningful experience of them and where lucrative resource developments on Indigenous traditional territories continue to routinely provide little benefit to local communities. This history has given Canada and the provinces much – land, resources, and political jurisdiction – and left Indigenous communities dispossessed of their lands and with social and cultural disorientation and discord, political and legal disempowerment, and endemic poverty and community health crises (Alfred, 2009). It is on the basis of this history that I argue an ethical obligation arises in NREM governance processes that involve Indigenous communities and traditional territories, an obligation to work towards decolonizing the Canadian-Indigenous relationship by creating space for and supporting self-government extended over Indigenous lands as part of NREM governance processes.

As discussed in chapter 4, especially sections 4.3.1.4, 4.3.2, and 4.5.2, meaningful self-government requires a land and resource base to support economic self-sufficiency, and resource and economic development needs to be directed and guided by Indigenous communities and their values if it is to lead to the oft-claimed potential of underwriting increases in socio-cultural health and community wellbeing. Further, given that Indigenous cultures and identities developed in harmony with and attachment to the land, the cultural revitalization that has been argued to be a necessary foundation for developing these guiding values itself requires a meaningful (re)connection with traditional lands and the socio-cultural practices entwined with them. Dealing with all that is implicated in this is clearly beyond the reach of individual NREM processes, but my point is that NREM practice cannot ignore or be

conceived of as existing in isolation from these other factors and considerations if it is to further justice, reconciliation, or sustainability. For example, land use planning on Indigenous traditional territories, which is so often focussed primarily on outlining exclusion zones and elsewhere facilitating resource extraction, as was the case in the WNO, needs to proceed with meaningful Indigenous public participation, input from traditional knowledge holders, and connections to Indigenous governments. And from this basis the planning process would work to develop a guiding vision and proceed with actions that recognize and integrate cultural values and land uses, respect Indigenous political institutions, and aim to support community economic and social development needs and aspirations. This should not be considered an 'add-on', as factors to consider if time and resources allow, rather it should be part of the core purpose and mandate of NREM in such contexts.

Details of the implications of this normative perspective for how best to recognize and incorporate self-government into NREM processes will obviously depend on contextual variables and are beyond my scope and expertise. However, several points can be made. Regarding inclusivity, as described in chapter 7, section 7.2.1, Indigenous communities cannot be included as stakeholders alongside the usual suspects of civil society and industry organizations and the general public, rather their relevant political-administrative systems should be included alongside the province and federal governments, while Indigenous citizens and civil society organizations are included as participants in the NREM process along with others of the general public and 'those affected'. It is also clear that a mini-municipality model of self-government, where Indigenous governments possess authority delegated from a higher order of government, is not acceptable to Indigenous nations (Belanger & Newhouse, 2004).

This is reflected in my refined conceptual framework, presented in figure 8.1 above, where in place of a singular political-administrative system there is now the possibility of multiple, and potentially overlapping, systems in relation to the NREM process.

Recent history has made it clear that negotiating self-government jurisdictions and building capacity to exercise them is complex and takes considerable time, and I do not mean to suggest that NREM ought to take all of this on – it would in fact be an inappropriate venue to do so as this requires a true government-to-government process. However, the ESPI and WNO demonstrated that when self-government and title to Indigenous lands have not been appropriately dealt with elsewhere, they are likely to be directly or indirectly raised in the context of NREM and carry the potential to derail the course of the management exercise until they are addressed. As a result, in addition to the normative argument for approaching NREM on Indigenous lands as self-government, there is a powerful pragmatic reason to do so as well. Reflecting back on the COSDI report, the recommendation that the province and, as relevant, federal governments collaborate with Indigenous governments to develop a comprehensive protocol outlining how they will relate in NREM contexts stands out as a promising avenue for beginning to describe NREM practice as an exercise in shared jurisdiction and self-government. The potential of this approach was seen in the 'draft 22' of WNO protocol negotiations, described in chapter 6, section 6.4.1, which would have, among other things, enshrined co-management and resource and revenue sharing but which was rejected by the province, according to my analysis likely because establishing a basis for self-government in NREM contexts would have diminished the jurisdiction and power of the province. It is unfortunate that a recommendation happily accepted by the Manitoba government nearly two decades ago

has not been acted upon, and it is telling that it yet stands as a progressive recommendation relative to Indigenous communities experiencing their rights and gaining meaningful benefits from resource developments on their lands in Manitoba and across Canada.

Nonetheless, in the absence of further clarity from the courts or meaningful action from federal and provincial governments to give practical meaning to the rhetorical recognition of the inherent right to self-government, NREM needs to begin from an open recognition of the rightness of Indigenous governments' jurisdiction, at some level, over their traditional lands, and should work to establish an appropriate relationship with them alongside the relevant provincial and/or federal Crowns, whether or not this is legally required or mandated to the NREM process. How Indigenous governments are involved and the values and visions that guide their participation are rightfully up to them to determine, but NREM can and ought to provide a powerful opportunity for them to do so.

8.4 Concluding Thoughts on Theoretical Idealizations, Actual NREM, and Sustainability

This research began with a motivation to understand how NREM, as a democratic governance process, can be practiced so as to direct us towards sustainability, yet, as with the ESPI and WNO, sustainability itself was not a direct focus in the research. In the ESPI, the focus on sustainable development planning that it started with was lost as it did little actual planning, but sustainability also became obscured in the plethora of factors and considerations taken on, from roads to forestry expansion, boreal conservation, community economic development, Aboriginal rights and consultation, etc. What was lacking was a clear guiding vision for how these considerations were inter-related and how they would be integrated in planning, which

certainly would have been challenging to articulate and maintain given the diversity of the factors and the passion with which they were advocated by various participants. It is tempting to conclude that the ESPI simply tried to take on too much, but what it tried was to implement integrated planning, and that is roundly recognized as the appropriate perspective for advancing sustainability. Perhaps the geographic area was too large, but regional and ecosystem-level approaches to planning are also routinely recommended by sustainability advocates. In the WNO the scope of the process was narrowed to focus on local planning and fewer considerations were included, but this planning was not approached holistically nor were the factors that were considered well integrated, in large part due to the lack of resources and narrow vision of the province, and so this was also not sustainability focussed NREM. The idea was that completed TALUPs would collectively form a plan for the region, but even had TALUPs been completed for all the First Nations this would have made for an incoherent BAP as individual plans were developed in isolation, with no unifying vision or guiding principles.

But perhaps a lesson can be drawn from this – that a broad area planning approach should take on fewer details and focus on articulating an overall vision and general principles that can be developed and held in common among affected communities and stakeholders, while the fine details of how this vision will be enacted on the land are developed locally and articulated in comprehensive plans covering community use or interest zones, or for Indigenous communities, for their traditional territories. In this way the concept of sustainability could be enshrined in principles and guidelines for the broad area that local plans would then articulate in their land use policies, which would, ideally, reflect local needs and socio-cultural values.

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Sustainability was also somewhat obscured in my conceptual framework for deliberative democratic NREM. I did suggest that NREM processes should seek to connect with the emergent green public sphere for input and feedback, and that connections with expert knowledge holders should include those with knowledge and perspectives relevant to the various aspects of sustainability. However, other public spheres and discourses, and experts, will hold perspectives and articulate interests that do not favour sustainability. So, much depends on strong green voices and arguments being present among expert cultures consulted and being developed and distributed throughout public discourses that are picked up by NREM processes, but these arguments must also be found valid and convincing within the process' discourse so as to shape steering directed at political-administrative systems and feedback provided to public discourses. For those of us who believe that sustainability is the rational approach we should take in governance, we can also believe that the more rational our governance processes are, the more likely they will direct us towards sustainability, even if this belief requires a healthy dose of faith.

The rationality of NREM processes as I have described them, structured and conducted in ways informed by Habermas' model of deliberative democracy and the communicative theory that underlies it, is dependent on them instantiating conditions that approach the communicative idealizations described in chapter 2, sections 2.2.3 and 2.4.2, which describe an approach or means for exploring and evaluating the validity bases for articulated positions and perspectives. These idealizations include: inclusivity; publicity and transparency; equal communicative rights; the absence of coercion, deception or illusion; and the evaluation of arguments and positions equally, on the merits of their underlying assumptions and supporting

reasons. As I discussed in section 2.5.3.1, these idealizations are not intended as a blueprint for structuring actual NREM processes, rather they point like mathematical limits towards conditions that should be continuously approached but which in actual practice may be rather rudimentary.

However, NREM experience has had more success with and the academic literature has more to say about how best to approach some of these theoretical idealizations in practice than others, namely inclusivity, publicity, and transparency, which were the ones I was able to examine more thoroughly in my case study. There is considerable less clarity on how to ensure equal communicative rights in the face of diverse social, cultural, and educational backgrounds where individuals will have widely varying communicative strengths and preferences for articulating their interests and perspectives and participants will have varying abilities to comprehend one another. Similarly, how can coercion be abolished and power equalized when power imbalances are always factually present? And perhaps most critically, it is unclear how a NREM process might best go about effectively and efficiently evaluating degrees of validity among the diverse arguments and positions considered, and how to do so without privileging some modes of expression and hence some classes of participants. Yet, to be rational, and hence arguably to favour sustainability, these factors must be attended to. Clearly, this is an area where further research is required to investigate the extent to which the rational potential of these idealizations is borne out and how best to structure and practice NREM accordingly.

Perhaps the most promising finding in my case study research was that discourse, as constrained and imperfect as it was, was able to destabilize established power, somewhat, for a time. First Nations participants, with the support of others, were able to make a convincing

argument for their increased inclusion and power, which fundamentally changed the structure

of the ESPI and bent the WNO to focus on First Nations issues and interests. The fact that

planning work and legal-administrative agreements were stymied by push-back from the

province is further evidence that the NREM processes were having real effects on power

relations. In the end, few participants were well satisfied with the outcomes of the ESPI and

WNO, but the destabilization did allow for some reconfiguration of relations between the First

Nations and the province via the TALUP process and legislation supporting it. This may be more

illusion than substance, after all the province still holds all the legal power and has not

demonstrated much of a change in its approach to relations with First Nations, but it may

become a stepping stone along a path towards greater respect and power for the ESPA First

Nations – as some observed, the commitment to a government-to-government relationship is

still there, waiting to be given meaningful form. And if NREM, framed as deliberative

democratic practice, is understood as an iterative and learning-based process, what is most

vital is that we critically examine and learn from our experiences and are relentlessly persistent

with ongoing, reasonable contestation aimed at understanding and reaching towards justice

and sustainability.

Primary Sources Cited from the ESPI and WNO

*Note: Items marked with an asterisk were available on Manitoba Conservation's WNO website at www.gov.mb.ca/conservation/wno/ until fall 2015, see chapter 3, section 3.4.2.2.

Canadian Nature Federation. (2002, July 29). "Analysis of Manitoba Hydro 2002 Presentations." Canadian Nature Federation, Manitoba Wildlands Campaign memo to Don Sullivan for ESRT. University of Manitoba Archives: David Punter fonds, box 13, folder 4.

Canadian Nature Federation. (2003, April 14). "Memo – A Comparison: East Side Lake Winnipeg Planning Initiative (ESLWPI) AND National Round Table on the Environment and the Economy (NRTEE) Guiding Principles on Consensus Processes." Available from http://manitobawildlands.org/docs/ESLUP&NTREEPrinciplesFinal.doc.

ENGOs Comments. (2001, Dec. 19). "East Side Planning Initiative – Draft Phase One Report – Comments." Includes attachment "Essential Elements for a Valid East Side Land Use Planning Process." Gaile Whelan Enns, Manitoba Wildlands; Don Sullivan, Boreal Forest Network; Scott Kidd, Canadian Parks and Wilderness Society – Manitoba Chapter. Included in ESPI Phase 1 Final Report, appendix 4. Available from http://manitobawildlands.org/docs/ESide12.01.rtf, http://manitobawildlands.org/docs/ESideCommentsAttch.rtf.*

ENGOs Meeting. (2003, Sept. 29) "ENGOs Meeting to Discuss the Forthcoming Information Session with Members of the ESRT: A Summary of Comments from the Meeting."

ENGOs Press Release. (2004, Nov. 16). "East Side Planning Initiative (ESPI) Report Released – No Round Table or Public Review." Gaile Whelan Enns, Manitoba Wildlands; Ron Thiessen, Western Canada Wilderness Committee; Don Sullivan, Boreal Forest Network.

ENGOs Recommendations. (2004, July 22). "Manitoba Environmental Organizations – Recommendations for ESPI Status Report." Gaile Whelan Enns, Manitoba Wildlands; Ron Thiessen, Western Canada Wilderness Committee; Don Sullivan, Boreal Forest Network. Note: not included in printed *Promises to Keep*'s "Stakeholders Submissions," but was included in that section of the Complete Appendix and in electronic versions of report. Available from http://manitobawildlands.org/docs/ENGO_ESPI_Recs_July04.doc.*

ESAC Member Letter. (2003). Letter to Conservation Minister Steve Ashton from ESAC member representing Resource Conservation Manitoba (now Green Action Centre).

ESAC Minutes. ESPI East Side Advisory Committee meeting minutes available for: Feb. 17/03, May 9/03, Feb. 12/04.* Additional meeting agenda reviewed for April 29/04. ESPI Secretariat.*

ESPI Community Visits Briefing Book. (2003). Collection of documents used to prepare ESRT members for ESPA community visits, Sept. 2003 – Jan. 2004. ESPI Secretariat. University of Manitoba Archives: David Punter fonds, box 14, folder 1.

ESFNC Minutes. East Side First Nations Council meeting minutes available for: Dec. 13/04, Feb. 10-11/05, April 11-12/05. ESFNC renamed WNO July 2005.*

ESPI Draft FNC-MB MoU. (2003). Drafted by Moses Okimaw for ESPI Secretariat, includes draft consultation plan. University of Manitoba Archives: David Punter fonds, box 13, folder 5.

ESPI Memo. (2004, Jan. 17). "Purpose – Structure and Mandate of Proposed Working Groups." Report from ESRT Committee on Working Groups to ESRT & FNC. Prepared by Peter Globensky, ESPI Secretariat. University of Manitoba Archives: David Punter fonds, box 14, folder 5.

ESPI Memo. (2004, April 22). "Timetable & Benchmarks for Report Submission: The Final Countdown!" Approved by ESPI PCI, April 16/04. Memo from Peter Globensky, ESPI Secretariat, to ESRT/FNC & ESAC.

ESPI Memo. (2004, May 17). "Re. Compiled Input from the North, Central and South Working Groups." Memo from Bill Anderson, ESPI Secretariat, to PCI, Working Groups, ESAC. Available from http://manitobawildlands.org/ESPI/docs/CovNoteMay17_04CompliedInput.doc.

ESPI Memo. (2004, July 20a). Memo from ESPI Secretariat to ESAC re. "Promises to Keep" Draft Recommendations. (2004, July 21).

ESPI Memo. (2004, July 20b). Memo from ESPI Secretariat to ESRT & FNC re. "Promises to Keep" Draft Recommendations. (2004, July 21).

ESPI Phase 1 Draft Report. (2001, Nov.). "East Side Lake Winnipeg Broad Area Planning Initiative: Preliminary Discussions: Summary of Comments and Recommendations from Phase 1 Discussions: Draft". Winnipeg: Manitoba Conservation. Available from http://manitobawildlands.org/ESPI/docs/PhaseIPreDiscussReport.pdf.

ESPI Phase 1 Final Report. (2002, March). "East Side Lake Winnipeg Broad Area Planning Initiative: Preliminary Discussions: Final Report: Comments and Recommendations." Winnipeg: Manitoba Conservation. Available from http://manitobawildlands.org/ESPI/docs/Phase1PreDiscussFinalRpt.pdf.*

ESPI Review Panel Presentation. (2001, Jan.). Appears used to introduce ESPI concept in early Phase 1 meetings.*

ESRT Minutes. ESPI East Side Round Table meeting minutes available for: March 11/02, May 14-15/02, May 31/02, June 27-28/02, July 30-31/02, Oct. 23-25/02, Jan. 17/03, Feb. 18/03, March 18/03, April 15/03, August 8/03, Oct. 8/03, Dec. 3-4/03, Dec. 4/03. ESPI Secretariat.*

ESRT Mines Presentation. (2002, May 15). "Mineral Status and Potential." Presentation by: Manitoba Industry, Trade and Mines, Ric Syme.*

ESRT Parks Presentation. (2002, May 15). "Parks and Natural Areas." Presentation by: Manitoba Conservation, Parks and Natural Areas Branch, Gord Jones.*

ESRT Transportation Presentation. (2002, May 15). "Proposed Planning Process for an All Weather Road on the East Side of Lake Winnipeg." Presentation by: Manitoba Transportation and Government Services, Don Norquay.*

FNC Minutes. ESPI First Nations Council meeting minutes available for: Feb. 6/03, March 17/03, May 8/03, Aug. 29/03, Dec. 3/03, Jan. 29/04. ESPI Secretariat.*

God's Lake Submission. (2009, June 8). "In the Matter of Bill 6, The East Side Traditional Lands Planning and Special Protected Areas Act – Submission of the God's Lake First Nation." Written submission to the Standing Committee on Legislative Affairs. Available from http://www.manitobawildlands.org/pdfs/GodsLake_Bill6_8June09.pdf.

