ACTIVE NOW: PUBLIC POLICY LEGITIMACY AND

THE EMERGENCE OF IDLE NO MORE

by

© Candice A. Ramalho

A Thesis submitted to the School of Graduate Studies

in partial fulfilment of the requirements for the degree of

Master of Arts in Environmental Policy

Environmental Policy Institute, Division of Social Science, Grenfell Campus

Memorial University of Newfoundland

October, 2014

Corner Brook   Newfoundland

Abstract

Despite vast research on both policy reform and social movement emergence, their relationship is relatively understudied. This thesis helps to address this gap by using qualitative methodology to explore the relationship between a Canadian omnibus budget bill (Bill C-45) and the emergence of Idle No More movement (INM). Following Snow and Soule's model of social movement emergence, Bill C-45 is identified as INM's 'mobilizing grievance'. In order to explain why, Bill C-45 is assessed against Wallner's framework of policy legitimacy. Bill C-45—specifically its amendments to the *Navigable Waters Protection Act* and the *Indian Act*—is shown to lack substantive and procedural legitimacy. This legitimacy deficit provides an explanation for why the founders of INM deemed Bill C-45 serious enough to require grassroots mobilization. This thesis thus contributes to both public policy and social movement literature by explaining how INM's emergence was the direct result of the questionable legitimacy of policy reforms.

Acknowledgements

You know what they say. If at first you don't succeed, try the same thing again. Sometimes this effort is called persistence and is the mark of a strong will. Sometimes it's called preservation and is a sign of immaturity. For an individual, one of the definitions of insanity is doing the same thing over and over again in the same way and expecting different results. For a government, such behaviour is called… policy.

Thomas King
The Inconvenient Indian
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List of Abbreviations

AANDC – Aboriginal Affairs and Northern Development Canada
AANO – HoC Standing Committee on Aboriginal Affairs and Northern Development
ADM – Assistant Deputy Minister
AFN – Assembly of First Nations
ATIP request – Access to Information Request
Bill C-38 – Jobs, Growth, and Long-term Prosperity Act
Bill C-45 – Jobs and Growth Act
CAPP – Canadian Association of Petroleum Producers
CEAA – Canadian Environmental Assessment Act
CEAA 2012 – Canadian Environmental Assessment Act, 2012
CPC – Conservative Party of Canada
DRAP – Deficit Reduction Action Plan
EFI – Energy Framework Initiative
FINA – House of Commons Standing Committee on Finance
FNLMA – First Nations Land Management Act
FNPOA – First Nations Property Ownership Act
GoC – Government of Canada
HoC – House of Commons
INM – Idle No More
MNC – Métis National Council
MP – Member of Parliament
MUN – Memorial University of Newfoundland
NCC – Native Council of Canada
NDP – New Democratic Party
NEB – National Energy Board
NIB – National Indian Brotherhood
NPA – Navigation Protection Act
NWAC – Native Women's Association of Canada
NWPA – Navigable Waters Protection Act
SARA – Species at Risk Act
SARM – Saskatchewan Association of Rural Municipalities
SCC – Supreme Court of Canada
SSCEENR – Standing Senate Committee on Energy, the Environment and Natural Resources
TRAN – House of Commons Standing Committee on Transport, Infrastructure and Communities

Chapter 1 – Why Are They Idle No More?

In recent years, new and momentous protests and social movements have erupted around the world, such as the Arab Spring, the Occupy Movement, and national demonstrations against austerity policies. In light of these manifestations of contentious politics, "The Protester" was named Time's Person of Year in 2011 (Time, 2011). Given the recent rise in widespread and globalized mobilization, the world may have entered a new global protest cycle (see Della Porta and Tarrow, 2005; Tarrow, 1998; Tarrow, 2011; Tejerina, Perugorria, Benski and Langman, 2013).

Within this globalized context, a movement calling itself Idle No More (INM) burst onto the Canadian political scene in October 2012. The movement started rather unassumingly when four female Aboriginal[1] and non-Aboriginal activists (Nina Wilson, Sheelah Mclean, Sylvia McAdam, and Jessica Gordon[2]) held a "teach-in" in Saskatoon, Saskatchewan. The subject of this and other teach-ins was the Government of Canada's (GoC) introduction of the *Jobs and Growth Act* (Bill C-45) and its amendments to dozens of pieces of legislation. The founders of INM sought to create a public space to share and discuss their concerns, and to translate these fears into meaningful action (Wotherspoon and Hansen, 2013). From these grassroots beginnings, INM spread across Canada and

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[1] The term Aboriginal is used in this thesis when speaking of Indigenous Peoples in Canada. This usage is consistent with Canadian standards, following section 35(2) of the *Constitution Act, 1982* which defines Aboriginal peoples as "including the Indian [First Nations], Inuit and Métis peoples of Canada."

[2] Nina Wilson is a member of the Kahkewistahaw Nation in Treaty Four territory (Saskatchewan) and an activist, Sheelah Mclean is a self-identified third generation settler and a professor at the University of Saskatchewan, Sylvia McAdam is from the Nehiyaw (Cree) Nation in Treaty Six territory (Saskatchewan) and a professor at the First Nations University of Canada. Jessica Gordon is a member of the Pasqua Nation (Cree/Anishinaabe) in Treaty 4 Territory and self-employed.

globally. By early 2013, over 140,000 Aboriginal and non-Aboriginal persons gathered in person and online to express their solidarity with INM (Full Duplex, 2013). Some have even called it "one of the most significant political mobilization campaigns on the part of Canada's First Nations in modern history" (Hudson, 2014, p. 149).

While INM is not exclusively an Aboriginal movement, many of its members and issues are Aboriginal. Aboriginal mobilization, like INM, is not new to Canada and in fact predates Canada as a sovereign nation (Ladner, 2008; Woons, 2013). There have been dozens of Aboriginal protest events and movements in Canada's history, with many as direct reactions or responses to the GoC's policy agenda (Ramos, 2006; Ramos, 2012; Wilkes, 2006). The 1969 *Statement of the Government of Canada on Indian policy* (the White Paper) is a well-known example.[3] First Nations were unified in their opposition, holding protests and releasing alternative policy papers, such as Red Paper (also known as Citizens Plus) by the Indian Chiefs of Alberta (Ladner, 2014). The Red Paper criticizes the basic premise of the White Paper as being assimilationist, discriminatory, and deeply unjust (Indian Chiefs of Alberta, 1970).

Within this historical context, INM appears to be a resurgence, or possibly a new contemporary iteration, of a national Aboriginal movement (Becker, 2013). Unlike most other instances of Aboriginal protest in recent Canadian history, INM was launched by four women outside the usual power structures (Ladner, 2014). The grassroots members and

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[3] The White Paper famously proposed the repeal of the Indian Act and the abolishment of Indian status, amongst other things.

supporters of INM were making an explicit political statement that they were no longer idle, or as idle as they were in the past.

However the question remains, what prompted this change from idle to active? Initial observation and evidence strongly suggests that Bill C-45 played a key role in the emergence of INM. This relationship is demonstrated by Figure 1, reproduced from Google Trends[4]. Working from this initial observation, this thesis analyzes the relationship between the legitimacy of Bill C-45 and the emergence of INM in order to explain why a new social movement emerged as a substantial and active social movement in Canada and beyond.

"Bill C-45"
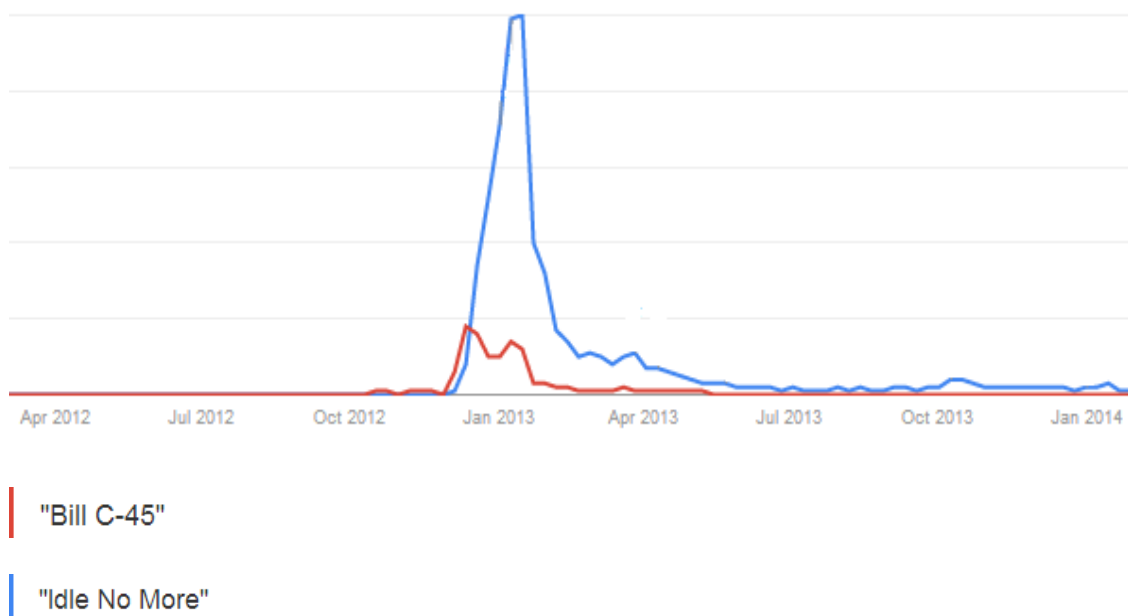
"Idle No More"

Figure 1. Interest Over Time, as measured in Google searches, for "Idle No More" and "Bill C-45

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[4] As explained by Google, "the numbers on the graph reflect how many searches have been done for a particular term, relative to the total number of searches done on Google over time. They don't represent absolute search volume numbers, because the data is normalized and presented on a scale from 0-100" (Google, 2014, ¶2).

1.1 How to Reform Federal Legislation

To start to answer this question, we have to look to legislative reform. Legislation, as a regulatory policy[5] instrument, is "perpetually reformulated, implemented, evaluated, and adapted" (Jann and Wegrich, 2007, p. 44). Indeed, the so-called policy cycle provides an iterative model for analyzing and understanding policies through five stages: agenda setting, policy formulation, decision-making, policy implementation, and policy evaluation (Hessing, Howlett, and Summerville, 2005; Jann and Wegrich, 2007). Building from Easton's input-output model, the premise of the policy cycle is that "one policy succeeds its predecessor with minor or major modifications," meaning that there is an evolutionary cycle involving feedback loops and changes (Hessing et al., 2005, p. 107; deLeon, 1977; Jann and Wegrich, 2007). Policy-making is thus seen as a continuous, iterative process. The policy cycle however is a conceptual tool for explaining how policies are developed and changed. In reality, the policy process is more complex and may not follow the idealized stages; it may result in unintended outcomes (Hessing et al., 2005; Jann and Wegrich, 2007). There are often unexpected consequences to policy decisions at different stages of the policy cycle. In many fields, including environmental policy, outcomes can be inherently uncertain, owing to the complex systems they seek to govern and our evolving understanding of socio-ecological systems (Berkes, Colding, and Folk, 2003; Gunderson and Holling, 2002) and environmental policy subsystems or networks (see Compston, 2009; Montpetit, 2003; Saunders, 2013).

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[5] Policies are defined as "a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where these decisions should, in principle, be within the power of these actors to achieve" (Jenkins, 1978, p. 15).

When policies are changed, it can be insightful to answer several analytical questions: what changed, how was it changed, why was it changed, who was involved, and what were the consequences? The answers to these questions are highly contingent on the policy context. Howlett, Ramesh and Perl (2009) point to democracy and capitalism as highly influential contextual institutions. Moreover, the structure of the political system, such as a parliamentary or presidential system and the division of power across political bodies, is suggested to also influence the policy context. They further contend that the policy context is influenced by the capacity and cohesion of state and non-state actors, in particular the policy actors (like the bureaucracy and political parties) and the policy subsystems they interact within. The actors that can spur reforms vary across time and space. For example, how much weight do lobbyists have with the key decision makers? Is the rationale for the reforms ideological or evidence-based? What are the governmental priorities and law-making authorities?[6]

To reform federal legislation in Canada, the GoC follows a procedural process based on the parliamentary system by passing a Government Bill—typically originating in the House of Commons (HoC) rather than in the Senate (Parliament of Canada, 2006).[7] There are four types of bills the GoC can use to reform existing legislation: bills that contain major revisions of existing Acts, bills that contain amendments to existing Acts, statute law

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[6] For instance, the division of powers (i.e. heads of power) between the Canadian federal and provincial governments are largely outlined in sections 91 and 92 of the *Constitution Act*. For areas beyond these sections, as it is with the environment, there is divided jurisdiction based on the existing heads of power.
[7] This bill is the outcome of a policy proposal, a policy decision, and the drafting of the bill to achieve the policy goal. Once drafted, the bill is introduced to the HoC, where it goes through First Reading, Second Reading (Committee Stage and Committee Report), and Third Reading. If the HoC passes the bill, the Senate repeats the steps taken in HoC. If both House pass the bill, it received Royal Assent, thereby becoming law.

amendment bills, and omnibus bills (Marleau and Montpetit, 2000). An omnibus bill is unique because it seeks "to amend, repeal or enact several Acts" and it is "characterized by the fact that it has a number of related but separate parts" (Marleau and Montpetit, 2000).

The Environmental Enforcement Act (Bill C-16) is a recent example of an omnibus bill; it amended the enforcement provisions of nine environmental acts. Another example of an omnibus bill commonly used by the GoC is a budget bill (i.e. *An Act to implement certain provisions of the budget tabled in Parliament on [date]*). These bills typically amend federal financial legislation based on that year's federal budget.

While the historical numbers are uncertain, the GoC has introduced 24 omnibus budget bills since 1992 (see Appendix A). Few have attracted attention, and many going completely unnoticed outside the National Capital Region (Massicotte, 2013; Cockram, 2014). However, the year 2012 marked an exception to that rule.

On April 26, 2012 the currently elected GoC, a Conservative Party majority led by Prime Minister Stephen Harper, tabled the *Jobs, Growth, and Long-term Prosperity Act* (Bill C-38). Bill C-38 began implementing the federal budget, which was on released March 29, 2012. The 450-page bill contained changes to approximately 70 federal laws, including some of Canada's key environmental legislation. Specifically, Part 3 contained "certain measures related to responsible resource development". The *Canadian Environmental Assessment Act* (CEAA) was repealed and replaced with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). With the stated aim to streamline and reduce red tape, CEAA 2012 has a new designation process that effectively decreases the number of projects to be assessed, it lowers the rigor of assessments, and certain processes

have shorter timelines, which may limit public and Aboriginal participation[8]. Moreover, the approval of a project under the *Navigable Waters Protection Act* (NWPA) no longer triggers an environmental assessment (Walton, 2012). Following Canada's formal withdrawal from the Kyoto Protocol[9], the *Kyoto Protocol Implementation Act* was repealed.[10] The *National Round Table on Environment and Economy Act* was also repealed.[11] The *Species at Risk Act* (SARA) was amended to remove the maximum time limit on permits for activities that impact species at risk, and exempted the National Energy Board (NEB) from protections on the critical habitat of species at risk.[12] The *Fisheries Act* was amended to change section 35(1)*,* the section that protected fish habitat.[13] The existing section was replaced with new language that only protects fish that are part of a commercial, recreational or Aboriginal fishery, or fish that support such a fishery (Hutchings and Post, 2013). As the title of Part 3 suggests, these reforms were made to increase opportunities for 'responsible resource development.'