Harper, L. (2010, April 9). "Further Comments on a Draft Kee-Way-Ootinetan Kitaskiinaan Agreement for Joint Management of Natural Resources [Draft 2.6]." Memo from Louis Harper to WNO Cree First Nations.

Harper, L. (2010, April 30). "Comments on a Draft Paskonakosheen Agreement for Joint Management of Natural Resources [Draft 2.0]." Memo from Louis Harper to Island Lake First Nations.

Kee-Way-Ootinetan Kitaskiinaan RRMB Draft. (2009, Dec. 7). "Kee-Way-Ootinetan Kitaskiinaan Agreement for Joint Management of Natural Resources." L.H. Draft 2.6. Draft agreement between Bunibonibee Cree Nation, God's Lake First nation, Manto Sipi Cree Nation, & the Province of Manitoba.

Lombard Report. (2004, Feb. 12). "ESPI Advisory Committee Workshop 'Charting the Course' Findings." Winnipeg: Lombard North Group.

Manitoba Hydro. (2002, Dec.). "Future Transmission Line Development on the East Side: Summary of Key Perspectives from Introductory Meetings with Leadership of East Side Communities." Winnipeg: Manitoba Hydro. University of Manitoba Archives: David Punter fonds, box 13, folder 4. Also Available at http://manitobawildlands.org/pdfs/MBHydroESideFutureDec2002.pdf.

Manitoba Justice. (2003, June 13). "Memo re. East Side Lake Winnipeg Planning Initiative – Memorandum of Understanding with First Nations Council [i.e. ESPI Draft FNC-MB MoU. (2003)]." Gord Hannon, Crown Counsel, Manitoba Justice, Aboriginal Law Group, review and comments to Moses Okimaw, Manitoba Conservation. University of Manitoba Archives: David Punter fonds, box 13, folder 5.

Manitoba Prospectors & Developers. (2003, June 4). "Hayes River Heritage Designation – Brief from: Manitoba Prospectors & Developers Association." Prepared by D. Fogwill. Included in *Promises to Keep*, appendix 8.3.*

Manitoba Wildlands. (2005, Jan.). "The East Side Planning Initiative: Status Report – Wind Down of ESPI-Phase 2, ESPI – Some Options and Next Steps." Available from http://manitobawildlands.org/ESPI/docs/ESPImemoMWL_05Jan05.doc.

Ministers Visits. (2004). Brief re. March 2004 ministers' visits to East Side communities.*

NACC Recommendations. (2004, June). "Northern Association of Community Councils Submission to the East Side of Lake Winnipeg Round Table." Prepared by Dr. Karen Peterson. *Promises to Keep* appendix 8.5.*

Okimaw, M. (2007, April 30). "Wabanong Nakaygum Okimawin Accord: Manitoba East Side." Legal review by Moses Okimaw for Manitoba Wildlands. Available from http://manitobawildlands.org/docs/WNOAcrdReview_Okimaw.doc.

Okimaw, M. (2007, Nov.). "Regional Management Boards: WNO Accord." Legal commentary by Moses Okimaw for Manitoba Wildlands. Available from http://manitobawildlands.org/docs/RgnMgmtMOkmawNov07.doc.

Paskonakosheeng RRMB Draft. (2008, Oct.). "Paskonakosheen Agreement for Joint Management of Natural Resources." October, 2008 'clean' draft. Draft agreement between Garden Hill, Red Sucker Lake, St. Theresa Point, and Wasagamack First Nations, & the Province of Manitoba.

Preparing for CBLUP. (2006, Aug.). "Preparing for Community Based Land Use Planning in 16 First Nation Communities within the East Side Planning Area: Scenarios for Discussion and Decisions on how Community Based Land Use Planning can Proceed." Prepared by WNO Secretariat for WNO CoC meeting Aug. 29-30/06.

Promises to Keep. (2004). *"Promises to Keep…" Towards a Broad Area Plan for the East Side of Lake Winnipeg: A Status Report*. Winnipeg: ESPI.*

Promises to Keep – Complete Appendix. (2004). *"Promises to Keep…" Towards a Broad Area Plan for the East Side of Lake Winnipeg: Complete Appendix*. Winnipeg: ESPI.*

"Promises to Keep" Draft Recommendations. (2004, July 14). "Promises to Keep: Towards a Broad Area Plan for the East Side of Lake Winnipeg: A Status Report – Draft Recommendations." Draft shows ESRT changes to original recommendations to date. ESPI Secretariat. Available from http://manitobawildlands.org/ESPI/docs/RT_ChangesActualRecs14July_04.pdf.

"Promises to Keep" Draft Recommendations. (2004, July 21). "East Side Planning Initiative Round Table and First Nations Council Changed Recommendations." Chart lists original recommendation and suggested ESRT/FNC changes to date. ESPI Secretariat. Available from http://manitobawildlands.org/ESPI/docs/changedRecommends07_21_04.pdf.

"Promises to Keep" Draft Recommendations. (2004, Aug. 5). "East Side Planning Initiative Round Table and First Nations Council Changed Recommendations." Chart lists original recommendation and suggested changes to date. ESPI Secretariat. Available from http://manitobawildlands.org/ESPI/docs/changedRecommends08_05_04.pdf.

"Promises to Keep" Draft Recommendations. (2004, Aug. 10). "Draft Status Report: Final Changes to Recommendations & Chapter 7.0." ESPI Secretariat. Available from http://manitobawildlands.org/ESPI/docs/DraftRecommendations10Aug2004.pdf.

"Promises to Keep" Draft Status Report. (2004, July 5). "Promises to Keep - Towards a Broad Area Plan for the East Side of Lake Winnipeg - A Status Report." Draft awaiting ESRT/FNC approval. Available from http://manitobawildlands.org/ESPI/docs/PromisesKeepDraft5July2004.doc.

"Promises to Keep" Working Groups Input. (2004, May 17). "Compiled Input from the North, Central and South Working Groups." Raw input from working groups, sorted by issue. ESPI Secretariat. Available from http://manitobawildlands.org/ESPI/docs/CategorizedCollectRecom.doc.

Proposed CBLUP Framework. (2005, Sept.). "Draft – A Proposed Framework for Guiding Community-based Land Use Planning." Prepared by Brian Wilkes, TROW Associates, for WNO Secretariat.

Tembec ESPI Comments. (2001, Dec. 20). "Comments/Response to 'Summary of Comments and Recommendations from Phase 1 Discussions [Phase 1 Draft Report].'" Prepared by Bill Snell, Tembec, for Manitoba Conservation. Included in ESPI Phase 1 Final Report, appendix 5.*

Ten Challenges. (2004). "Ten Challenges to the Broad Area Plan." Appears authored by Peter Globensky, Exec. Coordinator, ESPI Secretariat. University of Manitoba Archives: David Punter fonds, box 14, folder 5.

WNO Accord. (2007). *Wabanong Nakaygum Okimawin Council of Chiefs Accord*. Available from https://digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=15494&md=1.*

WNO CoC Minutes. WNO Council of Chiefs meeting minutes reviewed for May 7/09, agenda and attachments for Jan. 26-27/10. WNO Secretariat.

WNO Cree Group Submission. (2009, June 8). ""In the Matter of Bill 6, The East Side Traditional Lands Planning and Special Protected Areas Act – Submission of the Wabanong Nakaygum Okimawin, Cree Group." Written submission of WNO Cree First Nations to the Standing Committee on Legislative Affairs. Available from http://www.manitobawildlands.org/pdfs/WNOCreeGroup_Bill6_8June09.pdf.

WNO Cree Region. (2010, Oct. 19-21). WNO Regional Meeting of the Cree First Nations, agenda and attachments only.

WNO Island Lake Region. (2010, Oct. 13-15). WNO Regional Meeting of Island Lake First Nations, agenda and attachments only.

WNO Minutes. Wabanong Nakaygum Okimawin Council meeting minutes for: Oct. 13/05, Nov. 30-Dec. 1/05, March 2/06, May 29/06, August 30/06, Nov. 29-30/06, Sept. 26/07.* Additional minutes reviewed for May 6/09, agenda and attachments for Jan. 26/10. WNO Secretariat.

WNO Newsletter. (2008). WNO Secretariat.*

WNO Protocol Draft 22. (2006, June 9). "Working Draft 22 – Wabanong Nakaygum Okimawin Protocol Agreement." Includes overview prepared by Brian Schwartz, legal counsel retained by WNO CoC. Available from http://manitobawildlands.org/pdfs/WNOProtocolv22_9june06.pdf.

WNO TALUP Report. (2010, June). "Traditional Land Use Planning: Wabanong Nakaygum Okimawin – Final Report." Assessment of WNO TALUP process to date and report on

community planning coordinators' training, completed by consultant contracted by Aboriginal Relations Branch, Manitoba Conservation.

WNO TALUP Workshop. (2008, June). "Wabanong Nakaygum Okimawin (WNO) Traditional Land Use Planning Workshop, June 24 &25, 2008 – Summary Report." Prepared by Centre for Indigenous Environmental Resources for Aboriginal Relations Branch, Manitoba Conservation.

Literature Cited

Abele, F., & Prince, M. (2006). Four Pathways to Aboriginal Self-Government in Canada. *American Review of Canadian Studies, 36*(4), 568-595.

Agrawal, A. (1997). The Politics of Development and Conservation: Legacies of Colonialism. *Peace & Change, 22*(4), 463-482.

Alfred, G. T. (2009). Colonialism and State Dependency. *Journal of Aboriginal Health, 5*(2), 42-60.

Anderson, M. (1992). Large Scale Projects and Local People. In Y. Lithman, R. Riewe, R. Wiest & R. Wrigley (Eds.), *People and Land in Northern Manitoba* (pp. 163-173). Papers Presented at 1990 Conference. University of Manitoba Anthropology Papers 32. Winnipeg: Hignell Printing Ltd.

Armitage, D., Berkes, F., & Doubleday, N. (Eds.). (2007). *Adaptive Co-Management: Collaboration, Learning, and Multi-Level Governance*. Vancouver: UBC Press.

Arnstein, S. R. (1969). A Ladder of Citizen Participation. *Journal of the American Institute of Planners, 35*(4), 216-224.

Asch, M. (1994). To Negotiate into Confederation: Canadian Aboriginal Views on Their Political Rights. In R. Francis & D. Smith (Eds.), *Readings in Canadian History: Post-Confederation* (4th ed., pp. 561-578). Toronto: Harcourt Brace Canada.

Baber, W. F. (2004). Ecology and Democratic Governance: Toward a Deliberative Model of Environmental Politics. *The Social Science Journal, 41*, 331-346.

Baber, W. F., & Bartlett, R. V. (2005). *Deliberative Environmental Politics: Democracy and Ecological Rationality*. Cambridge, MA: MIT Press.

Baber, W. F., & Bartlett, R. V. (2007). Problematic Participants in Deliberative Democracy: Experts, Social Movements, and Environmental Justice. *International Journal of Public Administration, 30*, 5-22.

Ball, T. (2006). Democracy. In A. Dobson & R. Eckersley (Eds.), *Political Theory and the Ecological Challenge* (pp. 131-147). Cambridge: Cambridge University Press.

Baxter, H. (1987). System and Life-World in Habermas's *Theory of Communicative Action*. *Theory and Society, 16*, 39-86.

Belanger, Y., & Newhouse, D. (2004). Emerging from the Shadows: The Pursuit of Aboriginal Self-Government to Promote Aboriginal Well-Being. *The Canadian Journal of Native Studies, 24*(1), 129-222.

Bell, C. (1997). R. V. Badger: One Step Forward and Two Steps Back? *Constitutional Forum, 8*(2), 21-26.

Benhabib, S. (1994). Deliberative Rationality and Models of Democratic Legitimacy. *Constellations, 1*(1), 26-52.

Benhabib, S. (1996). Toward a Deliberative Model of Democratic Legitimacy. In S. Benhabib (Ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (pp. 67-94). Princeton: Princeton University Press.

Berg, B. L. (2004). *Qualitative Research Methods for the Social Sciences* (Fifth Edition ed.). New York: Pearson Education, Inc.

Berkes, F. (2007). Adaptive Co-Management and Complexity: Exploring the Many Faces of Co-Management. In D. Armitage, F. Berkes & N. Doubleday (Eds.), *Adaptive Co-*

Management: Collaboration, Learning, and Multi-Level Governance (pp. 19-37). Vancouver: UBC Press.

Berkes, F. (2008). *Sacred Ecology* (2nd ed.). New York: Routledge.

Berkes, F. (2010). Devolution of Environment and Resources Governance: Trends and Future. *Environmental Conservation, 37*(4), 489-500.

Berkes, F., Colding, J., & Folke, C. (Eds.). (2003). *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change*. Cambridge: Cambridge University Press.

Bernard, H. R. (2006). *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (4th ed.). Oxford: AltaMira Press.

Bland, D. (2013). *Canada and the First Nations: Cooperation or Conflict?* Aboriginal Canada and the Natural Resource Economy Series. Macdonald-Laurier Institute. Retrieved May 17, 2016, from http://www.macdonaldlaurier.ca/files/pdf/2013.01.05-MLI-Canada_FirstNations_BLAND_vWEB.pdf

Bocking, S. (2004). *Nature's Experts: Science, Politics, and the Environment*. New Brunswick, New Jersey: Rutgers University Press.

Bohman, J. (1998). The Coming of Age of Deliberative Democracy. *The Journal of Political Philosophy, 6*(4), 400-425.

Bohman, J. (1999). Theories, Practices, and Pluralism: A Pragmatic Interpretation of Critical Social Science. *Philosophy of the Social Sciences, 29*(4), 459-480.

Bohman, J. (2002). How to Make a Social Science Practical: Pragmatism, Critical Social Science and Multiperspectival Theory. *Millennium: Journal of International Studies, 31*(3), 499-524.

Bohman, J. (2004a). Expanding Dialogue: The Internet, the Public Sphere and Prospects for Transnational Democracy. In N. Crossley & J. M. Roberts (Eds.), *After Habermas: New Perspectives on the Public Sphere* (pp. 131-155). Malden, MA: Blackwell Publishing.

Bohman, J. (2004b). Realizing Deliberative Democracy as a Mode of Inquiry: Pragmatism, Social Facts, and Normative Theory. *Journal of Speculative Philosophy, 18*(1), 23-43.

Bohman, J., & Rehg, W. (2009). Jurgen Habermas. *The Stanford Encyclopedia of Philosophy* Retrieved Sept. 16, 2010, from http://plato.stanford.edu/archives/sum2009/entries/habermas/

Borrows, J. (2017). Challenging Historical Frameworks: Aboriginal Rights, the Trickster, and Originalism. *The Canadian Historical Review, 91*(1), 114-135.

Bowie, R. (2013). Indigenous Self-Governance and the Deployment of Knowledge in Collaborative Environmental Management in Canada. *Journal of Canadian Studies, 47*(1), 91-121.

Brookfield, S. (2005a). Learning Democratic Reason: The Adult Education Project of Jurgen Habermas. *Teachers College Record, 107*(6), 1127-1168.

Brookfield, S. (2005b). *The Power of Critical Theory: Liberating Adult Learning and Teaching*. The Jossey-Bass Higher and Adult Education Series. San Francisco: Jossey-Bass.

Brown, B., Hanson, M., Liverman, D., & Merideth, R. (1987). Global Sustainability: Toward Definition. *Environmental Management, 11*(6), 713-719.