These changes prompted immediate backlash from environmental groups across Canada. Press releases, public interviews, and media coverage all culminated with the voluntary 'blackout' of hundreds of websites on June 4, 2012 in protest of the environmental amendments in Bill C-38.[14] There were hundreds of protests, with many

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[8] Division 1 of Part 3, provision 52, p. 31-94 of Bill C-38.
[9] Canada official withdrew from the Kyoto Protocol in December 2011.
[10] Division 53 of Part 4, provision 699, p. 401 of Bill C-38.
[11] Division 40 of Part 4, provision 593, p. 365 of Bill C-38. The GoC believes the advisory role of the National Round Table on Environment and Economy can be replaced through existing non-governmental research (Government of Canada, 2012b).
[12] Division 7 of Part 3, provisions 163-169, p. 181-184 of Bill C-38.
[13] Division 5 of Part 3, provision 142, p. 158 of Bill C-38.
[14] Black-Out, Speak-Out was an online protest that saw over 500 websites, including the federal New Democratic Party, the Sierra Club of Canada, and the Suzuki Foundation, either replace their websites with

organized by Leadnow, a Vancouver-based advocacy organization, that seeks to promote democracy and governmental accountability (Leadnow, 2014). Despite these and other efforts to amend the Bill and block its passage, the Bill received royal assent on June 29, 2012. While protests against Bill C-38 were not sustained, new and larger protests were imminent.[15]

On October 18, 2012, the GoC introduced Bill C-45 to complete the implementation of the 2012 federal budget. This 428-page omnibus budget bill similarly, but to a lesser extent, contained reforms to over forty federal pieces of legislation. The NWPA was rescoped through Part 4, "Various Measures." Beyond renaming it the *Navigation Protection Act* (NPA), its regulatory regime would only apply to projects that interfered with the navigation of waterways listed in a schedule to the Act.[16] This was a major reduction in scope. The NWPA's regulatory regime previously applied

> *It is though [sic] the government had not learned from what we saw in the spring, the kind of opposition we saw from coast to coast to coast from Canadians on Bill C-38.*
>
> - Niki Ashton, Member of Parliament (MP) (Parliament of Canada, 2012 October 29)

to all waterways that could be navigated by any type of floating vessel for transportation, recreation or commerce. It also gave additional ministerial discretion to exempt specific projects and waterways from the approval process (Ecojustice, 2012). The *Fisheries Act* was amended again to redefine, among other things, 'Aboriginal Fishery'.[17] CEAA 2012

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a message against Bill C-38, or convert their website to greyscale and feature a criticism the Bill C-38 (CBC News, 2012 June 3).

[15] The 'Death of Evidence' and other scientist-led protests against the federal government's commitment to science-based decision-making may be considered a more general spin-off.

[16] Division 18 of Part 4, provisions 316-350, p. 275-307 of Bill C-45.

[17] Division 4 of Part 4, provision 175, p. 204 of Bill C-45. Bill C-38 defined "Aboriginal" in relation to a fishery as, "fish [that] is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food or for <u>subsistence</u> or for social or ceremonial purposes." Bill C-45 redefined

was amended to correct a loophole, drafting mistakes and English-French inconsistencies, and to make "transitional provisions applicable to designated projects, as defined in that Act, for which an environmental assessment would have been required under the former Act" (Parliament of Canada, 2012c, p. 3).[18] The *Indian Act* was amended to change the voting requirements for First Nations communities to designate reserve lands (i.e. lease land without surrender) from the majority (50% + 1) of all eligible voters in a referendum to the majority of voters in attendance at the vote.[19] GoC approval requirements were also amended. Despite objections by INM and others, the unaltered[20] bill received royal assent on December 14, 2012.

1.2 Purpose and Research Questions

Using an interdisciplinary approach, this research seeks to understand why INM emerged following legislative reform, particularly in response to amendments with environmental implications. While it is documented in the media that INM began after the introduction of Bill C-45, there is no scholarly account that systematically and analytically examines and explains why and how INM emerged in response to such legislation.

"Aboriginal" in relation to a fishery as, "fish [that] is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes <u>or for purposes set out in a land claims agreement entered into with the Aboriginal organization</u>" (emphasis added).

[18] Division 21 of Part 4, provisions 425-432, p. 334-335 of Bill C-45.

[19] Division 8 of Part 4, provisions 206-209, p. 226-228 of Bill C-45.

[20] MP pension-reforms were removed from Bill C-45 and passed separately on October 19, 2012.

In order to do so, I adopt Snow and Soule's (2010) framework on social movement emergence. It hypothesizes that a 'mobilizing grievance' is the most important causal variable for the emergence of a social movement. Mobilizing grievances are defined as:

> Grievances that are shared among some number of actors, be they individuals or organizations, and that are felt to be sufficiently serious to warrant not only collective complaint but also some kind of corrective, collective action. (Snow and Soule, 2010, p. 24)

Working from this framework (explored further in Section 1.3) and initial observations, the research question is: ***Was Bill C-45 the mobilizing grievance that led to the emergence of INM? Why or Why not?***

This question is answered in two parts. First, content analysis is used to determine to how often Bill C-45 is identified as the catalyst for INM. In order to establish if Bill C-45 can be conceptualized as the mobilizing grievance, relative to all other potential grievances, Chapter 3 analyzes the content of early versions of INM's website, media articles on the initial days of INM, original social media content on INM, and protest signs from early INM demonstrations. This data determines how often Bill C-45 is identified as the primary reason for INM's collective action. The reasons provided for their mobilization, whether or not they point to Bill C-45, ascertain the movement's mobilizing grievance. The data reviewed in Chapter 3 supports the initial observation that Bill C-45 was the catalyst for INM; it was the mobilizing grievance. No other event or issue is consistently, without failure, identified when the emergence of INM is discussed.

Secondly, I need to identify if Bill C-45 meets the theoretical requirements of a mobilizing grievance. Thus, I explore why Bill C-45 could be deemed serious enough to warrant collective complaint and corrective action. Snow and Soule do not provide a means

for such an evaluation, therefore an additional framework is required. Based on the case study, seriousness is operationalized using a framework of public policy legitimacy. This framework was selected because evaluations of legitimacy (and illegitimacy) determine how public policies are initially perceived when introduced and influence the perception of how 'serious' these policies may be (Wallner, 2008). The legitimacy of public policy is conceptualized as the public's assessment of its substantive and procedural elements (Wallner, 2008).

In this case study, substantive legitimacy is measured as the alignment of the policy reforms with the substantive beliefs and values of the public, in particular the members and supporters of INM. The length of policy incubation, the use of emotive appeals by the GoC, and Aboriginal consultation are used to measure procedural legitimacy. In sum, the degree to which Bill C-45 was substantively and procedurally legitimate is used to measure how serious the members of INM considered the Bill and its reforms to be.

By answering the research question above, this thesis provides an explanation for why INM emerged when it did.[21] The central argument advanced is that Bill C-45 was the mobilizing grievance that led to the emergence of INM because the bill lacked both substantive and procedural legitimacy. However, following an interpretative and constructivist approach, I recognize that multiple explanations, using different frameworks and analytical lenses may produce different explanations that could be valid and

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[21] This research does not explain why Bill C-45 was a collectively felt grievance—see definition of mobilizing grievance. As national policy it impacts collectives, with collective identities, and collective structures/processes—not individuals—and therefore it is reasonable to assume the grievance would be shared.

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informative. This thesis does not seek to provide a definitive answer, but to provide a compelling, internally logical, and well-reasoned explanation by combining social movement theory and public policy theory.

It speaks specifically to the significant role that environmentally related reforms played in the emergence of INM. Additionally, by examining the extent to which the emergence of INM (a new phenomenon and thus lacking academic study in general) was the result of policy reform, this research contributes to the literature on both public policy reform and social movement emergence. This research sits at the nexus of environmental policy, contentious politics, and Aboriginal politics.

The rest of Chapter 1 provides an overview of the guiding theoretical framework on social movement emergence, a justification of where this research fits within the literature and of how it addresses an existing gap, a review of the methodology, and a statement of ethics. Chapter 2 contains a cross-disciplinary literature review. It reviews the literature on the common theories of social movement emergence, the emergence of INM and Aboriginal mobilization in Canada more generally, and the legitimacy of public policies. In order to answer the research question, Chapter 3 explores the degree that members and supporters of INM emphasize Bill C-45 when talking about the movement's motivation. This will determine if it was the mobilizing grievance. Chapter 4 explores how Bill C-45 meets or fails to meet the conditions of legitimate policy, which would provide an explanation for why Bill C-45 was perceived to be serious enough to warrant collective complaint and corrective action. Chapter 5 provides concluding remarks explaining why

Bill C-45 was INM's mobilizing grievance, the importance of environmental policy reform

to INM's emergence, the limitations of this research, and opportunities for future research.

1.3   Guiding Framework on Social Movement Emergence

Snow and Soule's (2010) General Model of Social Movement Emergence provides a guide

to explore and explain the emergence of social movements. As shown in Figure 2, there are

three major parts to this explanatory model. The first variable is the "mobilizing grievance".

The second part is the "contextual conditions," which are political opportunity, resource

mobilization, and ecological factors. The "social movement" is the third and final element.

Snow and Soule's definitions for each of these elements are included in Table 1.
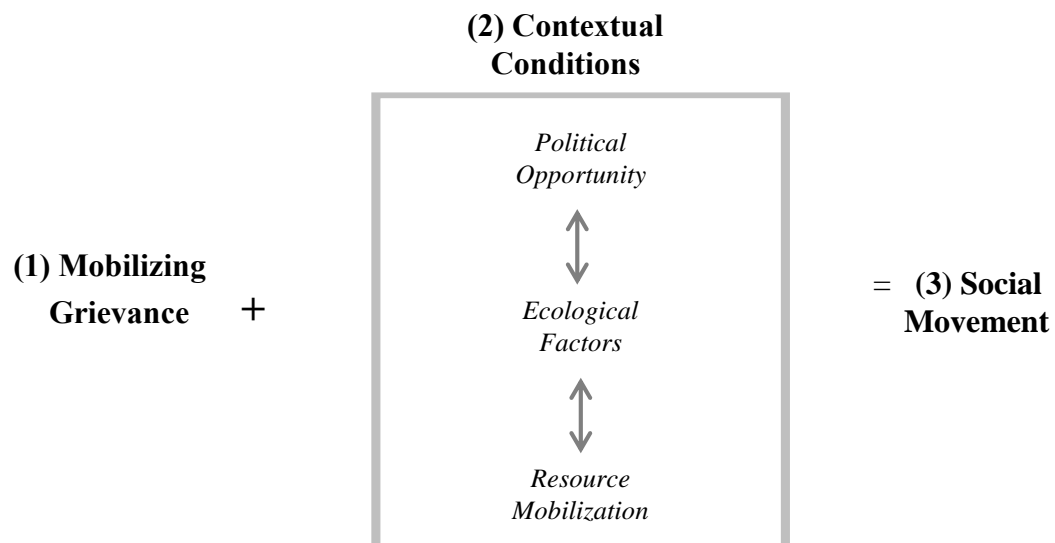
Figure 2. Snow and Soule's (2010) General Model of Social Movement Emergence

Table 1. Snow and Soule's (2010) General Model of Social Movement Emergence –
Definitions

Concept		Definition
Mobilizing Grievance		"Grievances that are shared among some number of actors, be they individuals or organizations, and that are felt to be sufficiently serious to warrant not only collective complaint but also some kind of corrective, collective action."
Contextual Factors	*Political Opportunity*	"Freedom for individuals and collectivities to express their grievances and pursue their interest above ground rather than below ground," while recognizing that this freedom is "contingent on the degree of openness or accessibility of the political system, and thus focus on its 'receptivity or vulnerability' to organized challenge."
	Resource Mobilization	"Access to sufficient resources to organize and mount a campaign to address…grievances."
	Ecological Factors	"The spatial arrangement of movement-relevant populations and physical places, often called free spaces, conducive to facilitating or sustaining collective challenges to authority."
Social Movement		"Social movements are collectivities acting with some degree of organization and continuity, partly outside institutional or organizational channels, for the purpose of challenging extant systems of authority, or resisting change in such systems, in the organization, society, culture, or world system in which they are embedded."

Their model is predicated on the complex relationship between the necessary but insufficient independent variables (mobilizing grievance and contextual conditions) and the dependent variable (the social movement). The complexity of the model and its integration of numerous elements is significant. As Jenkins, Jacobs, and Agnone (2003) suggest, "it is not a question of opportunities alone being important or grievances or organization alone, but all three combining" (p. 293). Indeed, this model is important because it combines four theoretical schools: political opportunity theory, resource mobilization theory, and an

updated version of relative deprivation theory that incorporates key aspects of framing

theory (Snow and Soule, 2010). They justify this integrated approach by suggesting,

> …the analysis of social movements is fraught with interpretative dangers when approached
> from the vantage point of a single perspective. The probable result is akin to the storied
> description of an elephant rendered by six blind men on the basis of the part they touched:
> misrepresentation and oversimplification. Such interpretive dangers suggest that there is
> considerable wisdom to approaching the study of social movements in an integrative
> fashion that incorporates a number of different perspectives rather than privileging one. (p.
> 20-21)

All of the elements are needed for a social movement to emerge. Inherent in the

conceptualization of mobilizing grievances are some factors included in "new social

movement" approaches as well, such as collective identity and emotion (Berkes, Colding,

and Folk, 2003; Gunderson and Holling, 2002) and environmental policy subsystems or

networks (see Compston, 2009; Montpetit, 2003; Saunders, 2013).

However, due to the scope of this research, the contextual conditions of the model

are not explored in detail. I assume that the three contextual conditions were present for the

emergence of INM because they are necessary variables. It is assumed that political

opportunities were seized, resources were mobilized, and ecological spaces were utilized.

To flesh out these aspects in detail is beyond the parameters of this research, as it would

amount to a study on the emergence of INM, rather than targeted research exploring the

role of Bill C-45 as a probable mobilizing grievance in its emergence.

As shown in Chapter 2, mobilizing grievances are often the catalyst for social

movements in the literature on social movement emergence. That is, without a mobilizing

grievance a social movement would not emerge (Snow, 2013). Given the observed

relationship between the introduction of Bill C-45 and the emergence of INM, it is

important to determine if and to what extent the bill can be conceptualized as the mobilizing grievance for INM.

1.4   Research Gap

John Rawls argues that the intent of civil disobedience "is to stigmatize and change unfair laws or policies by making an appeal to consciences—both those of the authorities and of the general public."

- Tescione, 2013, p. 192

As detailed in Chapter 2, the literature on public policy is generally silent on the emergence of social movements. Despite a growing awareness of social movements within the generally state-centric public policy literature, public policy scholars generally speak of social movements as pre-existing stakeholders trying to intervene at two stages of the policy cycle: setting agendas or contesting implementation (Ozen and Ozen, 2010; Meyer, Jenness and Ingram, 2005; Andrews, 2001). This general gap is exemplified by Eric M. Patashnik's (2008) book. It explores "what happens after major policy changes are enacted" and was hailed as addressing a gap in the literature (Campbell, 2010). While Patashnik (2008) considers what makes policy reform sustainable, he does not consider the outcomes of policy reform that could challenge the reform itself. The relationship between policy reform and social movements remains underdeveloped in the public policy literature.

In contrast, there is an abundance of research on nearly all aspects of social movements, including emergence within the study on contentious politics (Williams, 2013; Tarrow, 2013). The theoretical and empirical literature on social movements often, however, speaks to the relationship between movements and public policy (see Ball and

Charles, 2006; Burstein, Einwohner and Hollander, 1995; Costain, 1992; Dixon, 2008; Giugni, 1998; Giugni, McAdam and Tilly, 1999; Johnson, Agnone, and McCarthy, 2010; McCarthy and Zald, 1977; Meyer, 1993; Meyer, 2005; Oberschall, 1973; Ozen and Ozen 2010; Rochon and Mazmanian, 1993; Sawyers and Meyer, 1999; Tarrow, 1998; Tilly, 1978). This relationship is shown to be reciprocal. As Meyer (2004) notes, policy reforms may be an outcome of social movements (see Amenta and Zylan, 1991; Piven and Cloward, 1977), but may also be an independent variable in their emergence (see Costain, 1992; Meyer, 1993; Meyer, 2005). Ozen and Ozen (2010) articulate this idea further by asserting, "There is a two-way relationship between public policies and social movements. Public policies may generate social movements. Likewise, social movements may lead to the formation of new public policies," and they find that literature on social movements focuses on the latter (p. 36).

Indeed, nearly all research on social movement addresses policy issues, either directly or indirectly, be it Indigenous peoples and governance policies (Puig, 2010), local residents and environmental policies (Cronkleton et al, 2008; McGurty, 2000; Ozen and Ozen, 2010), rural residents and policies (Wood, 2003), the suffrage movement and gender-based policies (Costain, 1992; DuBois, 1999), or immigrants and immigration policy (Johnson and Ong Hing, 2007). The majority of this research explores how existing social movements respond to or attempt to influence public policy in specific case studies (Meyer, 2004; see Amenta and Zylan, 1991; and Piven and Cloward, 1977).