Bryant, R. L., & Wilson, G. A. (1998). Rethinking Environmental Management. *Progress in Human Geography, 22*(3), 321-343.

Calhoun, C. (2013). *The Problematic Public: Revisiting Dewey, Arendt, and Habermas*. The Tanner Lectures on Human Values, University of Michigan, April 11. Retrieved Feb. 20, 2018, from https://tannerlectures.utah.edu/Calhoun%20Tanner%20Lecture.pdf

Canada. (1992). *Consensus Report on the Constitution*. Charlottetown Accord. Retrieved June 17, 2016, from http://www.thecanadianencyclopedia.ca/en/article/charlottetown-accord-document/

Canada. (1995). *The Government of Canada's Approach to Implementation of the Inherent Right and Negotiation of Aboriginal Self-Government*. Department of Indian and Northern Affairs Canada. Retrieved May 22, 2016, from http://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844

Canada. (2011). *Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Agreements*. Indian and Northern Affairs Canada: Evaluation, Performance Measurement, and Review Branch, Audit and Evaluation Sector. Retrieved June 12, 2016, from http://www.aadnc-aandc.gc.ca/eng/1325102789963/1325102827484

Canada. (n.d.). *A History of Indian and Northern Affairs Canada*. Indigenous and Northern Affairs Canada. Last modified Sept. 2, 2011. Retrieved May 8, 2016, from https://www.aadnc-aandc.gc.ca/eng/1314977281262/1314977321448

Canada, & Manitoba. (1975). *Summary Report: Lake Winnipeg, Churchill and Nelson Rivers Study Board*. Retrieved July 12, 2016, from https://hydrojustice.files.wordpress.com/2015/07/let-justice-flow.pdf

Canadian Press. (2015). Manitoba First Nations Conditions: By the Numbers. *The Canadian Press*. Retrieved June 6, 2016, from http://cponline.thecanadianpress.com/graphics/2015/manitoba-fn-btn/index.html

Cardinal, H. (1999 [1969]). *The Unjust Society: The Tragedy of Canada's Indians*. Vancouver: Douglas & McIntyre. Originally published (1969). Edmonton: M.G. Hurtig Ltd.

Chodkiewicz, J., & Brown, J. (Eds.). (1999). *First Nations and Hydroelectric Development in Northern Manitoba: The Northern Flood Agreement, Issues and Implications*. Papers Presented at Feb. 6, 1999 Conference by the Society for Applied Anthropology in Manitoba. Winnipeg: Centre for Rupert's Land Studies.

Clark, M. C., & Wilson, A. L. (1991). Context and Rationality in Mezirow's Theory of Transformational Learning. *Adult Education Quarterly, 41*(2), 75-91.

Coates, K., & Morrison, W. (1987). *Treaty Research Report - Treaty Five (1875)*. Ottawa: Treaties and Historical Research Centre, Indian and Northern Affairs Canada. Retrieved July 7, 2016, from https://www.aadnc-aandc.gc.ca/eng/1100100028695/1100100028697

Comstock, D. (1994). A Method for Critical Research. In M. Martin & L. McIntyre (Eds.), *Readings in the Philosophy of Social Science* (pp. 625-639). Cambridge, MA: MIT Press.

Cooke, M. (1994). *Language and Reason: A Study of Habermas's Pragmatics*. Cambridge, MA: MIT Press.

Cooke, M. (2000). Five Arguments for Deliberative Democracy. *Political Studies, 48*, 947-969.

Cooke, M. (2001). Meaning and Truth in Habermas's Pragmatics. *European Journal of Philosophy, 9*(1), 1-23.

Cooke, M. (2005). Avoiding Authoritarianism: On the Problem of Justification in Contemporary Critical Social Theory. *International Journal of Philosophical Studies, 13*(3), 379-404.

Cranton, P. (2006). *Understanding and Promoting Transformative Learning: A Guide for Educators of Adults* (2nd Edition ed.). San Francisco: Jossey-Bass.

Cranton, P., & Roy, M. (2003). When the Bottom Falls out of the Bucket: Toward a Holistic Perspective on Transformative Learning. *Journal of Transformative Education, 1*(2), 86-98.

Creswell, J. W. (2014). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed.). Thousand Oaks, CA: Sage Publications.

Creswell, J. W., & Miller, D. L. (2000). Determining Validity in Qualitative Inquiry. *Theory into Practice, 39*(3), 124-130.

Crichton, V. (2001). Co-Management -- the Manitoba Experience. *Alces, 37*(1), 163-173.

Crossley, N., & Roberts, J. M. (Eds.). (2004). *After Habermas: New Perspectives on the Public Sphere*. Oxford: Blackwell Publishing/The Sociological Review.

Cunningham, F. (2002). *Theories of Democracy: A Critical Introduction*. New York: Routledge.

Dalton, J. (2006). Aboriginal Self-Determination in Canada: Protections Afforded by the Judiciary and Government. *Canadian Journal of Law and Society, 21*(1), 11-37.

de Loe, R. C., Armitage, D., Plummer, R., Davidson, S., & Moraru, L. (2009). *From Government to Governance: A State-of-the-Art Review of Environmental Governance*. Final Report. Prepared for Alberta Envoronment, Environmental Stewardship, Environmental Relations. Guelph, ON: Rob de Loe Consulting Services.

Denzin, N. K., & Lincoln, Y. S. (2003). Paradigms and Perspectives in Transition. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Landscape of Qualitative Research: Theories and Issues* (2nd ed., pp. 245-252). Thousand Oaks, CA: Sage Publications.

Diduck, A. (2004). Incorporating Participatory Approaches and Social Learning. In B. Mitchell (Ed.), *Resource and Environmental Management in Canada* (pp. 497-527). Don Mills, ON: Oxford University Press.

Diduck, A. (2010). Incorporating Participatory Approaches and Social Learning. In B. Mitchell (Ed.), *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty* (4th ed., pp. 495-525). Don Mills: Oxford University Press.

Diduck, A., Sinclair, A. J., Pratap, D., & Hostetler, G. (2007). Achieving Meaningful Public Participation in the Environmental Assessment of Hydro Development: Case Studies from Chamoli District, Uttarakhand, India. *Impact Assessment and Project Appraisal, 25*(3), 219-231.

Diduck, A., & Sinclair, J. (2002). Public Involvement in Environmental Assessment: The Case of the Nonparticipant. *Environmental Management, 29*(4), 578-588.

Dillon Consulting. (2000). *East Side of Lake Winnipeg All Weather Road Justification and Scoping Study: Executive Summary*. Report prepared for Manitoba Department of Highways and Government Services.

Dirkx, J. M. (2006). Engaging Emotions in Adult Learning: A Jungian Perspective on Emotion and Transformative Learning. In E. Taylor (Ed.), *New Directions for Adult and Continuing Education* (Vol. 109, pp. 15-26). San Francisco: Jossey-Bass.

Dobson, A. (1996). Representative Democracy and the Environment. In W. M. Lafferty & J. Meadowcroft (Eds.), *Democracy and the Environment: Problems and Prospects* (pp. 124-139). Cheltenham, UK: Edward Elgar.

Dobson, A. (2007). *Green Political Thought* (4th ed.). New York: Routledge.

Dryzek, J. S. (1987). *Rational Ecology: Environment and Political Economy*. New York: Blackwell Publishers.

Dryzek, J. S. (1996). Political and Ecological Communication. In F. Mathews (Ed.), *Ecology and Democracy* (pp. 13-30). London: Frank Cass & Co.

Dryzek, J. S. (2000). *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. New York: Oxford University Press.

Dryzek, J. S. (2001). Legitimacy and Economy in Deliberative Democracy. *Political Theory, 29*(5), 651-669.

Dryzek, J. S. (2005). Designs for Environmental Discourse Revisited: A Greener Administrative State? In R. Paehlke & D. Torgerson (Eds.), *Managing Leviathan: Environmental Politics and the Administrative State* (2nd Edition ed., pp. 81-96). Peterborough, ON: Broadview Press.

Dunn, K. (2005). Interviewing. In I. Hay (Ed.), *Qualitative Research Methods in Human Geography* (2nd ed., pp. 79-105). Toronto: Oxford Universtiy Press.

Durant, R. F., Fiorino, D. J., & O'Leary, R. (Eds.). (2004). *Environmental Governance Reconsidered: Challenges, Choices, and Opportunities*. Cambridge, MA: MIT Press.

Durant, R. F., O'Leary, R., & Fiorino, D. J. (2004). Introduction. In R. F. Durant, D. J. Fiorino & R. O'Leary (Eds.), *Environmental Governance Reconsidered: Challenges, Choices, and Opportunities* (pp. 1-27). Cambridge, MA: MIT Press.

Eckersley, R. (1990). Habermas and Green Political Thought: Two Roads Diverging. *Theory and Society, 19*, 739-776.

Eckersley, R. (1996). Liberal Democracy and the Rights of Nature: The Struggle for Inclusion. In F. Mathews (Ed.), *Ecology and Democracy* (pp. 169-198). London: Frank Cass & Co.

Eckersley, R. (1999). The Discourse Ethic and the Problem of Representing Nature. *Environmental Politics, 8*(2), 24-49.

Eckersley, R. (2002). Environmental Pragmatism, Ecocentrism and Deliberative Democracy: Between Problem-Solving and Fundamental Critique. In B. P. Taylor & B. Minteer (Eds.), *Democracy and the Claims of Nature: Critical Perspectives for a New Century* (pp. 49-69). Lanham, MD: Rowman & Littlefield Publishers.

Eckersley, R. (2004). *The Green State: Rethinking Democracy and Sovereignty*. Cambridge, MA: MIT Press.

Elling, B. (2008). *Rationality and the Environment: Decision-Making in Environmental Politics and Assessment*. London: Earthscan.

Ewert, A. W., Baker, D. C., & Bissix, G. C. (2004). *Integrated Resource and Environmental Management: The Human Dimension*. Cambridge, MA: CABI Publishing.

Fenton, R., Harris, J., Miller, P., & Smith, D. (2001). *Manitoba's Ecosystem Based Pilot Project: Values Team Final Report*. EBM Values Team. Winnipeg.

Finger, M., & Verlaan, P. (1995). Learning Our Way Out: A Conceptual Framework for Social-Environmental Learning. *World Development, 23*(3), 503-513.

Fischer, F. (2009). *Democracy and Expertise: Reorienting Policy Inquiry*. Oxford: Oxford University Press.

Fitzpatrick, P., & Sinclair, A. J. (2003). Learning through Public Involvement in Environmental Assessment Hearings. *Journal of Environmental Management, 67*, 161-174.

Fitzpatrick, P., Sinclair, A. J., & Mitchell, B. (2008). Environmental Impact Assessment under the Mackenzie Valley Resource Management Act: Deliberative Democracy in Canada's North? *Environmental Management, 42*(1), 1-18.

Flood, G. (2007, March 25). Province Might Cede East Side. *Winnipeg Free Press,* p. B3,

Flyvbjerg, B. (1998). Empowering Civil Society: Habermas, Foucault and the Question of Conflict. In M. Douglass & J. Friedmann (Eds.), *Cities for Citizens: Planning and the Rise of Civil Society in a Global Age* (pp. 185-211). New York: John Wiley & Sons.

Flyvbjerg, B. (2006). Five Misunderstandings About Case-Study Research. *Qualitative Inquiry, 12*(2), 219-245.

Foster, S. (1998). Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement. *California Law Review, 86*(4), 775-841.

Fraser, N. (1990). Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy. *Social Text, 25/26*, 56-80.

Fraser, N. (1997). *Justice Interruptus: Critical Reflections on The "Postsocialist" Condition*. New York: Routledge.

Fraser, N. (2007). Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World. *Theory, Culture & Society, 24*(4), 7-30.

Freire, P. (1970). *Pedagogy of the Oppressed*. New York: Seabury.

Frichner, T. G., Special Rapporteur. (2010). *Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery* (No. E/C.19/2010/13). United Nations Economic and Social Council. Retrieved March 22, 2016, from www.un.org/esa/socdev/unpfii/documents/E.C.19.2010.13%20EN.pdf

Friesen, J. (2015, Jan. 23). Ottawa Failing to Include First Nations in Key Employment Data. *The Globe and Mail*. Retrieved June 6, 2016, from http://www.theglobeandmail.com/news/politics/unemployment-stats-missing-in-areas-where-job-training-is-a-priority/article22598523/

Funtowicz, S. O., & Ravetz, J. R. (1993). Science for the Post-Normal Age. *Futures, 25*(7), 739-755.

Getches, D. H., & Pellow, D. N. (2002). Beyond "Traditional" Environmental Justice. In G. Mutz, C. Bryner & D. S. Kenney (Eds.), *Justice and Natural Resources: Concepts, Strategies, and Applications* (pp. 3-30). Washington: Island Press.

Golde, C. M., & Gallagher, H. A. (1999). The Challenges of Conducting Interdisciplinary Research in Traditional Doctoral Programs. *Ecosystems, 2*(4), 281-285.

Goode, L. (2005). *Jurgen Habermas: Democracy and the Public Sphere*. Ann Arbor, MI: Pluto Press.

Goodin, R. (1992). *Green Political Theory*. Cambridge: Polity Press.

Goodin, R. (1996). Enfranchising the Earth, and Its Alternatives. *Political Studies, 44*(5), 835-849.

Goodin, R., & Dryzek, J. S. (2006). Deliberative Impacts: The Macro-Political Uptake of Mini-Publics. *Politics and Society, 34*(2), 219-244.

Granello, D. H. (2001). Promoting Cognitive Complexity in Graduate Written Work: Using Bloom's Taxonomy as a Pedagogical Tool to Improve Literature Reviews. *Counselor Education & Supervision, 40*(4), 292-307.

Habermas, J. (1984). *The Theory of Communicative Action. Volume 1: Reason and the Rationalization of Society* (T. McCarthy, Trans.). Boston: Beacon Press.

Habermas, J. (1989). *The Theory of Communicative Action. Volume 2: Lifeworld and System: A Critique of Functionalist Reason* (T. McCarthy, Trans.). Boston: Beacon Press.

Habermas, J. (1990). An Alternative Way out of the Philosophy of the Subject: Communicative Versus Subject-Centered Reason (F. G. Lawrence, Trans.). In *The Philosophical Discourse of Modernity: Twelve Lectures* (pp. 294-326). Cambridge, MA: MIT Press.

Habermas, J. (1991). A Reply. In A. Honneth & H. Joas (Eds.), *Communicative Action: Essays on Jurgen Habermas's the Theory of Communicative Action* (pp. 214-264). Cambridge, MA: MIT Press.

Habermas, J. (1992). The Unity of Reason in the Diversity of Its Voices (W. M. Hohengarten, Trans.). In *Postmetaphysical Thinking: Philosophical Essays* (pp. 115-148). Cambridge, MA: MIT Press.

Habermas, J. (1996a). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (W. Rehg., Trans.). Studies in Contemporary German Social Thought. Cambridge, MA: MIT Press.

Habermas, J. (1996b). Paradigms of Law. *Cardozo Law Review, 17*(4-5), 771-784.

Habermas, J. (1996c). Three Normative Models of Democracy. In S. Benhabib (Ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (pp. 21-30). Princeton: Princeton University Press.

Habermas, J. (1997). Modernity: An Unfinished Project [1981]. In M. Passerin d'Entreves & S. Benhabib (Eds.), *Habermas and the Unfinished Project of Modernity: Critical Essays On "The Philosophical Discourse of Modernity"* (pp. 38-55). Cambridge, MA: The MIT Press.

Habermas, J. (1998a). Communicative Rationality and the Theories of Meaning and Action [1986]. In M. Cooke (Ed.), *On the Pragmatics of Communication* (pp. 183-213). Studies in Contemporary German Social Thought. Cambridge, MA: MIT Press.

Habermas, J. (1998b). On the Internal Relation between the Rule of Law and Democracy (W. Rehg, Trans.). In C. Cronin & P. De Greiff (Eds.), *The Inclusion of the Other: Studies in Political Theory* (pp. 253-264). Studies in Contemporary German Social Thought. Cambridge, Mass.: MIT Press.

Habermas, J. (1998c). Some Further Clarifications on the Concept of Communicative Rationality [1996]. In M. Cooke (Ed.), *On the Pragmatics of Communication* (pp. 307-342). Studies in Contemporary German Social Thought. Cambridge, MA: MIT Press.

Habermas, J. (1998d). What Is Universal Pragmatics? [1976]. In M. Cooke (Ed.), *On the Pragmatics of Communication* (pp. 21-103). Studies in Contemporary German Social Thought. Cambridge, MA: MIT Press.

Habermas, J. (2001). Constitutional Democracy: A Paradoxical Union of Contradictory Principles? *Political Theory, 29*(6), 766-781.

Habermas, J. (2008a). Communicative Action and the Detranscendentalized "Use of Reason". In *Between Naturalism and Religion: Philosophical Essays* (pp. 24-76). Malden, MA: Polity Press.

Habermas, J. (2008b). Public Space and Political Public Sphere -- the Biographical Roots of Two Motifs in My Thought. In *Between Naturalism and Religion: Philosophical Essays* (pp. 11-23). Malden, MA: Polity Press.

Habermas, J. (2008c). Religion in the Public Sphere: Cognitive Presuppositions for The "Public Use of Reason" By Religious and Secular Citizens (C. Cronin, Trans.). In *Between Naturalism and Religion: Philosophical Essays* (pp. 114-148). Malden, MA: Polity Press.

Hamel, J. (1993). *Case Study Methods*. Newbury Park, CA: Sage Publications.

Hart, B. (2001). *Review and Analysis: East Side of Lake Winnipeg All Weather Road Justification and Scoping Study*. Paskianake Project Management, for Whelan Enns Associates. Winnipeg. Retrieved April 11, 2016, from manitobawildlands.org/pdfs/BHart_AWR_Review2001.pdf

Hays, P. A. (2004). Case Study Research. In K. deMarrais & S. D. Lapan (Eds.), *Foundations for Research: Methods of Inquiry in Education and the Social Sciences* (pp. 217-234). Mahwah, NJ: Lawrence Erlbaum Associates.

Healey, P. (2006). *Collaborative Planning: Shaping Places in Fragmented Societies* (2nd ed.). New York: Palgrave Macmillan.

Hendriks, C. M. (2006). Integrated Deliberation: Reconciling Civil Society's Dual Role in Deliberative Democracy. *Political Studies, 54*, 486-508.

Hoffman, S. (2008). Engineering Poverty: Colonialism and Hydroelectric Development in Northern Manitoba. In T. Martin & S. Hoffman (Eds.), *Power Struggles: Hydro Development and First Nations in Manitoba and Quebec* (pp. 103-128). Winnipeg: University of Manitoba Press.

Holling, C. S., & Meffe, G. K. (1996). Command and Control and the Pathology of Natural Resource Management. *Conservation Biology, 10*(2), 328-337.

Holstein, J. A., & Gubrium, J. F. (2008). Constructionist Impulses in Ethnographic Fieldwork. In J. A. Holstein & J. F. Gubrium (Eds.), *Handbook of Constructionist Research* (pp. 373-395). New York: The Guilford Press.

Hosking, D. M. (2008). Can Constructionism Be Critical? In J. A. Holstein & J. F. Gubrium (Eds.), *Handbook of Constructionist Research* (pp. 669-686). New York: The Guilford Press.

Innes, J. E., & Booher, D. E. (2004). Reframing Public Participation: Strategies for the 21st Century. *Planning Theory & Practice, 5*(4), 419-436.

Jamal, M. (2006). Treaty Interpretation after R. V. Marshall; R. V. Bernard. *Supreme Court Law Review, 34*, 443-463.

Janzen, L. (2004, April 23). First Nations Walk out on Development Pact: Lake Winnipeg's East Side Targeted. *Winnipeg Free Press,* p. A9,

Jarvis, P. (2008). *Democracy, Lifelong Learning and the Learning Society: Active Citizenship in a Late Modern Age*. New York: Routledge.

Jha-Thakur, U., Gazzola, P., Peel, D., Fischer, T. B., & Kidd, S. (2009). Effectiveness of Strategic Environmental Assessment -- the Significance of Learning. *Impact Assessment and Project Appraisal, 27*(2), 133-144.

Johnston, R. J. (1983). Resource Analysis, Resource Management and the Integration of Physical and Human Geography. *Progress in Physical Geography, 7*(1), 127-146.

Jones, G., Scaife, B., & Zebrowski, D. (2002). *Manitoba's Ecosystem Based Management Pilot Project: Executive Summary*. Winnipeg: Manitoba Conservation.

Keane, J. (2009). *The Life and Death of Democracy*. New York: W. W. Norton & Company.

Keen, M., Brown, V., A., & Dyball, R. (Eds.). (2005a). *Social Learning in Environmental Management: Towards a Sustainable Future*. London: Earthscan.

Keen, M., Brown, V. A., & Dyball, R. (2005b). Social Learning: A New Approach to Environmental Management. In M. Keen, V. A. Brown & R. Dyball (Eds.), *Social Learning in Environmental Management: Towards a Sustainable Future* (pp. 3-21). London: Earthscan.

Keewatin Tribal Council. (2005). *East Side Lake Winnipeg Planning Initiative: First Nations "Early Strategic Planning" Project*. Thompson, MB.

Kincheloe, J., & McLaren, P. (2003). Rethinking Critical Theory and Qualitative Research. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Landscape of Qualitative Research: Theories and Issues* (2nd ed., pp. 433-488). Thousand Oaks, CA: Sage Publications.

Kirmayer, L., Brass, G., Holton, T., Paul, K., Simpson, C., & Tait, C. (2007). *Suicide among Aboriginal People in Canada*. Aboriginal Healing Foundation Research Series. Ottawa: Aboriginal Healing Foundation. Retrieved May 10, 2016, from http://www.ahf.ca/downloads/suicide.pdf

Kohlberg, L., & Hersh, R. H. (1977). Moral Development: A Review of the Theory. *Theory into Practice, 16*(2), 53-59.

Koro-Ljungberg, M. (2008). A Social Constructionist Framing of the Research Interview. In J. A. Holstein & J. F. Gubrium (Eds.), *Handbook of Constructionist Research* (pp. 429-444). New York: The Guilford Press.

KPMG Consulting. (1995). *Manitoba's Forest Plan ... Towards Ecosystems Based Management -- Executive Summary*. Report to Manitoba Natural Resources. Winnipeg.

Kulchyski, P. (2004). Manitoba Hydro: How to Build a Legacy of Hatred. *Canadian Dimension, 38*(3).

Kulchyski, P. (2015). Trail to Tears: Concerning Modern Treaties in Northern Canada. *The Canadian Journal of Native Studies, 35*(1), 69-81.

Ladner, K. (2009). Understanding the Impact of Self-Determination on Communities in Crisis. *Journal of Aboriginal Health, 5*(2), 88-101.

Larcombe, P. (1993). *Northern Flood Agreement: Case Study in a Treaty Area*. Royal Commission on Aboriginal Peoples -- Phase II Report: Contemporary Aboriginal Land, Resource and Environmental Regimes, Origins, Problems and Prospects. Prepared by Symbion Consultants, Winnipeg. Retrieved May 12, 2016, from http://publications.gc.ca/site/archivee-archived.html?url=http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-43-eng.pdf

Leeuwis, C., & Pyburn, R. (Eds.). (2002). *Wheelbarrows Full of Frogs: Social Learning in Rural Resource Management. International Research and Reflections*. Assen, The Netherlands: Van Gorcum.

Leopold, A. (1960). *A Sand County Almanac: With Essays on Conservation from Round River [1949]*. New York: Ballantine Books.

Library of Parliament. (1999). *Aboriginal Self-Government*. Parliamentary Research Branch, Political and Social Affairs Division. Retrieved May 22, 2016, from http://www.lop.parl.gc.ca/content/lop/researchpublications/962-e.htm

Lidskog, R., & Elander, I. (2007). Representation, Participation or Deliberation? Democratic Responses to the Environmental Challenge. *Space and Polity, 11*(1), 75-94.

Lincoln, Y. S., & Guba, E. G. (2003). Paradigmatic Controversies, Contradictions, and Emerging Confluences. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Landscape of Qualitative Research: Theories and Issues* (2nd ed., pp. 253-291). Thousand Oaks, CA: Sage Publications.

Linders, A. (2008). Documents, Texts, and Archives in Constructionist Research. In J. A. Holstein & J. F. Gubrium (Eds.), *Handbook of Constructionist Research* (pp. 467-490). New York: The Guilford Press.

Loehwing, M., & Motter, J. (2009). Publics, Counterpublics, and the Promise of Democracy. *Philosophy and Rhetoric, 42*(3), 220-241.

Loxley, J. (1981). The 'Great Northern' Plan. *Studies in Political Economy, 6*(1), 151-182.

Loxley, J. (1992). Manitoba: The Dynamics of North-South Relationships. In Y. Lithman, R. Riewe, R. Wiest & R. Wrigley (Eds.), *People and Land in Northern Manitoba* (pp. 55-64). Papers Presented at 1990 Conference. University of Manitoba Anthropology Papers 32. Winnipeg: Hignell Printing.

Manitoba. (1977). *A Resource Allocation Scheme for Little Grand Rapids -- Pauingassi*. Department of Renewable Resources and Transportation Services. .

Manitoba. (1987). *Provincial Overview Plan: East Side of Lake Winnipeg*. Manitoba Department of Natural Resources. University of Manitoba Archives: David Punter fonds, Box 13, folder 1.

Manitoba. (1996). *Working in Partnership: Manitoba Policy on First Nation Government*. Department of Northern Affairs, Native Affairs Secretariat.

Manitoba. (1997). *The Sustainable Development and Consequential Amendments Act*. S.M. 1997, c. 61. Retrieved July 12, 2016, from http://web2.gov.mb.ca/laws/statutes/1997/c06197e.php

Manitoba. (1999). *Report of the Consultation on Sustainable Development Initiative*. Sustainable Development Coordination Unit.

Manitoba, MKO, & AMC. (1998). *First Nations Memorandum of Understanding*. MOU regarding protected areas initiative. Department of Natural Resources, Assembly of Manitoba Chiefs, Manitoba Keewatinowi Okimakinak. Retrieved July 10, 2016, from http://www.gov.mb.ca/sd/pai/mou_complete1.html

Manitoba Aboriginal Rights Coalition. (2001). *Let Justice Flow: Report of the Interchurch Inquiry into Northern Hydro Development*. Winnipeg: Manitoba Aboriginal Rights Coalition. Retrieved July 12, 2016, from https://hydrojustice.files.wordpress.com/2015/07/let-justice-flow.pdf

Manitoba Conservation. (2002). *Manitoba's Ecosystem Based Pilot Project: Science Team Final Report*. Manitoba Conservation. Winnipeg.

Manitoba Conservation. (2006). *Manitoba Conservation Annual Report: 2005-2006*. Manitoba Conservation. Winnipeg. Retrieved March 10, 2016, from http://gov.mb.ca/conservation/annual-reports/con_reports/conservation_annual_report_05_06.pdf

Manitoba Conservation. (2007). *Manitoba Conservation Annual Report: 2006-2007*. Manitoba Conservation. Winnipeg. Retrieved March 10, 2016, from http://gov.mb.ca/conservation/annual-reports/con_reports/conservation_annual_report_06_07.pdf

Manitoba Conservation. (2008). *Manitoba Conservation Annual Report: 2007-2008*. Manitoba
　　　Conservation. Winnipeg. Retrieved March 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/conservation_annual_report_2007_08.pdf

Manitoba Conservation. (2009). *Manitoba Conservation Annual Report: 2008-2009*. Manitoba
　　　Conservation. Winnipeg. Retrieved March 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/con_annual_report_2008_09_web.pdf

Manitoba Conservation. (2010). *Manitoba Conservation Annual Report: 2009-2010*. Manitoba
　　　Conservation. Winnipeg. Retrieved March 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/conservation_annual_report_2009_10.pdf

Manitoba Conservation. (2011). *Manitoba Conservation Annual Report: 2010-2011*. Manitoba
　　　Conservation. Winnipeg. Retrieved March 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/conservation_annual_report_2010_11.pdf

Manitoba Conservation. (2012). *Manitoba Conservation Annual Report: 2011-2012*. Manitoba
　　　Conservation. Winnipeg. Retrieved March 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/conservation_annual_report_2011_12.pdf

Manitoba Conservation. (2013). *Manitoba Conservation Annual Report: 2012-2013*. Manitoba
　　　Conservation. Winnipeg. Retrieved May 10, 2016, from
　　　http://gov.mb.ca/conservation/annual-
　　　reports/con_reports/conservation_annual_report_2012_13.pdf

Manitoba Conservation and Water Stewardship. (2012). *A Profile of Manitoba's Commercial
　　　Fishery*. Fisheries Branch. Retrieved June 8, 2016. from
　　　www.manitoba.ca/waterstewardship/fisheries/commercial/history.pdf.

Manitoba Conservation and Water Stewardship. (n.d.). *Fur Bearing Animal Harvests and Values*.
　　　Wildlife Branch. Retrieved June 6, 2016. from
　　　https://www.gov.mb.ca/conservation/wildlife/trapping/harvalue/index.html.

Manitoba Hansard. (2009, June 4a). *Legislative Assembly of Manitoba Debates and Proceedings:
　　　Official Report*. 39th Legislature, 3rd Session. Vol. LXI, No. 53B. Government of
　　　Manitoba. Winnipeg. Retrieved May 12, 2016, from
　　　https://www.gov.mb.ca/legislature/hansard/39th_3rd/hansardpdf/53b.pdf

Manitoba Hansard. (2009, June 4b). *Legislative Assembly of Manitoba: Standing Committee on
　　　Legislative Affairs*. 39th Legislature, 3rd Session. Vol. LXI No. 5. Government of
　　　Manitoba. Winnipeg. Retrieved May 12, 2016, from
　　　https://www.gov.mb.ca/legislature/hansard/39th_3rd/hansardpdf/la5.pdf

Manitoba Hansard. (2009, June 8). *Legislative Assembly of Manitoba: Standing Committee on
　　　Legislative Affairs*. 39th Legislature, 3rd Session. Vol. LXI, No. 6. Government of
　　　Manitoba. Winnipeg. Retrieved May 12, 2016, from
　　　https://www.gov.mb.ca/legislature/hansard/39th_3rd/hansardpdf/la6.pdf

Manitoba Hansard. (2009, June 11). *Legislative Assembly of Manitoba Debates and
　　　Proceedings: Official Report*. 39th Legislature, 3rd Session. Vol. LXI, No. 57B.

Government of Manitoba. Winnipeg. Retrieved May 12, 2016, from https://www.gov.mb.ca/legislature/hansard/39th_3rd/hansardpdf/57b.pdf

Manitoba Indian Brotherhood. (1971). *Wahbung: Our Tomorrows*. Winnipeg: Manitoba Indian Brotherhood.

Manitoba Indigenous and Municipal Relations. (n.d.). *Aboriginal and Northern Profile*. Retrieved June 4, 2016. from http://www.gov.mb.ca/ana/community/profile.html.

Manitoba Law Reform Commission. (2015). *Manitoba's Environmental Assessment and Licensing Regime under the Environment Act* (Report No. 130). Winnipeg: Manitoba Law Reform Commission. Retrieved April 12, 2016, from www.manitobalawreform.ca

Manitoba NDP. (2007, May 11). *Today's Ndp Moves Forward with East Side Protection*. Manitoba New Democratic Party. Poplar River First Nation. Retrieved May 5, 2016, from http://www.mb.ndp.ca/index.php?q=newsArticle&articlePageID=105

Manitoba Trade and Investment. (n.d.). *Wild Rice*. Retrieved June 6, 2016. from http://www.gov.mb.ca/trade/globaltrade/agrifood/commodity/wild_rice.html.

Martin, T., & Hoffman, S. (Eds.). (2008). *Power Struggles: Hydro Development and First Nations in Manitoba and Quebec*. Winnipeg: University of Manitoba Press.

Maus, I. (2002). Liberties and Popular Sovereignty: On Jurgen Habermas's Reconstruction of the System of Rights. In R. von Schomberg & K. Baynes (Eds.), *Discourse and Democracy: Essays on Habermas's between Facts and Norms* (pp. 89-128). Albany, NY: State University of New York Press.

MB News Release. (2000, Aug. 9). *Wide Area Planning to Begin for East Side of Lake Winnipeg*. Government of Manitoba. Winnipeg.

MB News Release. (2000, Dec. 1). *Conservation Minister Establishes Aboriginal Resources Advisory Council*. Government of Manitoba. Winnipeg.