In these case studies, research has shown that some social movements often emerge after years of existing public policy/policies, for example the antiapartheid movement (Van

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Kessel, 2013), anti-colonial movements (Schock, 2013), or the civil rights and black power movements (Andrews, 2013; McAdam, 1982; Yertisian and Bloom, 2013). This finding suggests that the sheer existence of contestable policies is insufficient to incite social mobilization, nor was reform the major driver for mobilization. For example, while the civil rights movement in the United States aimed to change institutionalized racist policies, such as segregated schools, it emerged long after the policies were in place and for reasons other than policy reform, specifically because of "the collapse of the cotton economy, the urbanization of black Southerners, and a strengthening of civic and religious organizations in black communities" (Andrews, 2013, p. 196).

Alternatively, the protests and riots against the International Monetary Fund and the World Bank's neoliberal economic policies, i.e. structural adjustment programs, emerged following their implementation—and were deemed a "predictable response"by Joseph Stiglitz, the former chief economist of the World Bank (Walton and Seddon, 1994; Wood, 2013). Through the work of advocacy networks and lobby groups, the strict and punitive immigration, refugee, and asylum policies of Australia prompted social mobilization (Monforte, 2013; Tazreiter, 2013). However, to have a new social movement emerge so soon after policy introduction and so seemingly intended to challenge policy reform is unique—or at least studied less in the literature on social movement emergence.

Meyer's (2004) article on social movements and public policy is particularly informative on this topic. It makes some important claims about social movements and contested public policy reforms. First, he suggests that unwelcome changes in policy may alert citizens of the need to act on their own behalf (p. 137). Second, that an unfavorable

change in policy can spur mobilization, even at such times when mobilization is unlikely to have much noticeable effect on policy (p. 137). Third, both unpopular policies and increased distance between policymakers and the public increase the likelihood of political mobilization. The probability of mobilization is reduced if policymakers can convince citizens that they influence policies and if the citizenry believes in the "wisdom of their policies" (p. 140). In contrast, the state can create "grievances through policy," for example by treating different groups differently (Meyer, 2004, p. 140). "In a liberal polity with numerous opportunities for participation and the prospects of policy payoffs" like Canada, Meyer (2004) suggests "we'd expect ad hoc coalitions on an issue-by-issue basis… with various constituencies more or less committed to extrainstitutional participation depending on the circumstances of the moment" (p. 140). While Meyer recognizes the role that public policy reform can have in creating mobilizing grievances, these ideas are only passing comments in a different thesis.

In summary, neither the literature on social movements or on public policy generally emphasize the emergence of social movements as an unintentional outcome of policy reform. Despite these burgeoning bodies of literature, there is scant research explaining why public policy reform may produce social movements because social movement scholars concentrate their research on how social movements inform public policies, whereas public policy literature generally marginalizes social movements. However, Meyer's hypotheses are particularly compelling about the ability for a policy change to directly prompt mobilization. This thesis attempts to start filling a gap by taking

an interdisciplinary approach to exploring and explaining the relationship between social movement emergence and public policy reforms.

1.5   Methodology

This section outlines the research design, the data sources, the data collection process, the method of data analysis, and the ethical considerations of this thesis.

1.5.1 Research design

Using INM as its analytical focus, this qualitative, explanatory research uses a longitudinal, case study design. Due to its historical and contemporary significance, INM is a unique case study that warrants in-depth analysis. The decision to use a single case study is supported by the 'how' and 'why' research questions. Furthermore, this design is congruent with the existing literature studying the emergence of social movements. Empirical research on social movements is often qualitative single-case studies (Amenta and Halfmann, 2012). Accordingly, this research design provides a 'thick' understanding of INM and of the role of Bill C-45 in its emergence. Furthermore, since I am studying only one phenomenon, a longitudinal rather than cross-sectional design is appropriate (Kriesi, 2004; Yin, 2009). Meyer (2004) suggests a longitudinal design is suitable for this kind of research because "scholars who conduct longitudinal studies to explain the stages… of social protest movements… tend to focus on more volatile aspects… such as public policy" (p. 134-135). The timeframe for analysis is generally March 2012 to January 2013, with an emphasis starting in October. March 2012 marks the introduction of the GoC's Budget

2012, which Bill C-45 helped to implement. The period between October 2012 and January 2013 is emphasized because both Bill C-45 and the first INM teach-in took place in October 2012 and INM transitioned from emergence and growth into full coalescence in January 2013. It is thus an appropriate place to focus data collection in order to maintain the research focus on emergence. As appropriate, data was also collected from the early 2000s to capture longer-term agenda setting and other processes, like consultation.

1.5.2 Data Sources

Two types of data were collected: primary data and literature. Unfortunately, requests for interviews with key figures, including the founders and spokespeople, in INM went unanswered and limited the use of a snowball method. Policymakers could not be interviewed due to the ongoing judicial review of Bill C-45. Despite this limitation, discussed further in Chapter 5, substantive primary data (direct and uninterpreted data) was collected from the Internet. The primary data includes visual images from protests, transcripts of parliamentary committees, and direct quotes and tweets from members and supporters of INM.

A random sample of one hundred images containing protest signs from INM events were identified by systematically searching Google Images, Twitter, Flickr, and Facebook using combinations of the following words: 'Idle No More,' 'INM,' 'protest,' and 'protest sign'. All images that contained protest signs were collected—regardless of their content—until 100 unquiet images were sourced without duplicates. The search parameters were set to limit the timeframe of results. Only images taken and/or posted between October 1, 2012 and January 31, 2013 were used. All images were taken in Canada, from across the country.

Many GoC websites were used to collect primary data on Bill C-45 and issues of legitimacy. The Transport Canada and Aboriginal Affairs and Northern Development Canada (AANDC) websites and Internet archives were searched for information on the NWPA and *Indian Act*, respectively. Finance Canada's website provided the 2012 budget, hundreds of submissions for the budget, and other budget-related documents. LEGISinfo, as the home to bills and related documents, was used to get text of Bill C-38 and Bill C-45. The Department of Justice's website was used to source copies of the relevant legislation. Official transcripts of parliamentary debates (i.e. Hansard) were collected from Parliament's website. It was also the source of documents from HoC and Senate committees, specifically transcripts and reports.

Four 'access to information' requests (ATIP request) were made pursuant to the *Access to Information Act*. Copies of three previously filed requests were obtained from Aboriginal Affairs and Northern Development Canada (AANDC):

1. A-2012-01257 The Consultation Record for Bill C-45;

2. A-2012-01680 Copies of briefing notes, memoranda, reports, decks, timelines / chronologies, evaluations / assessments, and meeting minutes / summaries relating to Idle No More. The timeframe for the request is December 1, 2012 to January 31, 2013; and

3. A-2012-01723 I am requesting copies of all PowerPoint decks related to Idle No More from between November 1st, 2012, and today [November 2013].

These records were disclosed in part, following certain exemptions in the *Access to Information Act*. The fourth request was made to Transport Canada on March 1, 2014 to further validate initial findings. Following advice from Transport Canada, the amended request sought:

4. Policy documents (briefings, decks, etc.), (2) consultation with stakeholders and Aboriginal groups, and (3) correspondence between stakeholders and Aboriginal groups and the Minister or Deputy Minister that directly pertain to the amendments to the NWPA contained in Bill C-45.

Despite limiting the scope of the request, the maximum number of extensions were applied, giving a deadline of August 5, 2014. Given the strength of the existing data, any new insights provided from this forthcoming data will be integrated into future publications but are not included in this thesis.

Primary data on or about INM was collected from four resources. First, INM's website was used as the main source for official data on and from INM. Content, such as key issues, manifestos, letters, and press releases from INM were found on its current website and from the oldest versions of the INM website available using the Internet Archive: Way Back Machine (November and December 2012). It was necessary to use archives because the current version of INM's website was created months after the movement's emergence. In order to understand sentiments at the start of INM, it is necessary to go back and analyze the oldest versions of the website. Second, Twitter was used to find the initial tweets about INM. Using advanced search function of Twitter, the first results for #IdleNoMore were produced and validated against a social media analysis of INM. Twitter was selected because it provides a unique forum for direct, uninterpreted communication. Third, videos posted online featuring the founders and supporters of INM discussing the emergence of INM were identified and reviewed. Lastly, newspapers, magazines, and blogs provided valuable data, including quotes by the founders, supporters, and protest organizers. While media articles are not as rigorously reviewed as academic sources, they were necessary because of the novelty of INM. Media sources were searched

using Factiva, but also by targeting major reputable national media: the Globe and Mail, the National Post, Maclean's, and CBC News. Additional content, including blogs (e.g. rabble.ca), were used to capture the grassroots, peripheral perspectives of the movement. These various forms of online documentation were collected electronically using Boolean search logic.

A strategic decision was made to use both content posted directly to the Internet by INM and the mainstream media's coverage. By doing so, the research captures "the interplay between different forms of mediation and [the] wide variety of media practices/formats that has particular relevance for present-day activism and practices of resistance" (Cammaerts, Mattoni and McCurdy, 2013, p.3). It is through such variety of mediums, utilized as 'communication and broadcast tools', that movements communicate and are communicated about (Cammaerts et al., 2013).

Secondary data (journal articles and books) were used to guide, support and verify the primary data. Academic literature was gathered concurrently with primary data. Scholarly articles and books were found electronically by employing well-defined Boolean searches, primarily using Memorial University of Newfoundland's (MUN) search function called "Summon". Literature was collected by searching the websites of key identified academic journals (such as *Mobilization*), searching thesis databases, and Google Scholar. Google Scholar Alerts were created for "Idle No More" to ensure new publications, including theses, were reviewed as they were published. Data from literature was also obtained from print sources via MUN's libraries and electronically using Google books.

1.5.3 Data Analysis

The data was analyzed using content analysis, "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns" (Hsieh and Shannon, 2005, p. 1278). Saldana (2013) defines coding as "the transitional process between data collection and more extensive data analysis" whereby codes[22] are used as an interpretative process in order to make sense of data (p. 5). This was an appropriate method of analyzing qualitative data, as coding is common in social movement literature (McAdam, 1982; Meyer, 2004). Content analysis was completed using NVivo 10, qualitative data analysis (coding) software. Directed content analysis was conducted to answer the research questions by using theory and initial observation to develop codes in the beginning (Hsieh and Shannon, 2005). Directed content analysis was selected to ensure congruence between the theoretical models, research questions, data collection, and data analysis. As explained by Yin (2009), 'pattern matching' was used to compare the empirical results of the coded content analysis to the theoretical models.

There were initially only three codes to explore the first part of the research question [Was Bill C-45 the mobilizing grievance that led to the emergence of INM?]: (mobilizing) grievance, INM and Bill C-45. Over time, more codes emerged from the data. For example, the 100 protest images were coded based on the words or images they contained, normally using the words of the protesters as codes. There was an iterative process between data

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[22] A code is defined as a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data (Saldana, 2013, p. 3)

collection and analysis. As new data was collected and new codes developed, previously

coded documents were reviewed. Over time four broad themes materialized and the codes

were grouped under these broad categories: environmental issues, Aboriginal issues,

political issues, and public policy – see Table 2 for key examples. In addition to these codes,

data was specifically coded if it was a direct quote by a founder or if it was qualified as a

core concept to INM. To answer the second part of the research question [why or why not

was Bill C-45 the mobilizing grievance], seven codes were developed following Wallner's

framework for public policy legitimacy: legitimacy (general), substantive, procedural

(general), incubation period, emotive appeals, and Aboriginal engagement/consultation.

Table 2. Codes that Emerged from the Data

Environmental Issues	Aboriginal Issues	Political Issues	Public Policy
Flora, fauna, Fish	First Nations	Constitution	Bill C-45
Environmental Protection	Land (designation)	Political Leadership	CEAA / CEAA 2012
Development (e.g. pipelines)	Rights (Treaty or Aboriginal)	Justice / Injustice	Public policy (general)
Water (including lakes and rivers)	Sovereignty	Political Influencers	NWPA
Land (protection)	Treaties	Democracy	*Indian Act*

After coding was complete, NVivo was used to analyze the data. A series of queries

were conducted to show the relationships in the data and codes. For example, analysis was

conducted on certain types of data, like protest signs, to determine what codes were used.

Data was also analyzed to determine where codes overlapped, for example how often text

was coded both INM and Bill C-45 compared to INM and Aboriginal or Treaty Rights. The content analysis produced both qualitative findings and descriptive statistics.

1.5.4 Reliability and validity

Data was collected using Yin's (2009) three principles of data collection for case studies. First, the thesis used multiple sources of evidence. By using different sources to corroborate "facts", this research ensured data triangulation, thereby improving its construct validity (Yin, 2009). Second, a case study database was created using NVivo. This NVivo database contains all the data collected and evolution of the research. This database allows for outside authentication, as the data can be reviewed in order to determine if another researcher would make similar conclusions. Consequentially, by creating this database, the reliability of my thesis was increased (Yin, 2009). Third, I maintained a clear chain of evidence. As explained by Yin (2009),

> The principle is to allow an external observer… to follow the derivation of any evidence from initial research questions to ultimate case study conclusions. Moreover, this external observer should be able to trace the steps in either direction (from conclusions back to initial research questions or from questions to conclusions). (p. 122)

NVivo was used to build a database to establish the chain of evidence, which improved reliability.

1.6 Ethical Considerations

The Grenfell Research Ethics Board approved the proposal for this thesis. The Board determined that the proposal met the requirements of ethical acceptability as given by the Tri-Council Policy Statement on the Ethical Conduct for Research Involving

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Humans. Due to previous and concurrent work with the federal government on issues related to law reform and Aboriginal affairs, the purpose and methods of this research were disclosed to the Values, Ethics, and Integrity Branch of Environment Canada. The assessment determined that there was neither a real nor potential conflict of interest, but an apparent conflict of interest. That is, a person may perceive there to be a conflict, whether or not it is the case. A number of requirements were prescribed and met to mitigate any perception of a conflict of interest. For instance, this thesis contains no privileged information that is not publicly available, government resources were only used for officially sanctioned activities, and none of my assignments were directly related to this research.

Chapter 2 – Literature Review

Owing to the interdisciplinary nature of this research, which draws from sociology, political science, and public administration, this literature review covers four bodies of literature: the history of Aboriginal mobilization in Canada, the emergence of INM, the common explanations on the emergence of social movements (Political Process Theory and grievances/mobilizing grievances), and the legitimacy of public policy reforms.

2.1   The Legacy of Aboriginal Mobilization in Canada

Much has been written about the history of Aboriginal mobilization in Canada (see Alcantara, 2010; Braun, 2002; Coates, 2000; Corrigall-Brown and Wilkes, 2012; Hodgins et al., 2003; Lambertus, 2004; Ledwell, 2014; Miller, 2000; Ramos, 2006; Ramos, 2008; Richardson, 1989; Wilkes, 2004, Wilkes 2006). The major foci of these works are sovereignty, Aboriginal and Treaty rights, protest methods, media coverage, First Nations specific protests, resource development, and identity (for media coverage see Corrigall-Brown and Wilkes, 2012; Lambertus, 2004; Wilkes, Corrigall-Brown and Meyer, 2010). The literature noted below highlights some key events and points to studies on *why* Aboriginal Peoples in Canada have mobilized, rather than *how*.

Aboriginal Peoples in North America have engaged in contentious politics amongst their own nations for thousands of years before colonization. For instance, hundreds of years before colonial contact, the Haudenosaunee Confederacy was established following a 'peaceful revolution' amongst the Cayuga, Mohawk, Oneida, Onondaga, and Seneca Nations (Ladner, 2014). However, the arrival of Europeans in North America marked a new chapter. Since the Royal Proclamation of 1763, one of the main elements influencing the relationship between the Crown and Aboriginal Peoples has been the ownership and use of land—Aboriginal rights and title. Many of the protests by First Nations in British Columbia during the late 1800s, for example, were in response to the GoC's and the provincial government's inaction on negotiating treaties (Lambertus, 2004).

Marking the 1969 release of the federal White Paper as a contemporary catalyst, there have been more than 500 distinct instances of collective resistance by Aboriginal

Peoples in Canada, peaking in the 1990s, and stabilizing around 10-20 instances per year (Blomley, 1996; Lambertus, 2004; Ramos, 2006; Ramos, 2008; Wilkes, 2004; Wilkes, 2006). While some instances of protest occur in solidarity, most social mobilization by Aboriginal Peoples in Canada appears to be localized. For example, when the Haida Nation famously protested logging on Haida Gwaii, they were responding to a local-level issue and policy decision to issue logging permits (Passelac-Ross and Smith, 2013) beyond the continued marginalization of First Nations in the area (Braun, 2002). The same goes for the Temagami First Nation in Ontario protesting resource development in their traditional territory (Wilkes and Ibrahim, 2013), the 1990 Oka Crisis (Ladner, 2014), the Algonquin objecting to uranium mining (Lovelace, 2009), or the 2013 anti-shale gas protests by the Elsipogtog First Nation in New Brunswick (Ornelas, 2014). Other instances of social mobilization, specifically the responses to the Meech Lake Accord and the 1969 White Paper, are clearly cross-country responses to macro-level policy decisions (Ladner, 2014).

While there have been continuous actions of resistance and mobilization by Aboriginal Peoples against the Crown since colonialism (Ladner, 2014), until INM Canada had not experienced such an unplanned, widespread, and transformative national Aboriginal movement since the 1990 Oka Crisis between the Mohawk of Kanesatake and the city of Oka, Quebec (Woons, 2013; Graveline, 2013). That changed in October 2012 with the emergence of the 'Canada's Native winter,' better known as INM (Wotherspoon and Hansen, 2013). Wotherspoon and Hansen (2013) argue that "Idle No More is both a specific movement and an awakening to re-engage in the ages-old resistance against

colonialism and imperialism" (p. 23). Despite its novelty, INM must be contextualized in the larger history of Aboriginal mobilization in Canada (Ladner, 2008).

Ladner's 2014 study on the history of First Nations social movements in Canada suggests that there are currently nine eras of Aboriginal mobilization in Canada—which move from individual outbreaks of protest actions to fully institutionalized social movement organizations. These eras are summarized in Table 3 below. She suggests that the isolated bursts of mobilization are all part of the same social movement, one that is rooted in "the deep belief in Indigenous nationhood and decolonization" (p. 228). Despite the decades and different actors, five broad issues have underpinned all the instances of Aboriginal activism in Canada: good governance, quality of life, economic and resource rights, land and territory, and self-determination/sovereignty. These issues are collective and allow for the movement to span time, space and different constructs of Aboriginality (e.g. treaty vs. non-treaty, status vs. non-status, and reserve vs. urban).

Table 3. Ladner's (2014) Eras of Aboriginal Mobilization in Canada

Defining Events	Outcomes
Era 1: Sovereignty (1700-1900)	
- 1763 - 1766 rebellion by Obwandiyag against the British. - 1869 - 70 and 1885 Métis resistance by Louis Riel. - Nehiyaw's 1870 – 1885 resistance against the GoC.	Challenging the nation-to-nation relationship between the Crown and Aboriginal Peoples.
Era 2: Material Well-being (1945 – 1950)	
- Establishment of the League of Indians in Canada.	The *Indian Act* made it illegal for unsanctioned gatherings, making mobilization illegal.
Era 3: Regional Rights (1950s)	
- Repeal of various restrictions under the *Indian Act*. - Growth of provincial associations.	Focus on improving the civil rights of local First Nations constituencies.
Era 4: National Rights (1960s – 1970s)	

- Creation of the National Indian Brotherhood (NIB) (1967) - The 1969 Statement of the GoC on Indian policy (The White Paper) to abolish Indian Status, *inter alia.* - The Indian Association of Alberta released its Citizen Plus (known as the 'Red Paper') (1970). - The Union of British Columbia Indian Chiefs was formed and released its own 'Brown Paper' (1970).	First Nations backlash resulted in the government abandoning its policy positions. A new national, rights oriented discourse development – marking a watershed moment in the transition from a traditional social movement (focused on material well-being) to a new social movement (focuses on intangibles).
Era 5: Diverse Identities (1970s)	
- New specialized organizations to support the budding movement, for example the Native Council of Canada (NCC) and the Native Women's Association of Canada (NWAC).	New more targeted social movement organizations emerged, but it was the rights-based agenda of the NIB that galvanized the base.
Era 6: Constitutional Window of Opportunity (1970s – 1982)	
- When the *Constitution Act, 1897* was being overhauled, the various fractions of the Aboriginal rights movement lobbied every level of government, held huge demonstrations, and even contacted the Vatican to promote and ensure the protection of their Aboriginal and treaty rights, treaty implementation, and First Nations sovereignty. - Meech Lake Accord.	Aboriginal and Treaty rights were enshrined in the *Constitution Act, 1982*. But the effort strained the NIB and the NCC, resulting in two new organizations: 1. The NIB became the Assembly of First Nations (AFN). 2. The Métis National Council (MNC) formed after the Métis left the NCC.
Era 7: Rejected Constitutional Opportunity (1982 – 1992)	
- Charlottetown Accord was negotiated between the federal and provincial/ territorial government and Aboriginal groups. - Rejection of the Charlottetown Accord by referendum. - Oka Crisis.	Required Aboriginal groups to refocus their efforts from solely constitutional change to broader mandates and to identify new ways to work with the governments.
Era 8: Working with the System? (1990 – 2000s)	
- Organizations became "bureaucratized, involved in policy networks, and integrated into the federal government's machinery" (Ladner, 2008, p. 237). - Upperwash Crisis. - The GoC used the NCC rather than the AFN to consult with Aboriginal Peoples. - The GoC planned to amend the *Indian Act* with its *First Nations Governance Act* initiative.	The MNC and the AFN withdrew from some contracting partnerships and the failure of the *First Nations Governance Act* initiative to pass into law.
Era 9: Strained Relationships (2004 – present)	
- Canada-Aboriginal Peoples Round Table process. - The Kelowna Accord.	The incoming Conservative Government strains the improved relationship built with the Liberal

| - | The election of the Conservative Government and rejection of the Kelowna Accord. | Government and Idle No More emerges. |

Ladner (2014) goes on to suggest that Political Process Theory partly explains the continued existence of Aboriginal social mobilization in Canada:

> …the Indigenous movement and its episodes of mobilization have been influenced, shaped, confined, and defined by the state— just as Tarrow (1998) and other social movement theorists who endorse the political process model suggest. That said, however, Indigenous politics of contestation do not fully fit with Tarrow's theorization of social movements or with the theories of other social movement scholars. Though influenced by the state and opportunity structures, Indigenous movements are fundamentally grounded in and defined by issues of nationhood and (de)colonization— considerations that have been largely overlooked in the social movement literature. (p. 247)

However, the issues of nationhood and colonization could be conceptualized as long-term grievances under Snow and Soule's model. Collective grievances cited by Ladner (2014) and others (see Blomley, 1996; Wilkes, 2004; Wilkes, 2006) include inadequate provision of health care, education, and housing, and the sale of disputed territory and Crown land for various purposes (e.g. resource development, infrastructure, and military bases) without adequate consultation, consent, or compensation, and are seen as a failure of the Crown to meet its fiduciary duty.

Alcantara (2010), Ramos (2006 and 2008), and Wilkes (2004 and 2006) examine the reasons why Aboriginal Peoples in Canada have mobilized in the past. Using rationale choice and political opportunity structure, Alcantara (2010) explores the motivation for the Labrador Innu to mobilize in the 1980s and 1990s against military airplane exercises. By testing five conditions hypothesized by Taiaiake Alfred[23], he concludes that mobilization

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[23] In order for an Aboriginal movement to exist 1. the movement must have access to institutional power, such as government organizations and the media; 2. there must be political and social divisions among the Settler elite, in terms of either political parties, economic classes, or ideologies; 3. the movement must have

was spurred by divergent preferences between the government and Innu, the frequent intrusion of the state on Aboriginal land, the successful framing, and the tolerance by the federal government. Responses to 'raw grievances' are assumed not to be a factor behind mobilization. However, his evidence suggests that increasingly disruptive activity at a military air base in Happy Valley-Goose Bay was a necessary grievance for the Labrador Innu to mobilize. Snow and Soule's (2010) model could have provided another framework for analysis beyond the rationale choice and political opportunity structure.

Ramos uses the elements of Political Process Theory with the idea of critical events to conduct a longitudinal analysis of the influences on Aboriginal mobilization in Canada from 1951 to 2000. He suggests that resources (new organizations and federal funding) and opportunities (media attention and completion of land claims) are the greatest influencers of protests. Ramos (2006) argues that PanAboriginal identity is a weak influence on mobilization because of the divergent localized identities constructed due to the legal status amongst Aboriginal Peoples. He contends that differences in legal status and identity, for example status versus non-status Indians, influences the perception of grievances. That is, what may be deemed a grievance for a status Indian, such as a failure to fulfill treaty obligations, may not be a concern for non-status Indians (Ramos, 2006). Ramos (2008) further emphasizes the importance of structural opportunities, specifically resources, to explain the occurrence of political opportunities for Aboriginal groups to mobilize. While

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the support and cooperation of allies in the Settler society; 4. the state's ability or capacity for repression must be in decline, in either physical terms or due to legal constraints or the political or social context; and, 5. the movement must be capable of advancing its claims and delegitimizing the state in the mass media (Alfred, 2005, p. 64.)

grievances are not a focus of his works, he points to the 1969 White Paper, the process in the 1980s to reform the *Constitution Act*, and the negotiation of land claims as all being critical events and sources of grievances. For example, he suggests that,

> …as the number of land claims settled increase contentious action will decrease but organization formation will increase. This is because their resolution eliminates a primary grievance for a number of Aboriginal actors… but also leads to the availability of new resources and points of accessing the dominant polity" (p. 806).

Overall, while providing important longitudinal analyses and applying useful frameworks, Ramos takes for granted the importance of grievances and fails to directly link their existence to mobilization.

Wilkes (2006) similarly uses Political Process Theory to suggest that Canada lacks a sustained national Aboriginal social movement because the country lacks strong leadership by social movement organization, political networks, and a national collective identity. However, he acknowledges the importance of unresolved historical and contemporary grievances to collective mobilization. Her earlier 2004 work suggests that higher levels of deprivation (operationalized as unemployment) and resources (operationalized as socioeconomic status) encouraged participation by First Nations in collective action (Wilkes, 2004). Overall, these findings suggest that identity, relationships with the federal government, resources, and grievances are all important indicators of why Canada's history is peppered with instances of Aboriginal mobilization.

Turning to the present and future, a recent paper uses the 'feasibility hypothesis' to explain why Aboriginal mobilization in Canada is currently possible (Bland, 2013). This hypothesis suggests that social fractionalization, a 'warrior cohort', the proportion of

natural resources in gross domestic product, level of security, and topography are the five main determinants for mobilization. In other words, feasibility rather than a 'root cause' determines mobilization. Importantly, Bland's 2013 article emphasizes contemporary policy over historical grievances:

> The possibility of a catastrophic confrontation between Canada's settler and Aboriginal communities, spurred not by yesterday's grievances but by the central features and consequences of our national policies, have the potential to make such an uprising feasible if not, one hopes, inevitable. (p. 8)

While long-term grievances are recognized as a powerful motivational driver within this hypothesis, they are insufficient to explain mobilization. This thinking reflects the assumptions of the necessary but insufficient independent variables of Snow and Soule's model.

Understanding the long and tumultuous history of Aboriginal Peoples in Canada is fundamental to understanding the complexity of Canada's political landscape. INM in many ways is a continuation, but a new branch, of the long history of the contentious relationship between Aboriginal Peoples and the federal government (Ladner, 2008; Wotherspoon and Hansen, 2013).

2.2   The Emergence of Idle No More

Since INM is a relatively new social phenomenon, the academic literature on it is limited but growing. Every article specifically points to Bill C-45 as a critical event (see Graveline, 2013; Heinrichs, 2013; Paradis, 2013; Trahant, 2013). For example, in their study on the emergence of and public response to INM, Wotherspoon and Hansen (2013)

state that Bill C-45 was the breaking point following a long series of grievances experienced by Aboriginal Peoples. In particular, INM's

> … most immediate roots lie with an initiative undertaken not by formal Indigenous leaders, but from unofficial leaders… in the course of discussing how their concerns about recent measures hidden in massive budget legislation could be translated into action. Their stance against provisions contained within Bill C-45. (p. 23)

Woons (2013) concurs, suggesting that INM "began as a response to federal legislation introduced in November 2012 that reduced environmental protection of important lands and waters within traditional Indigenous territories" (p. 173). Bill C-45 is widely linked to the emergence of INM.

Many authors point specifically to Bill C-45's reforms to the NWPA (Anderson, 2013; Becker, 2013; Heinrichs, 2013; Philp, 2012; Graveline, 2013) as the key legislative change that sparked INM. Philp (2012) holds that the primary grievance in Bill C-45 was specifically

> …the overhaul of the Navigable Waters Protection Act which removes environmental protection from all but 97 of the 32,000 lakes and rivers previously protected. This will allow unbridled industrial and urban development, threatening species at risk and the habitat for many more and possibly the water supplies of some communities (p. 1).

Others note a general weakening of environmental protection as being a cause of outrage (Kirchhoff, Gardner, and Tsuji, 2013; Kovach, 2013; Wotherspoon and Hansen, 2013). In particular, Scott (2013) sees INM as a grassroots indigenous resistance to the federal government's 'responsible resource development' agenda (p. 33).

The literature also extends beyond discussions of the environment to the reforms of the *Indian* Act (Heinrichs, 2013; Becker, 2013; Philp, 2012). The perceived failure of the GoC to respect treaties or meet its constitutional duty to consult and accommodate

Aboriginal Peoples when their Aboriginal or Treaty rights may be infringed – by the reforms contained in Bill C-38 and Bill C-45 – is also deemed a primary reason for the emergence of INM (Inman, Smis, and Cambou, 2013; Kovach, 2013; Kirchhoff, Gardner, and Tsuji, 2013; Philp, 2012; Heinrichs, 2013; Paradis, 2013).

The issues of sovereignty, nationhood, and identity are additionally discussed as important confounding factors that influenced the emergence of INM (Wotherspoon and Hansen, 2013; Paradis, 2013; Heinrichs, 2013). Several authors also point to the importance of how the government introduced the reforms, specifically through a budget omnibus bill (Graveline, 2013; Kirchhoff, Gardner, and Tsuji, 2013). Anderson (2013) also emphasizes the role of clear leadership and the use of technology. Overall, there are many elements identified in the growing literature on INM that help to identify the factors that led to emergence. However, they generally point to Bill C-45 or some aspect of it as the specific catalyst (Hudson, 2014).

Wotherspoon and Hansen (2013) further suggest that the high level of social exclusion historically experienced by Aboriginal Peoples in Canada (produced and reproduced through complex dynamics of policies, economic development, historical and contemporary colonialism, racism, and conceptions of justice) is necessary to explain the long-term context of INM. However, it was "the recognition that Bill C-45 contains provisions that are likely to extend a colonial legacy in which Indigenous people have encountered numerous forms of oppression and inequalities" that directly prompted INM. They further suggest that,

> The movement is important because it is rooted in old Indigenous laws that speak of our duty to protect the water and land for the future generations. It marks the re-awakening of

an Indigenous tradition and culture grounded in respect for the environment, fostering resistance to the kinds of exploitation of land and water conveyed through many of the terms of Bill C-45. (Wotherspoon and Hansen, 2013, p. 23)

They conclude by noting,

For academic researchers as well as political observers, ongoing attention is needed to explore both the roots and possible futures of the movement and the kinds of influence, if any, it will generate over time. (Wotherspoon and Hansen, 2013, p. 34)

This study will help build that understanding by further exploring its emergence using mobilizing grievances and public policy legitimacy as a different lens of analysis.

2.3　The Emergence of Social Movements and the Role of Grievances

The literature on contentious politics, as the home of the study of social movements, has a long history of exploring the impact of policies on the emergence of social movements and vice versa (Meyer, 2005; Opp, 2009). There are many factors that theorists have suggested are necessary for the emergence of a social movement, such as the generation of collective identity (Van Stekelenburg, 2013). Building from its behavioural and psychological roots, one of the predominant methods to explore social movement emergence is Political Process Theory (see Costain, 1992; Noonan, 1995; Meyer, 1993; Haddadian, 2012). This theory was originally developed by McAdam in his 1982 study to explain the emergence of the black insurgency in the United States. Political Process Theory (i.e. Political Process Model of Movement Emergence) combines cognitive liberation, expanding political opportunities, and established organizations as the necessary variables for movement emergence. Over time, these three elements became political

opportunities, mobilizing structures, and framing processes (McAdam, 1996; Della Porta, 2013; Haddadian, 2012).