MB News Release. (2002, March 7). *East Side Lake Winnipeg Round Table Chair Appointed: Phil Fontaine to Lead Round Table Consultations*. Government of Manitoba. Winnipeg.

MB News Release. (2003, Dec. 5). *East Side Lake Winnipeg Planning Initiative Continues: First Nation Elders and Community Residents Share Their Views on the Future of the Regioin*. Government of Manitoba. Winnipeg.

MB News Release. (2004, March 15). *Cabinet Ministers Visit Communities on East Side of Lake Winnipeg: Meetings to Focus on Building Partnerships with First Nations and Future of Region: Struthers*. Government of Manitoba. Winnipeg.

MB News Release. (2004, Nov. 16). *Province Receives Report on Future of East Side of Lake Winnipeg*. Government of Manitoba. Winnipeg.

MB News Release. (2007, Dec. 19). *Study Released on Routing Options for Bipole Iii Transmission Line*. Government of Manitoba. Winnipeg.

MB News Release. (2009, May 11). *Manitoba Increases Support for Pimachiowin Aki World Heritage Project on East Side of Lake Winnipeg*. Government of Manitoba. Winnipeg.

MB News Release. (2009, Oct. 13). *Province Announces Trust Fund Established to Support Pimachiowin Aki World Heritage Project*. Government of Manitoba. Winnipeg.

McCaslin, W., & Boyer, Y. (2009). First Nations Communities at Risk and in Crisis: Justice and Security. *Journal of Aboriginal Health, 5*(2), 61-87.

McNeil, K. (2007). *A Brief History of Our Right to Self-Governance: Pre-Contact to Present*. National Centre for First Nations Governance. Retrieved June 15, 2016, from www.fngovernance.org/publication_docs/Self-Governance_Right_CFNG.pdf

Meadowcroft, J. (2004). Deliberative Democracy. In R. F. Durant, D. J. Fiorino & R. O'Leary (Eds.), *Environmental Governance Reconsidered: Challenges, Choices, and Opportunities* (pp. 183-217). Cambridge, MA: The MIT Press.

Meppem, T., & Bourke, S. (1999). Different Ways of Knowing: A Communicative Turn toward Sustainability. *Ecological Economics, 30*(3), 389-404.

Mercredi, O., & Turpel, M. (1993). *In the Rapids: Navigating the Future of First Nations*. Toronto: Viking.

Merriam, S. B. (1988). *Case Study Research in Education: A Qualitative Approach*. San Francisco: Jossey Bass.

Mezirow & Associates (Ed.). (2000). *Learning as Transformation: Critical Perspectives on a Theory in Progress*. Jossey-Bass Higher and Adult Education Series. San Francisco: Jossey-Bass.

Mezirow, J. (1978). Perspective Transformation. *Adult Education, 28*(2), 100-110.

Mezirow, J. (1981). A Critical Theory of Adult Learning and Education. *Adult Education, 32*(1), 3-24.

Mezirow, J. (1991a). Transformation Theory and Cultural Context: A Reply to Clark and Wilson. *Adult Education Quarterly, 41*(3), 188-192.

Mezirow, J. (1991b). *Transformative Dimensions of Adult Learning*. San Francisco: Jossey-Bass Publishers.

Mezirow, J. (2003). Transformative Learning as Discourse. *Journal of Transformative Education, 1*(1), 58-63.

Mikisew Cree First Nation v. Canada. (2005). 3 SCR 388. Retrieved May 10, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do

Miller, J. R. (2000). *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (3rd ed.). Toronto: University of Toronto Press.

Mitchell, B. (2002). *Resource and Environmental Management* (2nd ed.). Harlow, England: Pearson Education.

Mitchell, B. (2004). Introduction: Policy Context, Issues, and Challenges. In B. Mitchell (Ed.), *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty* (3rd ed.). Don Mills, ON: Oxford University Press.

Mochoruk, J. (2007). Manitoba and the (Long and Winding) Road to the *Natural Resources Transfer Agreement*. *Review of Constitutional Studies, 12*(2), 255-300.

Montuori, A. (2005). Literature Review as Creative Inquiry: Reframing Scholarship as a Creative Process. *Journal of Transformative Education, 3*(4), 374-393.

Morellato, M. (2008). *The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights*. National Centre for First Nations Governance. Retrieved April 17, 2016, from fngovernance.org/resources_docs/Crown_Duty_to_Consult__Accommodate.pdf

Morito, B. (2002). *Thinking Ecologically: Environmental Thought, Values and Policy*. Halifax: Fernwood Publishing.

Morris, A. (2000 [1880]). *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on Which They Were Based, and Other Information Related Thereto*. Toronto: Prospero Books. Originally published (1880). Toronto: Belfords, Clarke & Co.

Morris, M. (2001). *Rethinking the Communicative Turn: Adorno, Habermas, and the Problem of Communicative Freedom*. Albany, NY: State University of New York Press.

Mouffe, C. (1999). Deliberative Democracy or Agonistic Pluralism. *Social Research, 66*(3), 745-758.

Mulrennan, M. E. (2015). Aboriginal Peoples in Relation to Resource and Environmental Management. In B. Mitchell (Ed.), *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty* (5th ed., pp. 55-83). Don Mills, ON: Oxford University Press.

Nelson, J. G. (1991). Research in Human Ecology and Planning: An Interactive, Adaptive Approach. *The Canadian Geographer, 35*(2), 114-127.

Newhouse, D. (2000). Resistance Is Futile: Aboriginal Peoples Meet the Borg of Capitalism. In J. Bishop (Ed.), *Ethics and Capitalism* (pp. 141-155). Toronto: University of Toronto Press.

Newman, D. (2014). *The Rule and Role of Law: The Duty to Consult, Aboriginal Communities, and the Canadian Natural Resource Sector*. Aboriginal Canada and the Natural Resource Economy Series. Macdonald-Laurier Institute. Retrieved May 17, 2016, from www.macdonaldlaurier.ca/files/pdf/DutyToConsult-Final.pdf

Newman, D. (2015). *Is the Sky the Limit? Following the Trajectory of Aboriginal Legal Rights in Resource Development*. Aboriginal Canada and the Natural Resource Economy Series. Macdonald-Laurier Institute. Retrieved May 17, 2016, from www.macdonaldlaurier.ca/.../MLIAboriginalResourcesNo7-06-15-WebReady-V3.pdf

Niemi, J. I. (2005). Habermas and Validity Claims. *International Journal of Philosophical Studies, 13*(2), 227-244.

Noble, B. F. (2004). Applying Adaptive Environmental Management. In B. Mitchell (Ed.), *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty* (3rd ed.). Don Mills, ON: Oxford University Press.

Northern Flood Agreement. (1977). An Agreement Between the Government of Manitoba, the Government of Canada, the Manitoba Hydro-Electric Board, and the Northern Flood Committee, Inc., Representing Nelson House, Norway House, Cross Lake, Split Lake, and York Factory.

Northern Lights Heritage Services. (2000). *Manitoba's Ecosystem Based Management Pilot Project: Land Use Studies*. Prepared for Poplar River, Little Grand Rapids and Pauingassi First Nations; Southeast Resource Development Corporation; and Manitoba Natural Resources. Winnipeg.

Northern Manitoba Economic Development Commission. (1992). *Northern Manitoba: A Benchmark Report*. Northern Manitoba Economic Development Commission.

Northern Manitoba Economic Development Commission. (1993). *Sustainable Economic Development: A Plan for Action for Northern Manitoba*. Manitoba Department of Northern Affairs.

Norway House Master Implementation Agreement. (1997). An Agreement Between the Government of Manitoba, the Government of Canada, the Manitoba Hydro-Electric Board, and the Norway House Cree Nation.

Notzke, C. (1995). A New Perspective in Aboriginal Natural Resource Management: Co-Management. *Geoforum, 26*(2), 187-209.

O'Neill, J. (2002). Deliberative Democracy and Environmental Policy. In B. Minteer & B. P. Taylor (Eds.), *Democracy and the Claims of Nature: Critical Perspectives for a New Century* (pp. 257-275). Lanham, MD: Rowman & Littlefield Publishers.

O'Neill, S. (2000). The Politics of Inclusive Agreements: Towards a Critical Discourse Theory of Democracy. *Political Studies, 48*, 503-521.

Outhwaite, W. (2009). *Habermas: A Critical Introduction* (2nd ed.). Malden, MA: Polity Press.

Owen, B. (2009, June 10). First Nations May Withdraw from Accord. *Winnipeg Free Press,* p. A6. Retrieved June 12, 2016, from www.winnipegfreepress.com/local/first-nations-may-withdraw-from-accord-47509592.html

Paehlke, R. (2004). Sustainability. In R. Durant, D. Fiorino & R. O'Leary (Eds.), *Environmental Governance Reconsidered: Challenges, Choices, and Opportunities* (pp. 35-67). Cambridge, MA: MIT Press.

Pannekoek, F. (1987). *The Fur Trade and Western Canadian Society, 1670-1870*. Canadian Historical Association Historical Booklet, No. 43. Ottawa: The Canadian Historical Association.

Parkins, J. R., & Mitchell, R. E. (2005). Public Participation as Public Debate: A Deliberative Turn in Natural Resource Management. *Society and Natural Resources, 18*, 529-540.

Payne, M. (2001). Fur Trade Historiography: Past Conditions, Present Circumstances and a Hint of Future Prospects. In T. Binnema, G. J. Ens & R. C. Macleod (Eds.), *From Rupert's Land to Canada* (pp. 3-22). Edmonton: University of Alberta Press.

Peckett, M. (1999). *Ecoregion 90: The Social and Economic Landscape*. Ecoregion 90 Ecosystem Based Management Pilot Project. Bagida'an Aboriginal Research & Partnership Services. Winnipeg.

Petts, J. (2001). Evaluating the Effectiveness of Deliberative Processes: Waste Management Case-Studies. *Journal of Environmental Planning and Management, 44*(2), 207-226.

Petts, J. (2003). Barriers to Deliberative Participation in Eia: Learning from Waste Policies, Plans and Projects. *Journal of Environmental Assessment Policy and Management, 5*(3), 269-293.

Poplar River First Nation. (2011). *Asatiwisipe Aki Management Plan*. Retrieved May 12, 2016, from www.gov.mb.ca/sd/lands_branch/pdf/pfrn_management_plan_18may2011.pdf

Puxley, C. (2014, Oct. 30). Reserves Need $28m for Fire Protection: Aboriginal Affairs Report. *The Canadian Press - Global News*. Retrieved June 6, 2016, from http://globalnews.ca/news/1644416/reserves-need-28m-for-fire-protection-aboriginal-affairs-report/

Puxley, C. (2015a, Jan. 29). Grinding Poverty Faced by Manitoba First Nations Worst in Country: Aboriginal Affairs Documents. *The Canadian Press - Aboriginal Peoples Television Network*. Retrieved June 6, 2016, from http://aptn.ca/news/2015/01/29/grinding-poverty-faced-manitoba-first-nations-worst-country-aboriginal-affairs-documents/

Puxley, C. (2015b, Dec. 20). Manitoba First Nations Act as Number of Children in Care Hits 10,000. *The Canadian Press - The Star*. Retrieved May 12, 2016, from https://www.thestar.com/news/canada/2015/12/20/manitoba-first-nations-act-as-number-of-children-in-care-hits-10000.html

Puxley, C. (2015c, June 18). Manitoba Says Sorry for Taking Aboriginal Children from Homes. *The Canadian Press - The Star*. Retrieved May 12, 2016, from https://www.thestar.com/news/canada/2015/06/18/manitoba-says-sorry-for-taking-aboriginal-children-from-homes.html

R. v. Badger. (1996). 1 SCR 771. Retrieved May 9, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1366/index.do

R. v. Marshall. (1999). *[Marshall 1]*. 3 SCR 456. Retrieved May 10, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1739/index.do

R. v. Marshall; R. v. Bernard. (2005). 2 SCR 220. Retrieved May 10, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do

R. v. Sioui. (1990). 1 SCR 1025. Retrieved May 10, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/608/index.do

R. v. Sparrow. (1990). 1 SCR 1075. Retrieved May 10, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do

R. v. Van der Peet. (1996). 2 SCR 507. Retrieved May 12, 2016, from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1407/index.do

Ranciere, J. (2006). Democracy, Republic, Representation. *Constellations, 13*(3), 297-307.

Rayner, J., & Howlett, M. (2009). Introduction: Understanding Integrated Policy Strategies and Their Evolution. *Policy and Society, 28*(2), 99-109.

Reading, J., Kmetic, A., & Gideon, V. (2007). *First Nations Wholistic Policy and Planning Model: Discussion Paper for the World Health Organization Commission on Social Determinants of Health*. Assembly of First Nations. Ottawa.

Reed, M., Evely, A., Cundill, G., Fazey, I., Glass, J., Laing, A., et al. (2010). What Is Social Learning? [Response]. *Ecology and Society, 15*(4).

Rehg, W., & Bohman, J. (2002). Discourse and Democracy: The Formal and Informal Bases of Legitimacy in between Facts and Norms. In R. von Schomberg & K. Baynes (Eds.), *Discourse and Democracy: Essays on Habermas's between Facts and Norms* (pp. 31-60). Suny Series in Social and Political Thought. Albany, NY: State University of New York Press.

Roberts, J. M., & Crossley, N. (2004). Introduction. In N. Crossley & J. M. Roberts (Eds.), *After Habermas: New Perspectives on the Public Sphere* (pp. 1-27). Malden, MA: Blackwell Publishing.

Rosa, E. A., & Dietz, T. (2010). Preface: Footprints Small and Colossal. In E. A. Rosa, A. Diekmann, T. Dietz & C. C. Jaeger (Eds.), *Human Footprints on the Global Environment: Threats to Sustainability* (pp. *ix-xi*). Cambridge, MA: MIT Press.

Roulston, K. (2010). Considering Quality in Qualitative Interviewing. *Qualitative Research, 10*(2), 199-228.

Royal Charter of the Hudson's Bay Company. (1670). from http://www.hbcheritage.ca/hbcheritage/collections/archival/charter/charter.asp

Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*. Erasmus, G. & Dussault, R. (Commissioners). Ottawa: The Commission. Retrieved May 6, 2016, from https://qspace.library.queensu.ca/handle/1974/6874

Royal Proclamation. (1763). As published in The London Gazette, October 7-8, 1763. Retrieved May 12, 2016, from http://www.specific-claims-law.com/index.php?option=com_content&view=article&id=12%3Aroyal-proclamation-1763&catid=5&Itemid=8

Sayer, A. (1997). Critical Realism and the Limits to Critical Social Science. *Journal for the Theory of Social Behaviour, 27*(4), 473-488.

Schrank, A. (2006). Case-Based Research. In E. Perecman & S. R. Curran (Eds.), *A Handbook for Social Science Field Research: Essays & Bibliographic Sources on Research Design and Methods* (pp. 21-38). Thousand Oaks, CA: Sage Publications.

Schusler, T. M., Decker, D. J., & Pfeffer, M. J. (2003). Social Learning for Collaborative Natural Resource Management. *Society and Natural Resources, 15*, 309-326.

Schwandt, T. A. (2003). Three Epistemological Stances for Qualitative Inquiry: Interpretivism, Hermeneutics, and Social Constructionism. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Landscape of Qualitative Research: Theories and Issues* (2nd ed., pp. 292-331). Thousand Oaks, CA: Sage Publications.

Scott, S. M. (2003). The Social Construction of Transformation. *Journal of Transformative Education, 1*(3), 264-284.

Shabani, O. A. P. (2003). *Democracy, Power, and Legitimacy: The Critical Theory of Jurgen Habermas*. Toronto: University of Toronto Press.

Simpson, L. (2002). *First Nations Participation in Large Area Land Use Planning on the East Side of Lake Winnipeg: Recommendations for a Meaningful Process*. Anishinaabe Turtle Island Protectors & The Boreal Forest Network.

Simpson, L., Storm, S., & Sullivan, D. (2007). Closing the Economic Gap in Northern Manitoba: Sustained Economic Development for Manitoba's First Nation Communities. *The Canadian Journal of Native Studies, 27*(1), 49-108.

Sinclair, A. J. (2002). Public Consultation for Sustainable Development Policy Initiatives: Manitoba Approaches. *Policy Studies Journal, 30*(4), 423-443.