Despite it being the hegemonic explanatory theory of the emergence of social movements (McAdam, 1996), there is much criticism of Political Process Theory, both from within the school of thought and from other theoretical schools (see Bevington and Dixon, 2005; Caren, 2007; Gamson and Meyer, 1996; Goodwin and Jasper, 2012; Meyer, 2004). There are a number of compelling critiques. Political Process Theory ignores the role of collective grievances and implicitly assumes that the organizers are able to identify opportunities using a cost-benefit style of analysis (Pinard, 2011; Della Porta, 2013). It is overly structural and does not take into account agency and the importance of emotions (Goodwin and Jasper, 2012). Despite its different elements, Political Process Theory is practically synonymous with Political Opportunity Theory, because scholars tend to emphasize or exclusively focus on the 'opportunity' variable (Meyer, 2004; Goodwin and Jasper, 2012). It is also practically unfalsifiable because of its broad operationalization (Caren, 2007; McAdam, McCarthy, and Zald, 1996). Nearly everything can be construed as an opportunity; both the closing and opening of opportunities have been said to spur mobilization. The broad conceptualization of "opportunities" even prompted McAdam (1996) to try to narrow the scope. Lastly, and related to the other critiques, Meyer (2004) states that,

> …this model [Political Process Theory] is clearly not always applicable. Unfavorable changes in policy can spur mobilization, even at such times when mobilization is unlikely to have much *noticeable* effect on policy. Indeed, social movements that arise in response to proposed or actual unwelcome changes in policy may see their influence in moderating the efforts or achievements of their opponents or, more favorably, maintaining the status quo…. Bad news in policy and increased distance from effective policymaking both seem

to improve the prospects for political mobilization. In this case, opportunities for mobilization appear at exactly those times when influence on policy, at least proactive influence, is least likely. (p. 137-8)

Meyer himself admits that Political Process Theory cannot explain mobilization following unfavourable policy reforms.

Based on these critiques, Political Process Theory is not an appropriate theory to explore the emergence of INM. Snow and Soule's (2010) General Framework for Social Movement Emergence, on the other hand, is more robust than Political Process Theory. It adds mobilizing grievances, as discussed below, and does not abandon its other elements entirely. Instead, it offers a clearer conceptualization of the variables to ensure that the meaning of political opportunity is not ambiguous and that it does not overshadow other variables.

Like opportunities, much has been written about the fundamental role of grievances in social mobilization literature (see Ennis and Schreuer 1987; Gurr, 1970; Law and Walsh, 1983; Marx and Holzner 1977; Meyer 2004; Schurman and Munro, 2006). The negative feelings that fuel mobilization have been in both the foreground and background of various studies on social movement emergence. Pinard (2011) proposes that grievances "imply felt sentiments" whereas deprivations, which are often mentioned in the early literature, "refer to objective conditions" (p. 5). Even if they are not the focus of study, grievances are found throughout the literature on social movements.

Grievances can be defined as the "troublesome matters or conditions, and the feelings associated with them—such as dissatisfaction, fear, indignation, [and] resentment" that individuals feel on a regular basis (Snow and Soule, 2010, p. 23). They relate to

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conditions or "matters about which [people] are deeply troubled, have considerable concern, and feel passionately" (Snow, 2013, p. 540). Since they are fundamentally emotional, it is often purported that strong emotions are essential to the emergence of social movements (Eyerman, 2005; Goodwin, Jasper and Polletta, 2001).

While many grievances are long-term, others appear abruptly. 'Suddenly imposed grievances' occur when an unanticipated change threatens peoples' rights, status, principles, or values (Walsh, 1981; Walsh and Warland, 1983; van Stekelenburg and Klandermans, 2013). The central elements of a suddenly imposed grievance are that the grievance is new, unexpected, divisive and "provides the primary motivational impetus for organizing social movement campaigns and for engaging in social movement activities" (Snow, 2013, p. 540). Moral shock is often discussed as a suddenly imposed grievance and possible catalyst for collective outrage and action (McAdam, Tarrow and Tilly, 2001; Lemonik Arthur, 2013; van Stekelenburg and Klandermans 2013). Moral shock is "the experience of sudden and deeply emotional stimulus that causes an individual to come to terms with a reality that is quite opposed to the values and morals already held by that individual" (Lemonik Arthur, 2013, p. 776). Suddenly imposed grievances, like moral shock, may be by-products of a 'critical event', for which mobilization becomes a form of retaliation (see Rohlinger, 2009). In many ways, some scholars see an initial grievance as necessary for a social movement.

Despite these and other concepts, the depth of the theoretical and empirical scholarship on grievances is not what one may assume (Snow and Soule, 2010). This is because the three dominant theoretical perspectives within the field of social movement

scholarship (i.e. Political Opportunity Theory, Resource Mobilization Theory, and Framing Theory) generally marginalize grievances (Haddadian, 2012). Grievances do not play an important role in these theories, and are often suggested to be insufficient to explain collective action (e.g. Tilly, 1978; McCarthy and Zald, 1977; Tarrow, 1994). In fact, they are often taken-for-granted or seen as ubiquitous (Snow and Soule, 2010). For example, during the 1970s and 1980s Resource Mobilization Theory explored *how* movements mobilize rather than *why* (Meyer, 2004). To do so, Resource Mobilization scholars minimized the importance of grievances (i.e. the basic 'why' question), often seeing grievances as commonplace and thus lacking any explanatory power (Law and Walsh, 1983; Regan and Norton, 2005; Oberschall, 1973; McCarthy and Zald, 1977; Jenkins and Perrow, 1977; Snow and Soule, 2010; Opp 1988; Stekelenburg and Klandermans 2013). However, the shift to incorporate culture (e.g. values and beliefs) and emotions through 'framing processes'[24] has renewed the importance of grievances when studying social movements (Melucci, 1996; Rochon, 1998; Schurman and Munro, 2006; Snow and Soule, 2010).

Working to explain and ultimately dispel these perceptions, Snow and Soule (2010) argue that grievances have been wrongly marginalized. Working from the aforementioned individualistic/ubiquity critique of grievances, they have conceptualized *mobilizing grievances*. Mobilizing grievances are a specific type of grievance, defined as

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[24] Similar to social constructionism, framing purports that interpretation is central to understanding why mobilization occurs: "the meanings objects or events hold for people are not intrinsic—they do not, in other words, attach to them automatically - but are assigned or imputed through interpretative processes" (McAdam and Snow, 1997, p. 233).

> Troublesome matters or conditions, and the feelings associated with them, which are shared among a number of actors, be they individuals or organizations, and that are felt to be sufficiently serious to warrant not only collective complaint but also some kind of corrective, collective action. (Snow and Soule, 2010, p. 24)

The key conceptual difference is that "individual level grievances may be ubiquitous, but mobilizing grievances are not" (Snow and Soule, 2010, p. 26). Mobilizing grievances are the collective, deeply felt grievances that may spark or reinvigorate social movements (Snow and Soule, 2010; Snow 2013). To distinguish between these conceptualizations Snow (2013) provides a useful metaphor: "mobilizing grievances are more like mushrooms after a spring rainfall than weeds; they don't flourish continuously and everywhere, but only under specifiable conditions" (p. 541).

Grievances, while often dismissed as ubiquitous and thus uninformative, may be quite the opposite if they are mobilizing grievances. Snow (2013) suggests that mobilizing grievances are of paramount importance:

> Although there are various sets of conditions that contribute to the emergence…[of] social movements—such as the degree of perceived political opportunity, organization, and resource acquisition, none of these factors is more important than the generation of mobilizing grievances. (p. 540)

Arguing that mobilizing grievances are of central relevance to the emergence of a social movement is to suggest that social movements are not simply rational, instrumentalist avenues to achieve desirable outcomes. People do not mobilize after clear cost-benefit analysis leads them to determine that mobilization is the best course of action based on available resources and political conduciveness. Mobilization is driven instead by complex and culminating, potentially irrational, factors, including a sense of collective outrage, which is exemplified by Snow and Soule's model. As Schurman and Munro (2006) aver,

"what people think in their heads, as well as hold in their hearts, really matters" (p. 32). To apply this logic to mobilizing grievances is to suggest that what people collectively think and feel is fundamentally important to why social movements emerge.

2.4   The Legitimacy of Public Policies

In nondemocratic systems there usually is little need, in considering legitimacy, to distinguish between the regime and its policy…. In democracies the same thing may seem to be true. The (genuine) legitimacy of … parliament and prime minister, may seem to give a certain prima facie legitimacy to their policy. They have been elected, afterall, by the people. Hence it may not seem obvious why legitimacy might be a separate need for their policy and why, therefore, one might wish to consider a question like 'policy legitimacy'.

- Smoke, 1994, p. 98

With roots in the works of John Rawls, Max Weber, and John Locke, political legitimacy is a well-studied and well-theorized field (c.f. Grimes, 2008; Easton, 1979). While it is beyond the scope of this work to debate what exactly constitutes political legitimacy, the conceptualization of Bakvis and Skogstad (2012) is informative for this research. Rooted in a Weberian understanding, they aver that "governments must be perceived as legitimate if they are to count on the unequivocal support of citizens. Legitimacy is a reflection of the public's perceptions of the appropriateness of governing arrangements and their outcomes" (p. 15). In other words, if a government lacks the explicit support of their citizens, it lacks legitimacy. Legitimacy derives from both the actual legality of actions taken by the government, and from the public's perception of those actions within their own understanding of right and wrong (Grimes, 2008). These government actions are often policy decisions (Bakvis and Skogstad, 2012). As explained

by Bovens, t'Hart, and Kuipers (2001), part of political legitimacy is "public satisfaction with policy" (p. 21). Beyond the important questions of who is included in the public, such as Aboriginal Peoples who may not identify as a citizen of Canada and rather as a citizen of their nation, and if public consensus is required, this raises the question: what is public policy legitimacy?

There are many competing ideas about what constitutes policy legitimacy in the literature. An early conceptualization suggests that there are two necessary elements: the normative element that "requires that the policy be consistent with, and express, [the country's] political values," and the cognitive element that requires the perception of feasibility of the policy objectives (Smoke, 1994, p. 99, c.f. George, 1980). Peters (1986) contends that policy "legitimacy is largely psychological. It depends on the majority's acceptance of the rightness of government" (p. 63). However, to those who adhere to Immanuel Kant's Metaphysics of Moral, deliberation (i.e. deliberative democracy) determines if policies are legitimate (Woolley, 2008). Issalys (2005) links the idea of legitimacy in public action, including policies, to be grounded in the idea of (good) governance rather than government. Following the work of Schön and Rein (1994), Lett, Hier, and Walby (2012) see policy legitimacy as "confidence among stakeholders and members of the public that policy options are justified, appropriate, and fair. Policy options need to be framed in a manner that appears to address putative problems by generating appropriate policy solutions" (p. 330). Hanberger (2003) similarly contends that public policy legitimacy is "the product of satisfying felt needs and solving perceived problems" (p. 258). Gains and Stoker (2009) suggest there is general agreement that it is necessary for

the public to support the decision makers and their decisions (i.e. policies) in order for both

to be legitimate (Gains and Stoker, 2009). Legitimacy then is based on subjective

assessments and will vary across and between stakeholders and the general public

(McConnell, 2010; Wallner, 2008). Legitimacy may be understood as a normative

evaluation that differs between individuals, but like mobilizing grievances, assessments of

legitimacy can be felt collectively. Legitimacy is assessed against the values and beliefs of

a collective identity (e.g. Canadian citizens, Aboriginal Peoples, environmentalists).

A nuanced idea of policy legitimacy comes from Beetham's (1991) classic, The

Legitimation of Power. In it he argues that a policy decision or instrument is legitimate if

it meets three requirements: (1) it conforms to established rules (or it is illegitimate); (2)

the exercise of power can be justified by reference to beliefs shared by both the dominant

and the subordinate (or it has a legitimacy deficit); and (3) there is evidence of consent by

the subordinate (or it is delegitimizing) (Jagers and Hammar, 2009; Montpetit, 2008).

Beetham (1991) disagrees with Peters (1986) and others by suggesting that public

perception does not determine legitimacy (Montpetit, 2008). Instead, critical public

perception creates a legitimacy deficit or is delegitimizing. As explained by Montpetit

(2008), there can be a 'deep legitimacy deficit' if a policy design is out of line with the

beliefs of actors, which can result in delegitimation through the wide mobilization of

outraged actors. This idea is supported by Issalys (2005) who suggests legitimacy is borne

from the acceptance of the public to be governed and in their acceptance of the

government's rules. Obedience is "the behavioural expression of legitimacy" meaning that

disobedience is the expression of illegitimacy which has "implications for the stability of a

political system" (Grimes, 2008, p. 525; c.f. Easton 1979). Thus, critical public opinion might not make the policy legally illegitimate, but may delegitimize it and the political actor behind it. Based on these conceptualizations, there are five key elements that should ensure policy legitimacy: the citizenry recognizes a problem, they are involved in (or at least approve of) the process to address it, they support the policy solution, the policy does not privilege one group of society, and the policy is *intra vires*.

The basic premise behind all these discussions of legitimacy is that ensuring the legitimacy of public policies, not just their efficiency or efficacy, should be a priority for democratic governments when designing and implementing policy (Hanberger, 2003; Smoke 1994; Wallner, 2008). While the efficiency, efficacy and legitimacy of policies are often contrasted during policy development, they must all be present in order for policies to be sustainable and to build public support (Jagers and Hammar, 2009; Montpetit, 2008).

Gross-Stein (2001) suggests that ensuring efficacy, unlike efficiency, is integral to ensuring the legitimacy of policies. The relationship between legitimacy and efficacy is the basis for Scharpf's (1997) input-oriented and output-oriented legitimacy. Input-oriented processes involve meaningful engagement of citizens during the development of policies, which stimulates legitimacy by giving the citizenry direct influence over policy efficacy (Montpetit, 2008; Scharpf, 1997). This idea of input legitimacy returns to the notion of deliberation (see Woolley, 2008; Parkinson, 2003). In contrast, "output-oriented legitimacy derives from the efficacy of a policy in improving a situation believed problematic for society" which requires engaging key experts in the policy design (Montpetit, 2008, p. 264; Parkinson, 2003). Legitimacy is stimulated by using their knowledge to make policies

successful, i.e. to achieve efficacy. Importantly, the public's perception of policy legitimacy is based on both input and output legitimacy (Bakvis and Skogstad, 2012, p. 17).

Montpetit (2008) further addresses input and output legitimacy in his writing on policy design. He asserts that,

> When legitimacy is the prime concern of policy designers, output-oriented processes should be short and involve a limited number of knowledgeable actors. Input-oriented processes should be long and involve a large number of citizens. (p. 27)

This gives the effect of public involvement and improves the likelihood that the public will approve the final policy decision. Parkinson (2003) further contends that "expert opinions have weight, but only in as much as they are offered in a process of public deliberation, and are found persuasive by those to whom they are offered" (p. 183). Montpetit goes further by arguing that "an input-oriented process, whose duration allows for both deliberation and inclusiveness carries a higher legitimacy potential than a process which is only deliberative or only inclusive" (Montpetit, 2008, p. 267). Consequentially, output models can produce legitimacy deficits (Montpetit, 2008, p. 265). Even if a policy on paper is legally 'legitimate' due to the use of experts, good governance[25] requires that it should be fully legitimate by using input from the citizenry (Issalys, 2005).

Continuing the relationship between efficacy and legitimacy, policy legitimacy is also implicated in the assessment of policy success (see Marsh and McConnell, 2010;

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[25] Good governance itself is a complex and highly theorized concept. Its exploration is beyond the purview of this thesis. For this study, good governance "promotes equity, participation, pluralism, transparency, accountability and the rule of law, in a manner that is effective, efficient and enduring" (United Nations, 2014, para. 2).