Sinclair, A. J., & Diduck, A. (2016). Public Participation in Canadian Environmental Assessment: Enduring Challenges and Future Directions. In K. S. Hanna (Ed.), *Environmental Impact Assessment: Practice and Participation* (3rd ed., pp. 65-95). Don Mills: Oxford University Press.

Sinclair, A. J., Diduck, A., & Fitzpatrick, P. (2008). Conceptualizing Learning for Sustainability through Environmental Assessment: Critical Reflections on 15 Years of Research. *Environmental Impact Assessment Review, 28*(7), 415-428.

Sinclair, A. J., & Quinn, L. (2012). From Idea to Practice: Sustainable Development Efforts in Manitoba. *Dalhousie Law Journal, 35*(1), 31-54.

Sinclair, A. J., Sims, L., & Spaling, H. (2009). Community-Based Approaches to Strategic Environmental Assessment: Lessons from Costa Rica. *Environmental Impact Assessment Review, 29*(3), 147-156.

Slocombe, D. S., & Hanna, K. S. (2007). Integration in Resource and Environmental Management. In K. S. Hanna & D. S. Slocombe (Eds.), *Integrated Resource and*

Environmental Management: Concepts and Practice (pp. 1-20). Don Mills, ON: Oxford University Press.

Slowey, G. (2000). Aboriginal Self-Government, Extinguishment of Title and the Canadian State: Effectively Removing The "Other"? *Native Studies Review, 13*(1), 1-17.

Slowey, G. (2009). A Fine Balance? Aboriginal Peoples in the Canadian North and the Dilemma of Development. In A. Timpson (Ed.), *First Nations, First Thoughts: The Impact of Indigenous Thought in Canada* (pp. 229-247). Vancouver: UBC Press.

Slowey, G. (2013). Aboriginal Self-Determination and Resource Development Activity: Improving Human Security in the Canadian Arctic? In G. Gjorv, D. Bazely, M. Goloviznina & A. Tanentzap (Eds.), *Environmental and Human Security in the Arctic* (pp. 187-202). New York: Routledge.

Smith, J. (2015, June 2). Canada's Residential Schools Cultural Genocide, Truth and Reconciliation Commission Says. *The Star*. Retrieved June 10, 2016, from https://www.thestar.com/news/canada/2015/06/02/canadas-residential-schools-cultural-genocide-truth-and-reconciliation-commission-says.html

Smolin, L. (1997). *The Life of the Cosmos*. New York: Oxford University Press.

SNC Lavalin. (2011). *East Side of Lake Winnipeg Large Area Transportation Network Study: Final Report*. Prepared for the East Side Road Authority, Winnipeg, MB.

Stake, R. E. (2003). Case Studies. In N. K. Denzin & Y. S. Lincoln (Eds.), *Strategies of Qualitative Inquiry* (2nd ed., pp. 134-164). Thousand Oaks, CA: Sage Publications.

Taylor, C. (2007). *A Secular Age*. Cambridge, MA: Harvard University Press.

Thomassen, L. (2010). *Habermas: A Guide for the Perplexed*. New York: Continuum.

Tobias, T. (2000). *Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design and Data Collection*. Vancouver: Union of BC Indian Chiefs & Ecotrust Canada.

Torgerson, D. (1999). *The Promise of Green Politics: Environmentalism and the Public Sphere*. Durham, NC: Duke University Press.

Torgerson, D. (2000). Farewell to the Green Movement? Political Action and the Green Public Sphere. *Environmental Politics, 9*(4), 1-19.

Torgerson, D. (2003). Democracy through Policy Discourse. In M. Hajer & H. Wagenaar (Eds.), *Deliberative Policy Analysis: Understanding Governance in the Network Society* (pp. 113-138). Cambridge: Cambridge University Press.

Torgerson, D. (2005). The Ambivalence of Discourse: Beyond the Administrative Mind? In R. Paehlke & D. Torgerson (Eds.), *Managing Leviathan: Environmental Politics and the Administrative State* (2nd ed. revised ed., pp. 97-122). Peterborough, ON: Broadview Press.

Torraco, R. J. (2005). Writing Integrative Literature Reviews: Guidelines and Examples. *Human Resource Development Review, 4*(3), 356-367.

Tough, F. (1996). *"As Their Natural Resources Fail": Native Peoples and the Economic History of Northern Manitoba, 1870-1930*. Vancouver: UBC Press.

Tough, F. (2004). The Forgotten Constitution: The *Natural Resources Transfer Agreements* and Indian Livelihood Rights, Ca. 1925-1933. *Alberta Law Review, 41*(4), 999-1048.

Tough, F. (2005). From the 'Original Affluent Society' to the 'Unjust Society': A Review Essay on Native Economic History in Canada. *The Journal of Aboriginal Economic Development, 4*(2), 30-70.

Tousignant, M., & Sioui, N. (2009). Resilience and Aboriginal Communities in Crisis: Theory and Interventions. *Journal of Aboriginal Health, 5*(1), 43-61.

Vogel, S. (1997). Habermas and the Ethics of Nature. In R. S. Gottlieb (Ed.), *The Ecological Community: Environmental Challenges for Philosophy, Politics, and Morality* (pp. 175-192). New York: Routledge.

Waldram, J. (1984). Hydro-Electric Development and the Process of Negotiation in Northern Manitoba, 1960-1977. *The Canadian Journal of Native Studies, 4*(2), 205-239.

Waldram, J. (1988). *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada*. Winnipeg: University of Manitoba Press.

Webler, T., Kastenholz, H., & Renn, O. (1995). Public Participation in Impact Assessment: A Social Learning Perspective. *Environmental Impact Assessment Review, 15*, 443-463.

Weinberg, A. (2014). *The Reality of the Social Economy and Its Empowering Potential for Boreal Anishinaabek Communities in Eastern Manitoba*. Linking, Learning, Leveraging: Social Enterprises, Knowledgeable Economies, and Sustainable Communities, #14-02. Centre for the Study of Co-operatives, University of Saskatchewan. Saskatoon. Retrieved May 1, 2015, from http://usaskstudies.coop/publications/research-reports/index.php

Weinberg, D. (2008). The Philosophical Foundations of Constructionist Research. In J. A. Holstein & J. F. Gubrium (Eds.), *Handbook of Constructionist Research* (pp. 13-39). New York: The Guilford Press.

Weinstock, D., & Kahane, D. (2010). Introduction. In D. Kahane, D. Weinstock, D. Leydet & M. Williams (Eds.), *Deliberative Democracy in Practice*. Vancouver: UBC Press.

Wellstead, A., & Rayner, J. (2009). Manitoba: From Provincial-Based Planning to Localised Aboriginal Governance. *Policy and Society, 28*(2), 151-163.

Welton, M. R. (2001). Civil Society and the Public Sphere: Habermas's Recent Learning Theory. *Studies in the Education of Adults, 33*(1), 20-34.

Wiklund, H. (2005). In Search of Arenas for Democratic Deliberation: A Habermasian Review of Environmental Assessment. *Impact Assessment and Project Appraisal, 23*(4), 281-292.

Wilkins, K. (2007). Unseating *Horseman*: Commercial Harvesting Rights and the *Natural Resources Transfer Agreements*. *Review of Constitutional Studies, 12*(2), 135-171.

Willow, A. (2013). Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination. *Human Ecology, 41*(6), 871-884.

World Commission on Environment and Development. (1987). *Our Common Future*. The Brundtland Report. New York: Oxford University Press.

Wuttunee, W. (2004). *Living Rhythms: Lessons in Aboriginal Economic Resilience and Vision*. Montreal & Kingston: McGill-Queens University Press.

Wuttunee, W. I. C. (1971). *Ruffled Feathers: Indians in Canadian Society*. Calgary: Bell Books.

WWF Canada. (2010). *100 Million Hectares, 10 Per Cent of Canada, 1 Generation: How WWF Put Conservation on the Map*. World Wildlife Fund Canada. Retrieved May 12, 2016, from assets.wwf.ca/downloads/wwf100millionhectares.pdf

Yin, R. K. (2009). *Case Study Research: Design and Methods* (4th ed.). Thousand Oaks, CA: Sage Publications.

Young, I. M. (1996). Communication and the Other: Beyond Deliberative Democracy. In S. Benhabib (Ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (pp. 120-135). Princeton, NJ: Princeton University Press.

Young, I. M. (1997). Difference as a Resource for Democratic Communication. In J. Bohman & W. Rehg (Eds.), *Deliberative Democracy: Essays on Reason and Politics* (pp. 383-406). Cambridge, Mass.: MIT Press.

Appendix A: Themes for Interviews

Broad Themes for ESPI-WNO Interviews

The following areas, A – D, are broad areas that I am interested in learning about. The bullet points are not exact questions I will ask you in the interview, but are intended to give you an idea of the sort of things that could be part of the broad theme areas. I am most interested in what you think is most important and what you know the most about, so in the interview feel free to skip over areas and to head outside of these lines.

A) Nature and aims of the planning processes (ESPI and WNO):
- What were the main aims of the ESPI, the WNO? Did this change over time, and if so how and why? Were the planning objectives appropriate, should they have been different? Were they successful in reaching their goals?
- Were the processes set up and organized appropriately to accomplish the aims set for them? If not, what sort of set-up might have been more appropriate?
- What was the primary function of the ESPI, the WNO? (e.g. planning, research, policy/decision making, governance, etc.) Did this change over time?
- How does local community lands planning fit into the ESPI and WNO processes?

B) Representation, inclusion, and influence or power:
- Whose interests were represented? Whose were left out or marginalized? Were some groups included who maybe shouldn't have been, or who should have been but were left out?
- Who (groups, individuals, governments, etc.) had power in the planning processes – in setting the agenda and objectives and in steering or controlling some or all of the process? Did this change over time? How were they able to exert influence?
- How were decisions made?
- What sort of information helped guide decisions and planning directions? Did this information come from various different sources and perspectives (e.g. traditional knowledge, experts, public input, community leaders, government departments, industry, NGOs, etc.)? How was this information gathered and included?
- How were First Nations perspectives, information, and interests included in the processes?
- As a participant, did you feel your and others' points and perspectives were heard, understood, and considered fairly?
- Did people and groups involved in the processes learn or come to see things differently as a result of their participation? How was learning facilitated or blocked?

C) Relations with governments:
- How were the various levels of government involved (First Nation, Métis, provincial, federal)? What was the relationship like between the ESPI and WNO and these levels of government? Did one level of government hold more power, and was this appropriate?

- What strength did the ESPI or WNO have in producing or influencing decisions, plans, or policies that were officially implemented? Did this change over time?
- Did governments and the planning processes learn from and support one another?

D) Relations with the public:
- What role did the wider general Manitoban public have in these processes?
- What role did residents of the East Side have in these processes?
- Did the public on the East Side and/or in wider Manitoba become more informed about important issues on the East Side as a result of these planning processes?
- Was there public support for the planning processes' aims and goals? Did this change over time?

E) Final thoughts:
- Looking back now, who gained through these processes? Who was able to further some or all of their interests? How were these gains made?
- What lessons were learned through these processes? What do we understand now better than before?
- Are (some, all) communities on the East Side in a better position now than they were before? If so, in what ways?
- Is the ecology or environment in the area better protected now?
- How could it have been an even more effective process?

Appendix B: Interview Consent Form

UNIVERSITY of MANITOBA	**Natural Resources Institute** Clayton H. Riddell Faculty of Environment, Earth, and Resources	303-70 Dysart Road Winnipeg, Manitoba Canada R3T 2M6 Telephone: (204) 474-8373 Fax (204) 261-0038

Interview Consent Form

Research Project: Conceptualizing Participatory Natural Resource and Environmental Management as Deliberative Democratic Practice

Principle Researcher: Glen Hostetler, PhD candidate, Natural Resources Institute, University of Manitoba. ███████████████████████

Research Supervisor: Dr. John Sinclair, Natural Resources Institute, University of Manitoba. (204) 474-8374; jsincla@cc.umanitoba.ca

_____

This consent form should give you the basic idea of what my research is about and what you will be asked to do if you choose to participate. I will leave a copy of this form with you for your records. Signing this form is only part of what we call "informed consent." This means that you should always know what my research is about and how I will use the information you provide to me. At any time, even after the interview, you can ask for more information or details about the research so that you are comfortable that you know what you are participating in, and you can choose to withdraw as a participant at any time. Before signing, please be sure you are satisfied that you understand what is in this form and ask any questions you might have.

What my Research is About: The focus of my PhD study is natural resource and environmental governance, and how it can be a more democratic process where the interests and points of view of the people affected contribute to the plans and decisions made in a meaningful way. The idea is that when we hear from all sorts of people who have experience and knowledge about the issues being decided, we get a more complete understanding and can sort out which ideas will help us make better decisions and plans. From university courses and lots of reading I have some ideas about how this can be done, but I need to learn from people who have been directly involved in this sort of environmental and resource governance. As a result, a key part of my learning involves looking carefully at the experiences of the Wabanong Nakaygum Okimawin (WNO) and the East Side Planning Initiative (ESPI) before it. I am not doing an assessment or critique of the WNO or ESPI, instead I want to learn from what people involved in these processes found worked well and what they found was difficult or did not work so well.

What I'm Asking You to Do: If you agree to participate I will arrange an interview with you that should take no more than one hour, but you decide how long you want to talk to me. I may ask to speak with you again after the interview if I have more questions later and if you say that is

ok. If you agree I would like to audio record the interview to help me make sure I get what you are saying right. If you say yes to recording you can ask me to turn the recorder off any time you want and that will be fine. If there are any questions you don't want to answer, that is fine, and you can decide to stop at any time. If you decide part way through that you do not want to be part of my research we will stop and you can choose if I keep what you have told me so far or if I should destroy it.

Confidentiality: I want you to be comfortable to speak freely in the interview, and so all you say to me will be kept strictly confidential. When I use information that you share with me in presentations or publications I will not use your name or information that might let someone else identify you as my source. If you share anything you do not want me to use in any presentations or writings, just tell me in the interview and I will make a note to keep that information to myself. My interview notes and the audio recordings will be kept in a locked office and only I and my university supervisor will have access to them. All interview records will be destroyed within five years after my research is done.

Risks and Benefits to You: A potential risk to participating in an interview would be if you said something critical about a person or organization and they found out what you said. That is the reason for me being careful to keep what you say confidential and for not using any names or other identifying information in any presentations or writings I do. Instead I will use language like "many people told me..." or "it was reported that...". By participating in my research you will have a chance to tell your story and have your ideas and thoughts heard. As well, by sharing what you experienced you will be helping us all to learn how to get better at doing environmental and resource governance.

What I will Do with what I Learn: I will share what I learn with people who I hope can benefit from it. In the academic world what I learn will be part of my doctoral thesis, I will write articles for academic journals, and give presentations at academic conferences. I will also offer to prepare presentations or short articles for the WNO, the Manitoba government, and any organizations that participate in my research. Finally, I will write up a short summary of what I learn for any of the people I interview who are interested.

_____

By signing this form you are saying that you are satisfied you understand what is involved in participating in this research and are agreeing to participate. This does not waive your legal rights nor release me or the University of Manitoba from our legal and professional responsibilities. Remember you are free to withdraw from the study at any time and to refrain from answering any questions you prefer to omit, without prejudice or consequence. Your continued participation should be just as informed as this initial consent, so feel free to ask for clarification or new information at any time. The University of Manitoba may ask to look at my research records to see that my research is being done safely and properly.

This research has been approved by the Joint Faculty Research Ethics Board. If you have any concerns or complaints about this project you may contact me or my research supervisor, or you can contact the Human Ethics Coordinator at (204) 474-7122. A copy of this consent form has been given to you for your records and reference.

Is it ok to contact you again for more information? Yes_____   No_____

Do you want a summary of what I learn when I'm done? Yes_____   No_____

If yes, how/where should I send the summary?

_____

Is it ok for me to audio record this interview with you? Yes_____ No_____

Participant's Signature _____ Date _____

Researcher's Signature _____ Date _____

Appendix C: A Range of Political Action Orientations in Deliberative Democracy

A common criticism of Habermas' model of democracy is that it is not radical enough, that it grants too much to existing democratic institutions and practices and thus robs us of much of our critical freedom to reproach the system, to dissent from and challenge established norms (Shabani, 2003; Thomassen, 2010). This argument is made in a variety of ways, but one approach is that, because it is a procedural model, our critique of democratic outcomes must be rooted in some identified failure in communicative processes along the path from informal public discourses to legitimately implemented law and policy. This leads to two conclusions. On the one hand, if procedural failings are ever-present in instances of actual deliberative practice, and critical analyses of such instances suggest that they are, then there can be virtually no legitimate democratic outcomes. On the other hand, if we take a more relaxed view of procedural requirements, such as I have suggested is necessary for public discourses, then in many cases, absent some catastrophic procedural violation, we end up affirming the usual operations of already existing democracy. The first charge, that communicative violations are ubiquitous, is demonstrably correct, but concluding from that that legitimate outcomes are impossible repeats the mistaken understanding of counterfactual idealizations that I have addressed before. The idealizations do not describe some ideal concrete form of life or some ideal communication situation that we are striving to instantiate, rather they are counterfactual presuppositions implicit in communicative action that despite being factually underachieved or absent, yet have a conditioning influence on the conduct of communicative action and discourse.

The second charge is also fair enough as far as it goes; this model of democracy does allow that in most 'normal' circumstances there is little if any opportunity for public reason in the form of public discourses to exert much direct steering of the political system. However, it must be remembered that in these normal conditions the system operates within a legal context, and that context has been and continues to be at least in part shaped through legitimate democratic processes. As well, charging that this model of democracy is too weak and grants too much to the normal operations of the political system is also to suggest that the model exhausts the public's options for political action, which is not the case. Habermas (1996a) provides some discussion of the place of oppositional political action, including civil disobedience, situated outside the usual communication networks of democratic institutions and discourses. In his view, such political actions must still have some comprehensible communicative content to be effective; any political action must put forward a claim for the validity of something if it is to constitute a message that can be picked up and processed by either public discourses or the political system. So it would seem that political actions outside of the usual deliberative democratic channels can still ultimately feed into them, but there is no need to think of this as an undue restriction on options for political participation. Social actions, as I have defined them, do embody claims for the validity of something, even if it is an artistic expression disclosing a particular way of perceiving some aspect of the world, such as the graffiti I pass regularly that proclaims "you are better than the status quo." On this view the common aphorism "every act is a political act" holds true, with the provisos that the act be in political public space and carry forward a claim that is at least somewhat comprehensible. Such social acts contribute to public discourses by making claims or arguments, by presenting

alternative perspectives or illustrating alternative forms of life, or, even when not consciously

processed, they can create new opportunities for action and perception by embedding new

behaviours or orientations into the background of the lifeworld, which in turn feeds public

discourses. Indeed, in instances where the existing political order is irredeemably distorted and

oppressive, a directly oppositional or revolutionary stance, short of physical violence, could

count as legitimate political action under the vision of deliberative democracy I have in mind.

So, far from constraining options for legitimate political action, I see a deliberative form of

democracy as radically increasing them.

Torgerson (1999, 2000) discusses another way of conceiving of the range of approaches

to political action, speaking here specifically of green politics, that are available within generally

deliberative democratic contexts. He describes three faces of political action – functional,

constitutive, and performative – that may appropriately be employed to strengthen the

democratic legitimacy and ecological rationality of political systems, processes, and outcomes.

Functional politics proceeds as an effort to reform existing decision-making procedures and

outcomes by working from within existing institutions. Such an approach seeks out discursive

openings where democratic participation may, while not immediately challenging the

foundational assumptions of the existing process or of the administrative mindset, yet exert

influence towards more ecologically sensitive outcomes. Functional, pragmatic political action

has been criticized as being too accommodating of extant socio-political and economic

inequalities, of sacrificing criticality in favour of small victories, and as a result potentially

perpetuating and further entrenching structural injustices (Eckersley, 2002). Further, because of

its instrumentalist focus, Eckersley suggests that deep-seated cultural, value, or identity-based

conflicts are effectively sidestepped in order to achieve immediate solutions, which may simply

leave the ultimate source of conflicts over, for example resource use, intact and hence

guarantee similar conflicts will erupt in the future. Torgerson (1999) also points out that

functional politics is most open to co-option, citing the example of "sustainable development"

being introduced by environmentalists as a radical reorientation of industrial practice that was

subsequently appropriated by industry and used to green-wash practices that remained

essentially unchanged. However, Torgerson argues that this fear is greatly exaggerated and

places undue faith in the strength and stability of the administrative and political systems. Once

even small changes are introduced into decision-making practice and discourse, their eventual

outcome is uncertain, and it is certainly possible, and increasingly likely when critical publics

remain active and vigilant, that small reforms may eventually lead to larger fundamental

reorientations. In this way the criticism of being too accommodating is also blunted somewhat,

as failure to immediately address all structural injustices need not mean that they are forever

unchallenged.

Constitutive political action presents a more radical face and seeks the transformation

of the existing system by drawing on diverse social forces to create new and radically different

political spaces (Torgerson, 2000). Akin to the moral monism of environmental activism

(Eckersley, 2002), constitutive politics, even as it invites participation from diverse sources, can

tend towards exclusion in that it cannot countenance whatever is not of its precise mould. This

approach also frequently creates extreme narratives of dire consequences and necessary heroic

actions, which limits its effect by distancing those who regard such scenarios as either infeasible

or merely expressions from a lunatic fringe. Nevertheless, especially when adopting the posture

of the carnivalesque, constitutive political action can throw the status quo into sharp relief and

unmask the irrationality of the functionalist administrative mind (Torgerson, 1999). But

Torgerson favours what he has termed incremental radicalism, a combination of functional and

constitutive politics that retains their oppositional tensions with a decentred orientation that

would guarantee continuing contestation and debate. Dobson (2007), who generally favours

more radical approaches, nevertheless speaks of the pragmatic value of radical reformism in a

"march through the institutions" of existing democracy. At its core this would acknowledge the

need for fundamental changes together with the recognition that the path to such changes will

not be straightforward nor can it be comprehensively planned in advance, and as such diverse

political actions at all levels are appropriate.

There is a danger, often exhibited within the environmental movement, that political

action as described is conceived in mostly instrumental terms, where we proceed assuming that

we already know the "right" answer to the problems we have identified. In such an approach

discourse risks becoming devalued as merely a means to an end, and on this view the *telos* of

democratic discourse would paradoxically be the termination of discourse once everyone is

convinced of our "right" goals and action plans. But this instrumental approach to political

action belies an authoritarian inclination and a devaluation of rationally motivated learning as a

foundation for democratic change. Constitutive political action, and indirectly functional politics

as well, aim for transformation, which, if it is to be authentic and lasting, requires learning. And

it is a repeat of the hubris of Enlightenment conceptions of reason to assume that we know

what the "right" answer is in some direct way that excludes the input of voices, interests,

perspectives, and values of others. It represents a kind of fundamentalism that is inimical to

discursive practice (Habermas, 2008c).

The third face of political action described by Torgerson (1999) is drawn from Hannah

Arendt's concept of performative political action, which considers debate as the essence of

politics and as an intrinsically valuable activity. He likens this to an infinite game where the

whole point of playing is to play well and to keep the game going. We perform because it is fun,

because we want to experience and nurture the relationships developed through discourse,

and because we value the insights gleaned along the way. While taken on its own, performative

politics may be difficult for some to swallow, especially given pressing environmental issues in

need of immediate solution and a political-administrative mind and economic system in need of

taming, it nonetheless provides a welcome counterpoint to merely functional and constitutive

politics and draws our attention to the centrality of discourse in political action. As well, a focus

on the performative reinforces the view I have described of democracy founded on ongoing

reasonable contestation through discursive interaction.

Torgerson's conception of green political action keeps alive the tensions in the green

movement between a reformist, functional orientation on the one hand and transformative,

constitutive action on the other. As such there is space for legitimate action both within and

outside of, accommodating and against, existing democratic institutions. This is increasingly

possible to the extent that the concept of a green movement is replaced with that of a critical

green public sphere where diverse approaches and understandings are vigorously debated and

explored (Torgerson, 2000). Such a sphere is constituted through public discourse and through

all manner of green political action, but is weakened and diminished when green discourse is

practiced in exclusive ways that deny even the possible legitimacy of alternative

understandings. So what enables a deliberative form of democracy to rationally engage

ecological issues is the existence of a diverse, open, and vibrant green public sphere that

engages in discourse within its own boundaries, in other overlapping public spheres, and in the

discursive openings created and already present in political and administrative systems.

Appendix D: Western Rationalization and Systems Incursions into Indigenous Lifeworlds – Reflections on Habermasian Social Theory in the Context of Colonization

Habermas developed his theoretical descriptions of the lifeworld and its one-sided rationalization, deformation and colonization by systemic forms of integration, and the resultant 'pathologies of modernity,' with reference to Western social evolution through the Enlightenment and into the modern era (see chapter 2, sec. 2.3). But in a sense, Indigenous Canadians were subjected to much of this developmental trajectory in a compressed time-frame through the process of colonization.

Throughout much of Canada, and especially in Rupert's Land, Indigenous lifeworlds were colonized by the Western mercantile-capitalist economic system via participation in the fur trade. As was described in section 4.3.1, Tough's (1996) economic analysis of fur trade history in Northern Manitoba demonstrates how participation in the fur trade significantly altered, among other things, basic livelihood strategies, patterns of movement on the land, and social institutions that regulated land and resource use. For people so closely tied to the land, whose very cultural identity and self-understanding were constituted by and embedded in their web of relationships with the animate beings and inanimate elements of the land, these changes resonated throughout their background of shared understandings and assumptions, i.e. their lifeworlds. Later, the treaties, *Indian Act*, and government policies of assimilation sought to further force Indigenous people into the capitalist economy.

Canadian Indigenous scholars have outlined this history and its effects well. For example, Taiaiake Alfred (2009, p. 46) describes how during this period of colonial-capitalist expansion "every aspect of [Indigenous peoples'] lives was reshaped in the interests of

capitalism and to ensure the opportunity and profit potential of the white population." It was clear from government policy approaches that they understood the changes they were trying to institute were more than merely economic – assimilation was seen as the adoption of a comprehensive package of Western behaviours, values, and ways of thinking. Wanda Wuttunee (2004) discusses how traditional Indigenous and Western worldviews were and remain significantly different, especially regarding: notions of collective identity and responsibility vs. individualism and self-interest; ties to and respect for the life-giving land vs. regarding it as a separate and inert source of resources for personal profit; and a holistic, spiritual, inter-connected, and inter-dependent view of reality vs. a compartmentalized, scientistic outlook that considers humans as rightly dominating and controlling all else. David Newhouse (2000, pp. 147-148) argues that Indigenous peoples' historic and continuing encounter with capitalism, in which, given the prevailing power imbalance, they have had no real choice, "is fundamentally altering the moral order of Aboriginal society," an order that "indicated which goals were good and hence were supported, what type of social behaviour was acceptable and the nature, ends, and workings of social institutions," and which together "provided the glue that kept the society together." Clearly the enforced introduction of capitalism to Indigenous societies has constituted a colonization of their lifeworlds along the lines Habermas has described, initiating a process whereby, for example, traditional values of reciprocity, kinship, and living *with* the land began to be replaced with capitalist values of personal accumulation, individualism, and living *off* the land, thus introducing fundamentally different conceptions of right personal action choices, means of social integration, and the place of humans in the world, all of which worked to undermine traditional cultural and social norms.

Colonization also forcibly introduced and brought Indigenous people under the sway of Western political and legal administrative systems. Since these colonizing systems were foreign to Indigenous peoples, there were uncoupled from their lifeworlds from the start, and as Habermas has observed, this disconnection renders the systems largely immune to steering according to normative lifeworld understandings. And as with the economic system just discussed, the political and legal systems carried their own normative content, masked in their claims to impartiality, and so further aspects of Indigenous lifeworlds began to be remade according to the functional rationality of the systems.

As such, a significant part of Indigenous Canadians' experience of colonialism can be understood as the colonization of their lifeworlds by systems, but, contrary to the experience of Western societies, these systems were not of their design, did not evolve as an attempt to simplify or regularize their lived reality, and were coercively imposed. So while Habermas' analysis of the systems' invasion of the lifeworld shows the effects to have been negative and to have contributed to significant personal and social pathologies in Western societies, the effects for Indigenous peoples have been more severe. Alfred (2009, p. 52) goes on to say:

> Colonialism is best conceptualized as an irresistible outcome of a multigenerational and multifaceted process of forced dispossession and attempted acculturation – a disconnection from land, culture and community – that has resulted in political chaos and social discord within First Nations communities and the collective dependency of First Nations upon the state. This harm has resulted in the erosion of trust and of the social bonds that are essential to a people's capacity to sustain themselves as individuals and as collectivities.

Habermas' social theory also describes how modernity has led to the increasing specialization of inquiry and the creation of 'expert knowledge complexes' removed from direct communication with and influence over public discourses, thus impoverishing lifeworld

reproduction and disconnecting a resource that could enrich and renew it. For Indigenous

cultures, expert knowledge was retained and carried forward by traditional knowledge holders,

such as Elders and spiritual leaders, and was embodied in intertwined social, economic, and

spiritual practices and institutions (Berkes, 2008). Much of this knowledge was drawn from and

embedded in the aforementioned web of relations among the constituents of the holistically

perceived land. But as traditional practices and institutions came under assault from colonial

forces and Indigenous people were dispossessed of their lands, traditional knowledge and

understandings were increasingly disconnected from their vital source, from what had

grounded and given them meaning especially relevant to the world as Indigenous peoples

experienced it.

Compounding this, residential schools and interventions by child welfare agencies

disrupted much of the intergenerational transmission of traditional knowledge, and the

ubiquitous Christian missionaries routinely denigrated and sought to replace Indigenous

knowledge, values, and understandings with their own. For example, in most ESPA communities

children were forced to either leave home to attend residential schools or attend day schools in

their communities run by religious organizations, and the '60s scoop' and provincial child

welfare practices that continued for decades have resulted in Manitoba, despite its small

population, having among the highest number of Indigenous children removed from their

parents in Canada (Puxley, 2015b, 2015c). Further, when dealing with government agencies and

Western social institutions, Indigenous people were forced to adopt the newcomers' language

and thinking – communication based on traditional Indigenous knowledge and understandings

simply was incomprehensible within Western systems and to Canadian governments, courts,

and the public at large. Thus, a consequence of colonialism has been that traditional knowledge complexes have been diminished and their connection to Indigenous social and cultural discourses disrupted, and they have remained largely disconnected from Canadian economic, political, and legal systems, thus robbing them of opportunity and power to provide effective systems steering. However, as Alfred (2009), Wuttunee (2004), and others describe, rediscovering and connecting with traditional knowledge has been key to communities where significant progress has and continues to be made towards healing and cultural revitalization.

Habermas also critiqued modern Western conceptions of rationality as being one-sided, favouring the cognitive-instrumental dimension over the moral-practical and aesthetic-expressive, and argued that as Western societies moved towards the post-metaphysical their lifeworlds were increasingly reproduced and reformed under the influence of this limited vision of rationality, contributing to distortions and contradictions within it. From my reading of Indigenous discussions of traditional cultures, this does not map directly onto Indigenous experience – traditional worldviews were holistic and did not generally make the same distinction between the physical and meta-physical, nor is there an apparent slicing of reason into components corresponding to those Habermas identified in Western thinking. Nonetheless, when Indigenous peoples in Northern Manitoba first encountered Westerners, it was fur traders and missionaries who both certainly displayed metaphysical and conventional thinking, and many within the Western world still do. However, in the colonial encounter, the authorities, social norms, and metaphysical understandings that guided Indigenous behaviour and rationality were not respected nor recognized as valid by the newcomer public or their systems and social institutions. To be regarded as moral and rational, and hence to have any

power in relation to the dominating society and its institutions, they were required to take on the perspectives and values of Christianity, Western democracy, and capitalism.

In line with the increasing secularization and cognitive-instrumental rationalization of Canadian society, by the later 20th century Indigenous leaders were forced to articulate their interests and perspectives to the government and courts in ways that stripped them of their spiritual and traditional roots and appealed instead to Canadian legal doctrines, capitalist notions of progress, and Western conceptions of human and democratic rights. As the discussion of Indigenous history in section 4.3.1 demonstrates, there have been some significant successes taking this route, but it has also insinuated Indigenous political and economic development discourses into a Western frame that some Indigenous leaders and scholars find troubling – at its worst it can become what Alfred (2009, p. 51) refers to as "aboriginalism," which

> assumes that in renewing relationships between First Nations and the colonial regime, the important and valuable aspects of indigenous culture will be abandoned or compromised in the interests of honouring Euroamerican values and cultures, [reflecting] the essential colonial process of 'civilizing' Indigenous people, making us into citizens of the conquering states, so that instead of fighting for our lands and resisting further colonization, we seek a *resolution* that is acceptable to and non-disruptive for the state and society we have come to embrace and identify with.