McConnell, 2010; Wallner, 2008). McConnell's (2010) conceptualization of policy success includes three elements: program success, political success, and process success. The latter directly considers the legitimacy of (unimplemented) public policies. McConnell (2010) defines process success, inter alia, as "the preservation of government's policy goals and instruments, having done so with constitutional/quasi-constitutional legitimacy" (p. 225). This returns to Beetham's (1991) notion that a policy is legitimate if it conforms to established rules. McConnell (2010) suggests "a policy that is produced through constitutional and quasi-constitutional procedures will confer a large degree of legitimacy on policy outcomes, even when those policies are contested" (p. 41). On the other hand, a policy put forward without constitutional and quasi-constitutional legitimacy will be met with legal challenges and criticism from stakeholders (Marsh and McConnell, 2010). Nevertheless, by following the legitimate constitutional process, a government can successfully put forth a policy—regardless of its content—without fearing that others will question its authority to do so (McConnell, 2010). One may disagree with the policy intent, but not typically with the government's right to pursue it.[26] That is, unless the government's jurisdiction and constitutional basis is contested. This is the case with some First Nations who challenge the authority and sovereignty of the Crown, often on the basis of their inherent right of self-government and even claims of self-determination (Papillon, 2008; 2012).

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[26] For example, the Haudenosaunee Confederacy and the Stl'atl'imx Nation have challenged the sovereignty of the Crown on their traditional territory (Asch, 2014). Both Hunter (2003) and Papillon (2012) suggest the history of Canadian federalism, including the exclusion of Aboriginal Peoples from its design, means that Aboriginal Peoples view federal institutions as illegitimate.

On the other hand, Wallner (2008) addresses policy failure. She argues that legitimacy—beyond effectiveness, efficiency, and performance—is crucial to study when understanding why policies are unsuccessful. "Failure in policy legitimacy," Wallner writes, "may subsequently compromise the long-term goals and interests of authoritative decision makers by eroding society's acceptance of their legitimate claims to govern" (p. 422). Wallner (2008) suggests that legitimacy is a normative concept rooted in the "subjective interpretation found in the beliefs and perceptions of individuals and groups toward the actions and behaviors of others" (p. 423).

Taking a broader approach than McConnell (2010), Wallner holds that policies are illegitimate if they are perceived as procedurally and substantively illegitimate (also see Lett et al., 2012; Montpetit, 2008; Bakvis and Skogstad, 2012). That is, policies are legitimate if their content aligns with public and stakeholder ideals, and if the decision makers follow the accepted processes and norms during the policy cycle. Wallner provides a framework for analyzing the legitimacy of policies based on procedural and substantive elements—not constitutional or legal reasons (see Table 4). These categories contain *most* of the definitional elements discussed earlier, for example problem identification. Each is explored in turn below.

Table 4. Core Elements of Legitimacy in Public Policy (Wallner, 2008)

Legitimacy Type	Core Elements		
Substantive	Policy content aligned with stakeholders and the public		
Procedural	Incubation period	Emotive appeals	Stakeholder engagement

Substantive legitimacy is widely accepted as necessary for policy legitimacy. For Wallner this means "policy content should align with the dominant attitudes of the affected stakeholders and, ideally, the broader public" (Wallner, 2008, p. 422). Lett et al. (2012) provide a similar definition for substantive legitimacy: "the ways in which the substantive content of a policy aligns with the dominant attitudes of stakeholders and members of the public (i.e., the constituents find policy options reasonable)" (p. 330). Essentially, a policy is substantively legitimate if its components (i.e. policy goals, instruments, and outcomes) are deemed to be reasonable, appropriate, in the public interest, and in line with the values of the impacted group and/or society at large (Wallner, 2008; Bakvis and Skogstad, 2002). Actors normally will not support something that runs counter to their substantive goals. For example, if the GoC introduced legislation to privatize healthcare, that would likely be perceived as substantively illegitimate based on Canadian beliefs and values. At the very least, the policy should be framed in such a way that suggests its substance reflects widely held or popular views (Schön and Rein, 1994). However, the public is not homogenous and policies impact different groups in different ways, therefore "it is necessary to consider the achievement [of] legitimacy among different groups and interests" (Wallner, 2008, p. 423).

Procedural legitimacy is rooted in process—or process success, to return to McConnell (2010). If the government follows and respects the accepted steps at every step of the policy cycle, it should be procedurally legitimate. Lett et al. (2012) define procedural legitimacy as "the ways in which policy advocates persuade stakeholders and members of local communities that formal standards of policymaking have been addressed" (p. 331). Moreover, policies may be evaluated against the measures of public deliberation

(consensus, reason, rationality in discussion, and equality) to determine their procedural legitimacy (Woolley, 2008; Haggerty, 2009; Lett et al., 2012). Providing concrete requirements, Wallner (2008) avers that three aspects determine the procedural legitimacy of public policies: incubation period, emotive appeals, and stakeholder engagement.

Incubation period simply refers to how much time the public has had to consider the problem that the policy addresses (c.f. Hanberger, 2003; Schön and Rein, 1994; Lett et al., 2012). Wallner adopts the term 'incubation' from Polsby (1984), who suggests that time is a necessary incubator for an idea to become an agenda item. Looking to the policy cycle, the whole incubation period could be determined by how long it takes for problem identification, agenda setting, and policy development. Wallner, in speaking to research by Hacker (1997), identifies two services provided by incubation period:

> First, incubation ensures that the ideas of reform are secure in the minds of public officials and policy professionals who are responsible for the agenda itself. Second, incubation allows the time to educate members of the policy community and the public of the value of the proposed strategies. (p. 425)

While recognizing that governments do not always have control over the timing of policies, if the government fails to provide an adequate incubation period, "they may be unable to garner support from the community to enable successful implementation or create a meaningful consensus to guarantee the sustainability of the initiatives" (Wallner, 2008, p. 425). However, as shown in Wallner (2008), the introduction of rapid reforms may not reduce legitimacy if the phases of problem identification, agenda setting, and policy development have been long underway.

The use of emotive appeals by the political actor is necessary to ensure stakeholders and the public view the policies favourably, thereby building broad-based support

(Baumgartner and Jones, 1993). Emotive appeals are constructed through discourse and framing processes, whereby claim-makers attempt to use language, symbols, and imagery to construct the narrative and the problem (Hannigan, 1995). Emotive appeals are how political actors try to persuade the public into supporting their agenda:

> Emotive appeals consist of evaluative elements including the symbols and discourse used to frame a policy problem and its solution, and scholars of public policy recognize that language plays an important symbolic role shaping the policy agenda… Political actors, therefore, try to manipulate symbols and craft the discourse to stimulate support for their policy agenda and strengthen its legitimacy in the eyes of stakeholders and the public. (Wallner, 2008, p. 425)

Hence, the choice and use of emotive appeals is critically important for policy legitimacy. If the public and stakeholders fail to find the appeals convincing, it may put the policy at risk (Wallner, 2008). Whether or not the government is effective in framing the policy is of central importance to achieving procedural legitimacy.

Finally, the legitimacy accrued by consulting the public and stakeholders in the policy process will come as no surprise to anyone who studies public policy, or has come across the idea of input legitimacy. Public participation (Lett et al., 2012, p. 331) or deliberation (Woolley, 2008) are essential in order for policies to be perceived as legitimate. This speaks to ideas of transparency, democracy, and accountable decision-making (Bakvis and Skogstad, 2012). If a government choses to forgo these processes for the sake of expediency, efficiency, or simplicity—or to preserve its agenda—it may face backlash upon introduction of the policy. The same principle holds true if consultations are not meaningful. The public and stakeholders will not feel a sense of policy ownership, nor will

they likely feel that the government practiced good governance. The outcome may also be perceived as illegitimate:

> One would expect ordinary citizens to support federal practices that yield effective policies by addressing problems in a timely and efficient manner. If the political culture places a high priority on democratic processes, however, policies arrived at through closed, non-transparent, and unaccountable processes may still be viewed as illegitimate, even if they are highly effective in delivering certain outcomes. (Bakvis and Skogstad, 2012, p. 17)

Moreover, if policies are in (perceived) conflict with the objectives of stakeholders and citizens, they "may protest against an initiative, arguing that it insufficiently responds to their goals and interests" (Wallner, 2008, p. 423; c.f. Carmine, Darnall, and Mil-Homens, 2003; King, Feltey, and O'Neill Susel, 1998). The opposite is also true: meaningful public and stakeholder consultation or engagement may increase the legitimacy of a policy (Wallner, 2008). However, it is insufficient for the government to just consult; "the subsequent policy prescriptions [should be]… reasonably congruent with popular attitudes" expressed through the consultation process (Wallner, 2008, p. 424). Therefore, involving stakeholders and the public, early and meaningfully, through engagement or consultation is an important determinant of procedural legitimacy. While doing so may reduce expediency, efficiency, and simplicity, and may steer the government away from its agenda, it is necessary to improve the likelihood the public and stakeholders support the policy decision.

In summary, the literature on public policy legitimacy suggests that a policy will likely be considered legitimate if its content aligns with the beliefs and values of the public and stakeholders, if they are engaged in the policy process, if the government uses

compelling discourse and framing, and if the policy and policy problem have sufficient time to incubate in the public's consciousness.

But why does policy legitimacy matter? If a policy proves to be illegitimate, society may lose "confidence in the fairness and suitability of their government… and damage the specific party in power" (Wallner, 2008, p. 423). For example, in Wallner's comparative case study, the Albertan government saw strong electoral victories and a larger education mandate following legitimate reforms to education, whereas the Government of Ontario's efforts lacked procedural legitimacy and resulted in the incumbent Minister of Education losing his seat and overall party defeat. Wallner measures the outcome of policy legitimacy with electoral outcomes, agenda implementation, public support, and stakeholder support. Public support could be measured by the extent to which the policies prompted rallies, strikes, protests, boycotts, marches, and social movement mobilization. In whatever way it manifests, the legitimacy or illegitimacy of policies has implications far beyond their specific target.

2.5   Linkages between the Literatures

While the literatures reviewed above come from different traditions and fields within the social sciences, they have common themes and concepts that are significant to this research. Throughout the literature, there are discourses of power, inequality, decision-making structures, and structural influences. A major theme within the reviewed literature is the societal and political importance of non-state actors, specifically Aboriginal Peoples

in Canada.[27] Social movement emergence literature regularly emphasizes non-actors, including their emotions, identities, and resources, as the central subject of analysis. The literature on INM and the broader literature on Aboriginal Peoples in Canada provides examples of grassroots and non-state Aboriginal actors responding to various opportunities, grievances, events, and so forth. Moreover, unlike many branches of public administration that emphasize the polity almost exclusively, the literature on policy legitimacy regularly recognizes the ability of non-state actors to accrue and affirm the legitimacy of a policy decision and the polity more generally. Through these literatures, it is clear that non-state actors, like INM, are valid foci of study.

Additionally, the reviewed bodies of literature indicate that policy decisions can be so aggravating that they produce protests and mass mobilization. The literature on INM highlights Bill C-45. The history of Aboriginal mobilization points to several policy decisions as critical events: the 1969 White Paper, the occupation and use of (unceded) traditional territory, and the reforms to the *Indian Act*. The GoC's policy positions on sovereignty, consultation and accommodation, and resource development are similarly identified as causing widespread discontentment from Aboriginal Peoples. Building from this finding, the literatures further suggest that there is a reciprocal relationship between public policy reform and social movement emergence. While Ozen and Ozen (2010) explicitly make this claim, the other bodies of literatures support it. The 1969 White Paper and First Nations' response, for example, demonstrates that social movements can be

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[27] Recognizing debate over issues of sovereignty and statehood, and the existence of many Aboriginal governments and governance bodies in Canada, the Aboriginal Peoples and their representation in social movements are identified as non-state actors since they are not Member States of the United Nations.

launched because of policy decisions and that social movements can result in policy changes. While often not at the forefront of study, the literature demonstrates that complex relationships exist between social movements and public policies.

These crosscutting themes, and the literature more broadly, support the research question and objectives of this thesis. In particular, the research question builds from the literature on INM by addressing an explanatory gap, the literature on Aboriginal mobilization in Canada by contributing a novel and national case study, the literature on social movement emergence theory by applying the idea of a mobilizing grievance, and the literature on public policy legitimacy by using it as an innovative framework to explain why a policy decision could result in mobilization. By doing so, this thesis builds on and strengthens these research areas. It contributes to each field independently while making explicit linkages. It provides not only an empirical case study, but it contributes to the theoretical basis by suggesting legitimacy is an appropriate indicator for assessing unimplemented policies as the critical event, or mobilizing grievance, necessary for the emergence of a social movement.

Chapter 3 – INM's Focus on Bill C-45

Initial observations and the existing literature strongly suggest INM emerged as a direct and deliberate response to Bill C-45—specifically to contest it from becoming law. The purpose of this chapter is to test these assertions. The causal relationship between Bill

C-45 and the emergence of INM is explored by conducting content analysis on four data sources:

1. the earliest available versions of the INM website;
2. media coverage of INM's emergence, including statements by members, supporters, founders and representatives of INM;
3. social media content, specifically Twitter and Facebook, from the start of INM; and
4. the content of protest signs at early INM protests and rallies.

These sources were initially coded using codes identified during the literature review process and then recoded as new codes emerged from the data. How often data is coded to both 'reason[s] for the emergence of INM' and 'Bill C-45', relative to all other codes, is used as the measure to determine if Bill C-45 was the mobilizing grievance. Each source is analyzed below.

3.1   INM Website

The official INM website provides the most authoritative insights into the movement. The extent to which it emphasizes or ignores Bill C-45 when speaking about why the movement formed provides a strong indicator as to its importance as the key causal variable. The December 16, 2012 version of the INM website, the earliest available using Internet archives, provides critical insights into the initial emotions, issues, and actions of INM as a collective entity. In particular, it supports the central relevance of Bill C-45 to the initial days of INM.

There are references to Bill C-45 throughout the various webpages of the INM website. The INM History webpage stated unequivocally that "The focus [of INM] is

on grassroots voices, treaty and sovereignty, it began in the early part of October when discussing Bill C 45" (Idle No More, 2012 December 13, para. 2). Raising awareness about Bill C-45 was the first activity undertaken in the name of INM (Idle No More, 2012 December 13). Even where Bill C-45 is not directly named, the description of the grievances behind INM point to Bill C-45. For example, the Manifesto contended that the GoC sought to pass laws changing the land ownership under the Indian Act, which would negatively impact the environment and Aboriginal and Treaty rights (Idle No More, 2012 December 11b).

Bill C-45 permeated the entire content of the website, through both explicit and implicit mentions. As shown in Table 5, Bill C-45 was the fourth highest code on the five available webpages.[28] While there were more codes overall, Bill C-45 was coded to every reference explaining the motivation for the movement. In fact, many of the other codes were also coded to Bill C-45. For instance, "This [Bill C-45] is an attempt to take away sovereignty and the inherent right to land and resources from First Nations peoples" (Idle No More, 2012 December 11b, para. 2).

Table 5. Top five codes on the five available webpages

Nodes	Number of coding references
Environment > Land	19
Aboriginal Issues	17
Environment > Water (e.g. Lakes and Rivers)	13
Bill C-45	11
General policy, laws, bills, legislation	9
Sovereignty	8

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[28] Importantly, the other references were often also coded to Bill C-45. Nine of the seventeen references coded to Aboriginal Issues were also coded to Bill C-45.

Overall, the early versions of the INM website confirm that Bill C-45 was incredibly important to the formation of INM because the bill was deemed a legislative attack on Aboriginal and Treaty rights, sovereignty, First Nations, the land, and the water. While not exclusively dependent on Bill C-45, all of the environmental and Aboriginal issues raised stemmed from the bill. Had Bill C-45 not been introduced, it is unlikely that these concerns would have been raised at this time in the same way. As explained in the History of INM webpage, with "the passage of Bill C45, Idle No More has come to symbolize and be the platform to voice the refusal of First Nations people to be ignored any further by any other Canadian government" (Idle No More, 2012 December 13, para. 8).

Beyond theses general linkages, one of the most significant pieces of information is a standard letter for MPs that Jessica Gordon posted to the INM website:

RE: Bill C-45

This message is to strongly express that I do not support Bill C-45.

This Conservative government is blatantly violating the rights of all Canadians and its Indigenous people to transparency on critical issues facing all people. Currently, there are numerous MP's being investigated for the undemocratic and criminal practice of using robocalls to redirect voters, which calls into question the legitimacy of this government. I contend that these MP's do not legally or constitutionally represent their constituents, and demand that the government cease passing any forms of legislation until the outcome of these investigations are determined.

Furthermore, Bill C-45 specifically affects Indigenous sovereignty and inherent rights to the land, and therefore must receive due consideration, consultation and consent from the First Nations leaders and communities in which it directly impacts. The Treaties that were signed between the Crown and Indigenous peoples are nation to nation covenants that cannot be arbitrarily changed through unilateral legislation. Bill C-45 alters sections of the Indian Act and disregards the Treaties without consultation and consent.

Upon review of Bill C-45, it is clear that this legislation benefits corporations involved in oil pipelines and nuclear energy, without due attention and consideration given to the

impact that it will have on the land and environment. This government has proposed reconciliation with First Nations peoples, yet continues to enforce numerous policies such as Bill C-45 using paternalistic and neocolonial processes.

I demand that Bill C-45 be stopped until a democratic process of consultation and consent is duly followed by the various groups that it does impact.

Sincerely,

_____

(Idle No More, 2012 December 5a)

This letter indicates one of the primary objectives of INM – stopping Bill C-45. While it does not explicitly say that INM emerged to collectively contest the Bill, the letter was posted on the INM website by a founder, and provides a concise list of the collective grievances that members of INM experienced. All of this strongly supports the idea that Bill C-45 was the central concern of INM in early December 2012.

This focus on Bill C-45 and its implications are reiterated in the current version[29] of the Vision of INM. It makes the broad call for "all people to join in a peaceful revolution to honour Indigenous sovereignty and to protect the land & water" (Idle No More, 2014 May 19c). Its current manifesto speaks to a history of colonization, social inequity, resource exploitation, profiteering, and the need to become sustainable (Idle No More, 2014 May 19b). The methods to achieve these grand ideas are explained in its six-prong[30] "call to change," including:

1. Repeal provisions of Bill C-45 (including changes to the *Indian Act* and *Navigable Waters Act*, which infringe on environmental protections, Aboriginal and Treaty rights) and abandon all pending legislation which does the same.

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[29] May 2014 version of the INM Vision webpage.
[30] The four other calls relate to retaining free, prior and informed consent, respecting Aboriginal Title and Rights, to honouring historic treaties, and to protecting (Aboriginal) women from violence. It is evident based on this call to change that INM takes aim at governance in Canada.

2. Deepen democracy in Canada through practices such as proportional representation and consultation on all legislation concerning collective rights and environmental protections, and include legislation which restricts corporate interests. (Idle No More, 2014 May 19a)

Bill C-45 is the first and foremost grievance indicated. It is also significant that the first call to change is explicitly to repeal *portions* of Bill C-45, the specific sections deemed as infringing on environmental protections and Aboriginal and Treaty rights. There is not a challenge to Bill C-45 en masse, but certain elements.

In summary, the evidence from the early versions of the INM website affirms the observation that Bill C-45 was the initial mobilizing grievance that drove people to form and join INM. The various other collective grievances, e.g. violations of Aboriginal or Treaty rights and diminished environmental protection, stem from Bill C-45.

3.2 Media Coverage

Bill C-45 is referenced in ninety-eight percent (98%; 84/85) of analyzed news articles on the initial days of INM. While some articles acknowledge long-term grievances, Bill C-45 is identified as the primary grievance in every article that discusses the inception of INM (see Bernd, 2012 January 29; Bradshaw and McCarthy, 2013 January 1; Caven, 2013; Palmater, 2012 December 28; Seraphim, 2012 December 25). Hopper's (2012 December 26) article states INM was "conceived in November by four Saskatchewan women frustrated with the Tories' latest omnibus budget bill" (para. 1). Palmater, who is a spokesperson for INM, stated that INM "originally started as a way to oppose Bill C45, the omnibus legislation impacting water rights and land rights under the Indian Act" (2012

December 28, para. 6). Bill C-45 was, without exception, identified as the immediate grievance that compelled collective, corrective action.

The founders and representatives of INM provided quotations to journalists on the movement's origins and on their motivation to start and spread INM. Some of these statements are provided in Table 6 and confirm the causal relationship between Bill C-45 and INM.

Table 6. Exemplary Statements in the Media about why INM initially emerged

Speaker	Quotation	Source
McAdam	When I read Bill C-45, I was horrified. I got into a chat on Facebook with Jessica and Nina, and I started explaining to them the implications of C-45 for the environment, for the waters. I told them there's something in law called acquiescence. That means that if you're silent, then your silence is taken as consent. All of us agreed that we couldn't be silent, that grassroots people have a right to know.	Van Gelder, 2013
Palmater	We are standing up not only to protect our lands and waters… but also to restore justice for First Nations and democracy for Canadians.	Hasselriis (n.d)
McAdam	Bill C-45 is not just about a budget…it is an attack on First Nations Lands and on the bodies of water we all share from across the country.	Seraphim, 2012 December 25
Cuthand	Idle No More is a reaction to years of setback, inaction and one-sided legislative change by the Harper government.	Cuthand, 2012 December 28
Chief Allan Adam of the Athabasca Chipewyan First Nation	This anger has actually been building up for years…It's taken on a bigger meaning since Prime Minister Stephen Harper passed bills that threaten traditional ways of life, passing them without our consultation.	McDermott 2012 December 19
Melina Laboucan-Massimo of the Lubicon Cree First Nation and a protest organizers	Idle No More exists because we can no longer believe that the government respects us," she said. "If they listened or understood us, they would realize these new laws will essentially bring havoc to our communities.	McDermott 2012 December 20

Palmater	The GoC's "aggressive legislative agenda…is the spark that ignited the Idle No More movement into action…. We always knew action would be required at some point, but the legislation posed an imminent threat and required immediate mobilization. That is how a movement was born. In the early days, some were calling [it] the Idle No More movement, some calling it an Indigenous rights movements, but we all agreed that we needed to immediately oppose Harper's assimilatory legislative agenda. So many of the early activities included teach-ins which helped explain the legislation's potential impacts on First Nations and more importantly, what we could do to oppose it."	Palmater, 2013 January 4

Bill C-45 is again identified as the immediate and primary catalyst. While there are many compounding historical and contemporary collective grievances, the budget bill was the one that promoted mass, national mobilization by Aboriginal and non-Aboriginal Peoples alike (Kirkup, 2012 December 22). Importantly, Bill C-45 was framed as part of a larger legislative agenda – one that Bill C-45 seemingly embodied.

3.3   Social Media

The use of social media, specifically Twitter, as a resource for mobilization, was incredibly important to the emergence and growth of INM (Hudson, 2014). The content of the first tweets using #IdleNoMore (i.e. the Idle No More hashtag) provides unfiltered access to the primary issues and opinions at the time INM emerged.

A full content analysis of the first months of #IdleNoMore could not be completed because Twitter does not provide such analytics and NCapture for NVivo only captures the last seven days of tweets; it does not capture historical tweets. Only the initial tweets using

#IdleNoMore are analyzed, in part due to the sheer number of later tweets.[31] However,

since the focus of this research is emergence, not coalescence and growth, these first few tweets are the most critical and provide sufficient evidence about the importance of Bill C-45 to INM.

As explained in Full Duplex's (2013) analysis of the first six months of INM on Twitter and reproduced in Figure 3, unlike some reports in the media, the first tweets using #IdleNoMore were made by Jessica Gordon, not Tanya Kappo, at the end of October and early November 2012. The next earliest available tweet is an exchange between Gordon and Palmater on November 19, 2012 and Kappo's often credited tweet on

October 30, 2012

November 4, 2012

November 22, 2012

Figure 3. First #INM Tweets (Full Duplex, 2013)

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[31] A study on INM and Twitter identified 113,40[...] November 25, 2012 and January 19, 2013 (Belvi[...]

November 30, 2012. The common threads linking these tweets were #billc45 and #IdleNoMore.

While the focus of social media analysis is on Twitter, INM also uses Facebook as a platform for organization and dissemination. On November 22, 2012, the founders of INM created the "Idle No More" Facebook page and created an event for November 10, 2012 to protest Bill C-45 (Full Duplex, 2013). This is the event Gordon links to on her November 22, 2012 tweet and the link provided by Kappo.

In sum, Bill C-45 was the sole issue in the first tweets about INM and is the reason for the INM Facebook page. The social media data further supports the assertion that Bill C-45 was the primary driver behind INM's emergence in October 2012.

3.4   Protest Signs

This focus on Bill C-45 was mirrored in the words of those on the streets. The events that Gordon and Kappo linked to, and dozens of other INM protests across Canada, produced a wealth of data, in particular due to the sharing of pictures of protest signs on the Internet (see Figure 4). Beyond advertising nearly all of the INM protests as protests against Bill C-45, many early protest signs convey a clear anti-Bill C-45 message.

In fact, twenty five percent (25%) of all the protest signs analyzed directly referenced Bill C-45. This is a substantial number given the critiques that INM is unfocused and without a clear message (Ladner, 2014). After water and Aboriginal issues, Bill C-45 was the third most frequent concept coded in the protest signs. Many more signs allude to policy changes. Importantly, as was the case with the website's content, the references to water, land, sovereignty, and Aboriginal and Treaty rights all stem from Bill C-45. Bill C-45, and trying to stop it, was clearly the motivating factor that drew participants to the early INM protests.

Burns Lake   Calgary   Cornwall

| Penticton | Salish | Saskatoon |
| Whistler | Whistler | Toronto |
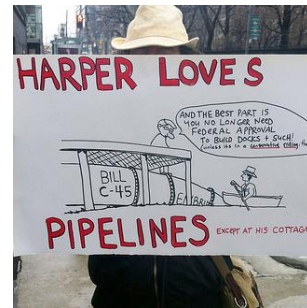
Figure 4. Protest Signs Coded to Bill C-45 at Protetsts across Canada in December 2012

3.5 Bill C-45 is the Mobilizing Grievance

Analysis from various protest signs, social media, media articles, and INM's official website indicates that opposing Bill C-45 was the major driving force of the early protests. In fact, all of the evidence points to Bill C-45 as the primary catalyst for INM. For instance, the INM website specified that INM "began in the early part of October when discussing Bill C 45" (Idle No More, 2012 December 13). By triangulating the data through these various sources, the reliability and validity of the common assumption of INM's roots is confirmed. While there are centuries worth of grievances building towards a national

Aboriginal-orientated social movement in Canada, Bill C-45 was the spark (Cuthand, 2012 December 21; Kirkup, 2012 December 22).
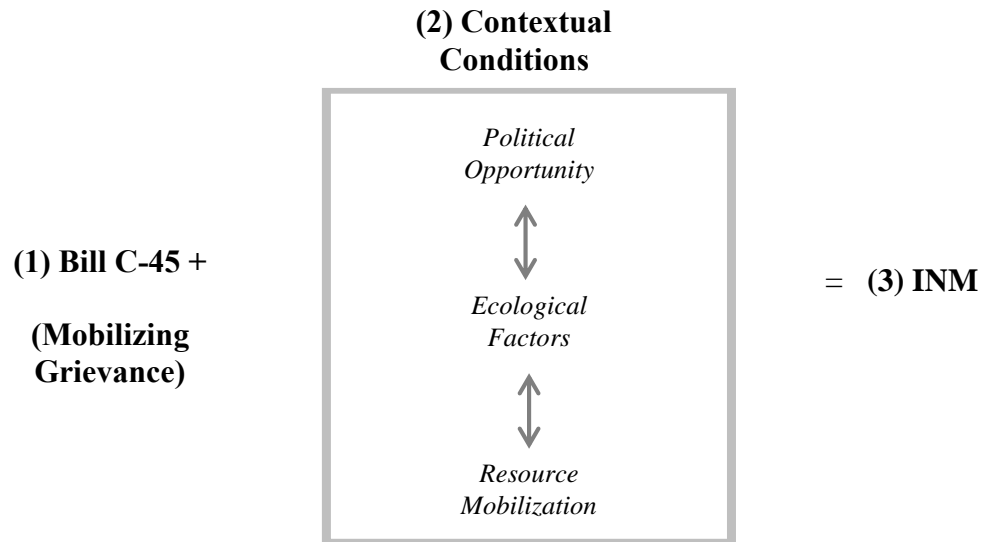
(2) Contextual Conditions

(1) Bill C-45 +

(Mobilizing Grievance)

Political Opportunity

↕

Ecological Factors

↕

Resource Mobilization

= **(3) INM**

Figure 5. Snow and Soule's (2010) General Model of Social Movement Emergence, with Bill C-45 and INM

Based on the timing, the discourse from INM leaders and followers, and the actions of the movement, the emergence of INM is very clearly linked to Bill C-45. The empirical evidence confirms initial observations: Bill C-45 was the mobilizing grievance.

Chapter 4 – The Legitimacy of Bill C-45

Following Snow and Soule's conceptualization of a mobilizing grievance, it is necessary to determine what about Bill C-45 made it serious enough to warrant collective complaint and corrective action. However, Snow and Soule are silent on how to make such

an assessment. Therefore, a supplemental framework is necessary. Since INM emerged before Bill C-45 was implemented, it is impossible that the effectiveness, efficiency, and performance of its reforms were assessed by INM and deemed sufficiently serious to warrant mass mobilization. In this context, assessments of legitimacy are more suitable (Wallner, 2008). As supported in the literature on social movement emergence and policy legitimacy, social mobilization can be both an indicator and an outcome of policy decisions or instruments with questionable legitimacy (see Section 2.3), making it an appropriate framework to assess Bill C-45 against.

Following Wallner's (2008) framework in Table 7, if the findings of this research suggest that Bill C-45 lacked procedural and substantive legitimacy, it will provide a compelling explanation as to why Bill C-45 was a mobilizing grievance. Alternatively, if Bill C-45 is shown to be legitimate, this will temper the importance of legitimacy and will suggest that additional elements of unimplemented policies should be studied further.

Table 7. Core Elements of Legitimacy in Public Policy to Assess Bill C-45

Legitimacy Type	Core Elements		
Substantive	Policy content aligned with stakeholders and the public		
Procedural	Incubation period	Emotive appeals	Stakeholder engagement (Aboriginal Consultation)

This chapter therefore analyzes the available data on Bill C-45 and INM to determine if Bill C-45 meets the substantive and procedural requirements of legitimate public policy, and if INM contested the substantive and procedural aspects of Bill C-45.

4.1   Substantive Legitimacy

Bill C-45 can be called substantively legitimate if its content is shown to align with the beliefs and values of the members of the public. If it does not, it is likely substantively illegitimate (Wallner, 2008) and has a legitimacy deficit (Beetham, 1991). In this case, I am primarily concerned with its alignment with the values and beliefs of the members and supporters of INM. In other words, did they take issue with the actual content of the reforms and/or the overall policy direction? As demonstrated in Chapter 3, they did protest the Bill, but it is necessary to ascertain if and to what extent their outrage was directed at the actual substance of the amendments, which is used as a proxy for determining their opinions.

To determine whether or not INM members and supporters found Bill C-45 substantively legitimate, multiple sources of evidence (e.g. protest signs; INM's website; quotes from INM leaders, spokespersons, and organizers; and media coverage) are used to identify what elements of Bill C-45 members and supporters of INM emphasized and how they may conflict with their demonstrated values and beliefs, including respect for Aboriginal and Treaty rights, environmental protection and stewardship, and empowered and self-reliant Aboriginal communities and peoples. Importantly, this research does not generalize, conflate or romanticize the interests, values, and beliefs of Aboriginal Peoples as being inherently environmentalist (see Braun, 2002; McGregor, 2009). As explained by Haluza-Delay, O'Riley, Cole, and Agyeman (2009),

> …there is, and has long been, an ambiguous relationship between environmentalists and Aboriginal peoples. While environmentalists often appropriate Aboriginality as an exemplar of environmental praxis, this stereotypes Aboriginal peoples as well as essentializes them. (p. 16)

Acknowledging this tendency and that personal interpretation to some degree is unavoidable, this research seeks to rely on the data, words, and issues raised by members of INM—Aboriginal and non-Aboriginal—to explore the movement's substantive concerns during its emergence.