So, in addition to the colonization of Indigenous lifeworlds by Western political, legal, and economic systems, a further violence has been wreaked upon them in the unequal encounter with Western modes of (one-sided) rationality, unequal not because Indigenous rationality was less developed or valid, but because Western values and worldviews were backed by the overwhelming power of the aforementioned systems and, when necessary, by state violence.

However, it must be recognized that the broad Indigenous community is not monolithic, and prominent voices have argued differently from what I have presented above. For example, William Wuttunee, the first status Indian lawyer in western Canada and organizer and first leader of the National Indian Council of Canada, forerunner of the Assembly of First Nations, wrote *Ruffled Feathers* in 1971 as a rebuttal to Harold Cardinal's *Unjust Society*. Wuttunee (1971) strongly advocated integration into the dominant Canadian society with full participation in its political and economic systems, against the dominant Indigenous discourse of the time that emphasized the recognition of treaties, separate status, and a special relationship with the Crown. And Wanda Wuttunee (2004), while incisively describing the important differences between traditional Indigenous and Western worldviews and arguing for the importance of economic development informed by Indigenous values, is careful to recognize and honour the choices that some Indigenous individuals and communities have taken to assimilate to varying degrees and/or to adopt pragmatic approaches to governance and development that reflect aspects of Western values and thinking. For example, ESPA First Nations have local businesses ranging from convenience stores to airlines that are run profitably according to capitalist principles, and all have functioning Christian churches and local special church meetings are regularly broadcast on NCI radio, a province-wide Indigenous station, while there are also those who gather and use traditional medicines, perform traditional ceremonies and dances, and so on.

Habermas described the effects of the deformations of the lifeworld due to its one-sided rationalization and colonization by the systems as leading to 'pathologies of modernity' in the Western world, namely loss of meaning, anomie, and psychological disorders, which are

respectively associated with deformities in the cultural knowledge, social integration, and

personal identity domains of the lifeworld. I would argue that these pathologies obtain to a

large extent in Indigenous communities as well owing to their colonial experience of the same

Western rationality and systems' incursions as described above. However, the history of

colonialism that has wreaked so much destruction on Indigenous cultures and identities and

rendered them politically disempowered, dispossessed of their lands and resources, and

economically and socially marginalized, has led directly to further personal, social, and cultural

pathologies, the effects of which are witnessed in the social dysfunction, cultural disorientation,

and poverty in too many Indigenous communities as described earlier. In addition, the

lifeworlds of Indigenous and settler Canadians have been consistently reworked with certain

deformations that function to normalize the marginalization of Indigenous values and interests,

and in this way unequal patterns of power relation have been woven into the background fabric

of general Canadian political, economic, and social perspectives and institutions.

Appendix E: The Northern Flood Agreement – A Brief Synopsis

The Northern Flood Agreement (NFA) related to the impacts of massive Manitoba Hydro projects on communities along the Churchill and Nelson River systems, which included Norway House First Nation, who were within the ESPA but chose not to actively participate in the ESPI and WNO, and other communities to the north of the ESPA. As a recent, and arguably the most high profile example of interactions between First Nations and resource development processes and projects in Manitoba, the NFA and associated implementation agreements were very much in the minds of Indigenous communities in the ESPA from the outset of the ESPI, and this formed part of the context for their participation, concerns, and approach in the ESPI and WNO.

The NFA arose out of concerns with and opposition to the Churchill River Diversion (CRD) and Lake Winnipeg Regulation (LWR) projects, planned in the 1960s and begun in 1970 under a cost-sharing agreement between Canada and Manitoba, with Manitoba Hydro undertaking the construction. The nature and effects of these projects, as well as the conflicts and controversies that ensued, are well detailed in Waldram (1988), Larcombe (1993), Chodkiewicz & Brown (1999), Manitoba Aboriginal Rights Coalition (2001), and Martin & Hoffman (2008). In short, the CRD was accomplished by building a control structure where the Churchill River empties from the north end of South Indian Lake, thus raising the lake levels by some three metres and forcing roughly 85% of the river's flow through a system of constructed channels and other rivers into the Nelson River system to the southeast. This was to enhance the power-generating potential of the Nelson, along which a series of hydroelectric dams were built. The LWR project primarily involved a control structure where the Nelson empties out of

Playgreen Lake at the north end of Lake Winnipeg, and was designed to hold back water in these lakes during the spring and summer high water seasons and then increase outflow into the Nelson in fall and winter to meet peak electricity demands, essentially turning Lake Winnipeg into a giant storage battery. The direct physical effects upstream of the LWR project have been minimal due to the size of Lake Winnipeg, but downstream the effect has been to reverse the natural seasonal high/low water flow pattern, which has had detrimental effects on natural ecological processes, fish stocks, and the safety of travel on waterways in summer and winter. The most extreme physical effects have been from the CRD, which has resulted in massive reduction in Churchill River flows, significant flooding on South Indian Lake, and has raised downstream water levels on the Nelson River and lakes along its course to Hudson's Bay, leading to widespread shoreline erosion, increased water turbidity, inundation of wetlands, and major effects on ecosystem functioning. Taken together, "the projects irreversibly altered the hydrological and ecological characteristics of some 30,000,000 acres (12.1 M ha) ... of northern boreal rivers and forests" (Hoffman, 2008, p. 111).

Socio-cultural and economic impacts have been described by the affected First Nations, academics, and church groups, but the province and Manitoba Hydro, in order to limit liability, have tended to dispute that these effects have happened to the extent or in the manner described, that they are directly related to the projects, and/or have argued that they would have happened anyway (Larcombe, 1993). Nonetheless, these effects have been widespread and severe, especially for the Indigenous community of South Indian Lake, which was entirely relocated due to the flooding. Due to the biophysical changes, local fisheries have declined or collapsed entirely, previously pristine water on the Nelson is undrinkable, traditional harvest

and ceremonial areas have been flooded or rendered practically inaccessible, burial sites have

been eroded and exposed, cash and in-kind or reciprocity-based economies have declined, and

traditional ecological knowledge, built up over generations living on the land, has become

unreliable in the new reality – the projects have been "an ecological, social, and moral

catastrophe for northern Manitoba and its Aboriginal inhabitants" (Manitoba Aboriginal Rights

Coalition, 2001). In line with what I have described as generally characterizing the nature of

development in Northern Manitoba, the report of the Interchurch Inquiry into Northern Hydro

Development concludes that "the environmental and social costs of hydro production are being

off-loaded on the peoples of the north, while the balance of benefits accrue to society at large"

(Manitoba Aboriginal Rights Coalition, 2001).

Earlier hydroelectric projects in the province had resulted in negative impacts for

Indigenous communities (see Waldram, 1984), and when plans of the CRD and LWR projects

became known, there was significant opposition from the affected communities at South Indian

Lake and along the Nelson River, as well as from church groups, academia, and the general

public. Project design and the start of construction pre-dated the 1973 federal directive on

environmental assessment, but the provincial *Water Powers Act* required a licence and public

hearings; however, shortly after hearings started the province moved to revise the Act allowing

the Minister to unilaterally issue 'interim' approvals without hearings so that construction could

start immediately. There were continued meetings with South Indian Lake, the most obviously

affected community, where the province and Hydro pressed the community to put forward

compensation claims, but project information was deliberately withheld and outright lies were

offered, such as that the flooded lake should obviously be able to support more fish (Waldram,

1984). The province hid behind the usual federal-provincial jurisdictional issue to deny that it had any responsibility for Indians and that it had exclusive jurisdiction to do as it pleased to all but federal reserve lands. Manitoba rejected a study by a group of University of Manitoba professors that predicted severe environmental and social impacts, and instead appeared to adopt the view of a consultant's report they had commissioned known as the Van Ginkel Report. In the cover letter to this report the consultants stated their "unqualified conclusion that the communities of native people that exist throughout Manitoba – and this is equally true of all parts of Canada – have no future," and the report argued that since Indigenous people were in a time of transition from a primitive past into the technological future, leaving the residents of South Indian Lake "anachronisms in the present age," the effects of the hydro projects would merely "move forward in time the break-up of this community and way of life" (quoted in Waldram, 1988, p. 121). These sentiments were reflected in most of the negotiations with the affected Indigenous communities, and Waldram (1984, p. 217) describes that, compared to earlier hydro projects where the province had behaved in a heavy-handed and disrespectful fashion, the approach of the province and Manitoba Hydro to these negotiations "became more deceitful, and the human rights of the people in the impact area were more arrogantly trampled than ever before."

Construction began in 1970, and in 1972 Canada and Manitoba jointly began a study to "determine the effects which the regulation and diversion projects are likely to have on other water and related resource uses, to indicate ways in which the projects may prove beneficial to such other uses, to recommend modifications in the design and operation of the works, and to recommend remedial measures where considered necessary to lessen undesirable effects"

(Canada & Manitoba, 1975, p. 3). This is the closest to an environmental assessment the project ever had, but as most of the project was in place by the time the study report was completed in 1975, consideration of design modifications was pointless and the study's purpose explicitly focused on effects on water and 'resource uses' while ignoring effects on humans or their societies, cultures, and economies – the social and economic effects have never been officially assessed.

By the mid 1970s flooding was already beginning and the magnitude of downstream effects on the Nelson were beginning to be more fully recognized by the Indigenous communities. Realizing that the project could no longer be stopped, something the government explicitly stated, in 1974 the Indigenous communities formed the Northern Flood Committee (NFC) to gather information and negotiate on behalf of the affected communities; however, the province refused to recognize them as legitimate representatives, so the NFC decided to focus their claims on treaty rights and impacts to reserve lands, which meant that the non-reserve Indigenous community of South Indian Lake was left to negotiate on their own. Negotiations were complex and adversarial, with Hydro withholding project information and Manitoba refusing to acknowledge that treaty rights were binding on them while claiming both that the project would not affect reserve land and that their earlier agreement with the federal government gave them legal authority to do so. It was not until the parties agreed to a mediator in 1977 that Manitoba agreed to deal effectively with the NFC (Larcombe, 1993). The federal government held that Manitoba needed it's authorization to use reserve land, which they never granted, but action in support of this treaty promise was never pursued and the government sought to discharge its fiduciary responsibility for the affected First Nations simply

by funding the NFC. Under mediation, the Northern Flood Agreement (NFA) was quickly reached in December 1977.

The NFA broadly: provided Crown lands in return for reserve lands required for the project, promised compensation for adverse effects resulting from the projects, offered 'first priority' rights to wildlife harvesting within communities' 'resource areas', established local Wildlife Advisory and Planning Boards to make recommendations about wildlife management, offered support for community development planning, and established arbitration as a means to resolve compensation disputes. However, the agreement had no mechanism or funding for implementation, and in the years that followed a prodigious number of compensation claims were denied and sent to arbitration, which proved costly, time consuming, and ultimately an unsatisfactory means of implementation. Extreme dissatisfaction in the affected communities with the lack of implementation eventually forced the province to take a new approach, which was to negotiate Master Implementation Agreements (MIA) one community at a time. MIA negotiations were long and complex, as by this time the level of distrust, as well as of social and economic disruption in the communities was extremely high. The MIAs in some ways represented real progress for the First Nations that signed them. For example, the resource management board established in Norway House's 1997 MIA, which allows for meaningful Indigenous involvement in resource allocation and land use planning and requires the community's approval of many management and development measures, was regarded by some in the ESPA as a benchmark to strive for (AG interview). MIAs also outlined significant, one-time financial compensation, which was better than the NFAs vague and seldom honoured

provisions.[41] In other ways the MIAs represent backtracking on the larger and more general

promises made in the NFA, for example, the NFA promised that community development

planning would result in joint action with the province "for the eradication of mass poverty and

mass unemployment and the improvement of the physical, social and economic conditions"

(*Northern Flood Agreement*, 1977, schedule E). Kulchyski (2004) provocatively refers to the

MIAs as one-time "cash buyouts of the promises made in the NFA."

The MIAs remain controversial for a number of reasons. To some the nature of the NFA

constitutes a modern treaty in outlining ongoing obligations for the federal and provincial

governments in exchange for loss of Indigenous land and livelihoods, and some interpret the

MIAs as essentially treaty termination instruments in seeking to 'settle' claims arising from the

NFA and as reflected in the 'release' clauses in which, using the Norway House MIA as an

example, the signing First Nation

> releases and forever discharges Canada [and Manitoba] of and from any and all actions,
> causes of action, suits, claims, demands, losses or damages of any nature or kind
> whatsoever ... which [the First Nation] ... have had, now have or hereafter can, shall or
> may have, for, or by reason of, any cause, matter or thing whatsoever to the extent
> attributable to Existing Development or arising of, or under, the NFA, save and except as
> set forth in this Agreement..." (*Norway House Master Implementation Agreement*, 1997,
> schedule 12.2.1)

This certainly does seem a provision designed to limit the ongoing nature of governmental

liability and responsibility as stated in the NFA. While the MIAs do contain provisions for

meaningful community participation in resource management beyond wildlife, which was the

sole focus of resource management in the NFA, the agreements are also clear that all non-

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[41] For example, Norway House's MIA, reached in 1997, provided roughly $42 million in cash, including forgiveness of prior loans and credits, along with $42.5 million in Manitoba Hydro bonds, although this is followed by some 50 pages outlining details of how the funds are to be held in trust and managed by the First Nation (*Norway House Master Implementation Agreement*, 1997, schedule 1.1).

reserve land within the 'community resource areas' established by the MIAs remains provincial Crown land where the laws of Manitoba prevail. It is also unclear if the 'first priority' resource rights promised in the NFA are upheld in the MIAs or if they apply to resources beyond wildlife. The MIAs contain clauses stating that nothing in the agreement is intended to alter Aboriginal or treaty rights, but it is not clear that this is in fact the case. For example, the rights to freely navigate through their lands and to pursue traditional livelihood activities are promised in Treaty 5, but both have been seriously impacted by the hydro projects and now the First Nation has agreed to release the government from liability for any losses of any kind arising from the projects – does this include loss of the practical application of these treaty rights? And in schedule 13.13.2 of the Norway House MIA, the First Nation acknowledges that none of Canada, Manitoba, or Manitoba Hydro have any responsibility for "the effectiveness of the implementation arrangements in this Agreement" nor do any of them warranty or imply that the agreement "will result in the attainment of the goals of Norway House Cree Nation." Where the NFA had promised cooperation in wiping out poverty and unemployment and increasing overall wellbeing, achieving these goals was now the sole responsibility of the First Nation, who, should the agreement's provisions prove insufficient to achieve the anticipated improvements, would have no further legal recourse.

While there are certainly strongly conflicting views of the NFA and subsequent MIAs, the episode demonstrated another example of the Canadian and Manitoban governments unilaterally embarking on resource development projects that had significant impacts on Indigenous communities without any consultation or apparent consideration of their rights or interests. Any satisfaction that could be had came only after protracted conflict and legal

wrangling, during which the province behaved shamefully in consistently minimizing the negative effects of its actions and its responsibility for Indigenous peoples, in withholding information and propagating misinformation, and in arguing that Indigenous and treaty rights were not binding on them. When the province did finally move to implement its NFA obligations, this was in the light of court decisions that by the later 1980s demonstrated that the province was legally required to negotiate with Indigenous people regarding the benefits and harms associated with development, and their approach to implementation was to seek to limit their responsibility and settle matters once and for all rather than recognize the spirit and intent of the NFA 'treaty' as an ongoing, cooperative process. The province also made sure to affirm their sovereignty over Indigenous traditional territories, even if they did allow the First Nations to have a stronger voice in how their territories were managed. The economic interests of the province and southern, non-Indigenous population were clearly, and at times explicitly, considered more important than the environment or the social, cultural, or economic interests of the Indigenous communities directly affected. Again, Indigenous people saw that they could not simply trust the government's intentions or promises, and again resource development resulted in wealth flowing from north to south while leaving northern Indigenous communities to bear the full force of the harms.