4.1.1 INM's Substantive Assessment of Bill C-45

The content of the early versions of the INM website emphasizes how significant the content of Bill C-45 was to the emergence of INM. The December 2012 version of the INM's website stated:

> Idle No More began with 4 ladies; Nina Wilson, Sylvia McAdam, Jessica Gordon & Sheelah McLean who felt it was urgent to act on current and upcoming legislation that not only affects our First Nations people but the rest of Canada's citizens, lands and waters. (Idle No More, 2012 December 13, para. 1)

This type of causal sentiment is repeated throughout its website. "Bill C 45 is not just about a budget," it said, "it is a direct attack on First Nations lands and on the bodies of water we all share from across this country" (Idle No More, 2012 December 13, para. 5). The earliest available INM Manifesto further states that Bill C-45 will leave "nothing but poisoned water, land and air. This is an attempt to take away sovereignty and the inherent right to land and resources from First Nations peoples" (Idle No More, 2012 December 11b, para. 3). These are clear criticisms of the perceived outcomes of the implementation of Bill C-45. These are concerns about substance. Within these critiques, there are two[32] major

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[32] The amendments to *the Fisheries Act* and CEAA 2012 are referenced but less frequently.

substantive policy reforms contained in the hundreds of pages of Bill C-45 that are repeatedly discussed in the data on the emergence of INM: the protection for waterways under the NWPA regulatory regime, and the designation (voting) process for reserve land under the *Indian Act* (Idle No More, 2014 May 19a; Thompson, 2012 December 19). Each is explored below. First, the substantive policy changes are explored and then INM's reaction to them is analyzed.

4.1.2 NWPA

Bill C-45 significantly overhauled the NWPA. Through section 316 of Bill C-45, the short title of the act was officially renamed the '*Navigation Protection Act*', rather than the '*Navigable Waters Protection Act.*' This change directly and unmistakably demonstrates the GoC's effort to separate the protection of navigation from the protection of navigable water (Ecojustice, 2012). This change of direction is accomplished through the subsequent amendments.

Sections 3 to 18 of the NWPA were repealed and replaced. It is through these massive changes that the GoC limited the application of the act to "works in certain navigable waters that are set out in its schedule" while maintaining the designation scheme for works. As explained by Ecojustice (2012),

> The NPA will only protect navigation on waters listed in a schedule to the Act. The proposed schedule includes 3 oceans, 97 lakes, and portions of 62 rivers. By comparison, Canada is estimated to contain nearly 32,000 major lakes and more than 2.25 million rivers: The NPA would exclude 99.7 per cent of Canada's lakes and more than 99.9 per cent of Canada's rivers from federal oversight. Notably absent from the proposed schedule are

significant rivers in British Columbia, such as the Kitimat and Upper Fraser Rivers, which lie along the path of the proposed Northern Gateway pipeline. Notably included are popular cottage-country lakes such as those in Muskoka, where wealthy powerboat owners will continue to enjoy unfettered navigation protections.

Practically speaking, this means that the vast majority of non-listed Canadian navigable waters will be left unprotected in the following ways:

> Proponents will not have to notify the government that they are building a work that interferes with navigation;

> Proponents will not need the Minister of Transport's approval before building a work that interferes with navigation; and

> The Minister of Transport will have no legislative authority under the NPA to remove obstructions or require that owners of such obstructions do so themselves, with one exception. Beyond infringing the right of navigation, this may have significant environmental consequences, as sunken vessels and other obstructions may indefinitely release harmful substances into waterways without a removal requirement. (p. 7-8)

These changes and the enabling authorities for the Minister of Transport to make orders[33] resulted in a more permissive and narrower regulatory regime, specifically regarding types of works and quantity of waterways.

Moreover, in order to reflect the use of the schedule, the existing subsection 5(1) prohibition ("No work shall be built or placed in, on, over, under, through or across any navigable water without the Minister's prior approval of the work, its site and the plans for it") is replaced by:

> *New section 3* - It is prohibited to construct, place, alter, repair, rebuild, remove or decommission a work in, on, over, under, through or across any navigable water that is listed in the schedule except in accordance with this Act or any other federal Act.

> *New subsection 5(1)* - An owner who proposes to construct, place, alter, repair, rebuild, remove or decommission a work — other than a designated work — in, on, over, under,

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[33] See new section 22(2)

through or across any navigable water that is listed in the schedule shall give notice of the proposal to the Minister.

New subsection 10(1) - An owner may construct, place, alter, repair, rebuild, remove or decommission a designated work in, on, over, under, through or across any navigable water that is listed in the schedule only if the construction, placement, alteration, repair, rebuilding, removal or decommissioning is in accordance with the requirements under this Act.

In addition, Bill C-45's coordinating amendments to the *National Energy Board Act* and the *Canada Oil and Gas Operations Act* state that power lines[34] and pipelines[35] are not works under the NPA. These amendments demonstrate the extent to which specific works are or may be exempted.

Beyond these reforms, there are numerous additional amendments to the NWPA, including enforcement measures (e.g. administrative monetary penalties), violations, and offences. Changes also include prohibitions against throwing or depositing various materials (new section 22) and against dewatering any navigable water (new section 23). Overall, Bill C-45 brought forward major substantive reforms to the NWPA that limited its application across Canada, both in terms of works and bodies of water.

INM's Reaction to the Substantive Reforms to the NWPA

The reforms to the NWPA are highly emphasized in the data on INM's emergence. The media coverage of INM consistently cites the NWPA as one of the few acts whose amendments galvanized the movement. One hundred percent (100%) of the coded

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[34] Section 349(a)
[35] Sections 249(5) and 249(9)(a)

newspaper articles that discuss the emergence INM identify the important role the substantive changes to the NWPA played in the generation of collective outrage.

This finding is further justified by the extent the discussion and messaging at INM protests emphasized the changes to scope of the NWPA. Twenty-three percent (23%) of all the protest signs coded included content on water. The explicit and latent content of the following signs elucidates the importance placed on the new policy position:

> Protected: 97 lakes, 62 rivers. Unprotected: Our future (Corner Brook, 2013 January 27)
> Bill C-45 will destroy Canada's water - 1% protected (Calgary, 2012 December)

Moreover, an INM organizer in Niagara, Ontario summarized her concern as, "Ninety percent of our water is unprotected. Pipelines could be laid anywhere... That should be everyone's concern" (Day, 2012 December 31, para. 11). She and many others are primarily concerned about two things. First, there is an exhaustive list of waterways that are regulated under the NPA. Second, the list is relatively short. These are issues about the contents of the amendments.

While Bill C-45 made numerous amendments to the NWPA, there is one consistent complaint: it will decrease the number of rivers and lakes that are regulated under the newly-named NPA. The findings suggests that in its formative days, INM members regularly stressed above all else that they are outraged because ninety-nine percent of Canada's lakes and rivers are outside of the scope of the NPA's regulatory regime. Specifically, they are outraged that this substantive amendment will leave thousands of bodies of water unregulated and will allow for development (e.g. pipelines) that may block navigation, thereby indirectly lowering environmental protection (see CBC, 2013 January

5; Day, 2012 December 31; Hager, 2012 December 23; McKibben, 2013 January 10). INM co-founder Sheelah McLean has repeatedly stated that "(the) bill is about everyone... The changes they are making to the environmental legislation (are) stunning in terms of the protections it will take away from the bodies of water" (Seraphim, 2012 December 25, para. 4; Idle No More, 2012 December 13, para. 6). She is again concerned by the substantive changes brought by introducing an exhaustive schedule under the NWA and changing the prohibitions.

In order to understand why this substantive change would cause such concern, it is necessary to determine if it aligns with or contradicts the values and beliefs of those protesting. Like many supporters of INM, Chief Isadore Day, the Chief of the Serpent River First Nation, emphasizes that the decreased protection of water as his primary concern with Bill C-45. His concern stems from the fact that water is invaluable to the Serpent River First Nation:

> The protection of water is a sacred obligation to Indigenous people. Without clean water, life will cease to exist. Our obligation to protect water is an overall respect for life itself… This [the reforms to the NWPA] is why our people are opposed to the omnibus bill; it blatantly disregards water. (Scoffield, December 27, 2012, para. 12)

This substantive reform carries weight for members and supporters of INM because the protection of water affects all Canadians—be it for drinking, for navigation, or for spiritual purposes (see Spray, December 11, 2012; Thompson, December 20, 2012).

Donald (2013) suggests it was the substantive environmental changes in Bill C-45 that prompted non-Aboriginal Peoples to join INM. Unlike Treaty or Aboriginal rights, the value placed on clean water is ubiquitous. This finding is consistent across the coverage of INM. It was the common belief in the need to protect water (be it for future generations, as

a spiritual duty, or due to environmental ethic) that brought together the grassroots, the Chiefs, university students, and educators to oppose the substance of Bill C-45.

The importance of these reforms is best encapsulated by repeating a quote above from Wotherspoon and Hansen (2013) when they say that INM,

> …is rooted in old Indigenous laws that speak of our duty to protect the water and land for the future generations. It marks the re-awakening of an Indigenous tradition and culture grounded in respect for the environment, fostering resistance to the kinds of exploitation of land and water conveyed through many of the terms of Bill C-45. (p. 23)

INM and its members and supporters do not agree with the developmental (i.e. "responsible resource") agenda behind the reforms (Scott, 2013). Their beliefs and values about the utilization of the environment and reserve land are fundamentally different to the business-friendly policy agenda of the reforms.

In sum, Bill C-45's changes to the regulatory regime governing lakes and rivers under the NWPA were central to the concerns of INM in its early days. The rationale behind the reforms to the NWPA, specifically developing a list of bodies of water that would be regulated under the NWPA, did not align with the views and values of the public that joined forces under INM. Supporters of INM believe that all waterways deserve protection—not just those on a list.

4.1.3 Indian Act

As explained in the introduction to Bill C-45, the budget bill amended the *Indian Act* by changing "the voting and approval procedures in relation to proposed land designations." The substantive amendments were narrowly targeted to a few specific

individual sections. Unlike the broad and massive change to the NWPA, the targeted

amendments to the *Indian Act* allow for a direct comparison of the *Indian Act*, pre and post

Bill C-45—see Appendix B.

Importantly, the reforms were exclusively used to create a new process for land

designation (i.e. leasing)[36]. This required two steps. First, four of the nine amendments were

used to create a new process for the designation of land, new subsections 37(2), 39.1, and

40.1(1) and (2). Second, subsection 37(2) allowed for lands that are designated to be leased

and have an interest in them granted. Sections 39.1 and 40.1 set out the conditions and

process for designation:

1. A referendum is held in accordance with the regulations;
2. The majority of the voters in attendance at the referendum support designation (simple majority);
3. The proposed designation is certified on oath by an officer of AANDC and by the chief or a member of the council of the band;
4. The council of the band recommends designation to the Minister of AANDC;
5. The Minister accepts or rejects the proposed designation.

These were the main changes to the *Indian Act* brought forward in Bill C-45. By doing so,

the process to designate land was separated from the process to surrender land. The process

for designation is easier and has its own provisions in the *Indian Act.*

The other five amendments to subsections 39(1), (2), and (3), and section 40 only

removed references to designation and contained miscellaneous drafting convention

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[36] Section 2 of the *Indian Act* defines "designated lands" as a tract of land or any interest therein the legal title to which remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests, whether before or after the coming into force of this definition.

updates. There was no change to the process to surrender land[37]; however, a reader may reasonably, but still incorrectly, assume that changes were made to process to surrender land if one only reviews Bill C-45 because the bill strikes out references to land surrender, in line with legislative drafting conventions.

INM's Reaction to the Substantive Reforms to the Indian Act

The substantive reforms impacting the land designation process under the *Indian Act* are also critically important to the emergence of INM. Indeed, much of the data speaks to concerns about land. Fifteen percent (15%) of all of the protest images were coded to either land (protection) or land (management). Signs like "Time to Stop Harper's land grab" (Edmonton, 2012 December 21) and, "I did not give anyone the right to sell our land!" (Prince Albert, 2012 December 30), are clearly implicitly targeting the content of the reforms to the *Indian Act*. Additionally, the INM website's description of Bill C-45 focuses exclusively on the land designation voting process reform under the *Indian Act* (Idle No More, 2012 December 11a). The decision to lower the voting threshold to a simple majority in order to designate reserve lands is a demonstrated substantive concern of INM members in its early days. However, the substance of the reforms is often misunderstood and mischaracterized as changing the process for land surrender, as exemplified in the protest signs. Surrender rather than designation would be a much more contentious substantive reform.

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[37] Section 2 of the *Indian Act* defines "surrendered lands" as a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart;

However, despite these concerns, the content of these changes is more in line with First Nations leadership than one might suspect. The Assembly of First Nations (AFN) supported the substance of the reforms to the *Indian Act* at the Standing Senate Committee on Aboriginal Peoples (Standing Senate Committee on Aboriginal Peoples, 2012 November 20; Flanagan, 2012 December 29). While the AFN does not represent INM, or vice versa, their position demonstrates that the substantive elements of the *Indian Act* reforms did align with the representative voice of many First Nations peoples in Canada. However, Daniel Salée, a professor at Concordia University, told the media,

> There are important differences between elected chiefs, the AFN, and INM… (Idle no More) seems to be a rejection of aboriginal leadership, a rejection of local chiefs and chiefs on the national stage… People seem to feel as though their leaders aren't working in their best interest or that they simply aren't getting the job done. (Curtis, 2012 December 31, para. 14)

It is less clear if the content of the actual, rather than the perceived, reforms to the *Indian Act* triggered collective outrage. This issue is explored further in Chapter 5. The findings do suggest, unsurprisingly, that substantive policy reforms that make it easier for First Nations to lose their land base would result in immense resistance. However, all of the specific instances of concern over the content of the reforms were directed at selling or surrendering land, rather than the actual substantive policy change to make designation (i.e. leasing) more efficient. Despite misunderstandings of *surrender* versus *designate*, members of INM rallied against the idea making it easier for land to leave the control of the First Nation. This reflects their belief in the value of community consent and continuous land-base.

4.2   Procedural Legitimacy

In order for Bill C-45 to be procedurally legitimate, it must have had sufficient time for policy problemization and acceptance, successful discourse and framing by the proponents, and public engagement and consultation. Ensuring that all three requirements are met will afford Bill C-45 a higher degree of legitimacy. Missing just one element can undermine overall legitimacy. The sections below explore if Bill C-45 and the substantive amendments noted in Section 4.1 are procedurally legitimate. Based on a slightly modified version Wallner's framework, incubation period is considered first, emotive appeals by the GoC second, and Aboriginal consultation third.

4.2.1   Incubation Period

In order for an idea to become an 'agenda item' that a political actor must address, the public must have adequate time to recognize a problem, accept it, and consider options to address it (Polsby, 1984; Wallner, 2008). This is the basic premise of an incubation period and is integral to the first stage of the policy cycle: agenda setting. In order for the public to accept the need for and value of government intervention (or further change in something the government is already intervening in), it must first recognize the issue and accept (or demand) that the government take action.

Incubation periods are critically important because without sufficient time dedicated to building understanding, the policy decision may fail to resonate and capture support, and can ultimately fail. Simply put, policy decisions lack an incubation period if they appear to come out of the blue. A successful incubation period is thus determined by

the adequacy of the time given for agenda setting at a minimum, and also by the time given to policy formulation and decision-making. The durations may vary. For example, it may take only days for an issue to emerge, be noticed, and become a policy problem, while other issues can take months or years to take hold in the public consciousness.

To understand the incubation periods of Bill C-45 and the specific reforms that INM contested, I consider the degree to which the policy problems were part of the public agenda by exploring:

a. The efforts by political actors to put the reforms on the public agenda;
b. The relationship between the contents of Budget 2012 and Bill C-45;
c. The time span between the introduction of Bill C-45 and its passing; and
d. The emphasis INM placed on policy incubation.

The reforms to the NWPA and the *Indian Act* are explored in turn.

a. Efforts by Political Actors to Put the Reforms on the Public Agenda (Long-term)

In order to understand the complete time span of policy incubation it is necessary to explore when the reforms are first publicly raised, and then the degree to which the political actors problematized them. The earlier and the greater the efforts by political actors to get policy problems on the public agenda, the more time citizens have to digest the issues, the policy options, and the need to intervene. If the incubation period is adequate, the action taken by the government will be anticipated, or at least unsurprising.

NWPA

After remaining essentially unaltered for 126 years, the GoC publically proposed substantial reforms to the NWPA on February 12, 2008. The reforms were raised at the House of Commons Standing Committee on Transport, Infrastructure and Communities (TRAN), which met at the request of the Minister of Transport, Infrastructure and Communities (Minister of Transport) to study "the current status of navigation protection of the Canadian waterways, including their governance and use and the operation of the current *Navigable Waters Protection Act*." This TRAN meeting set the stage for the reforms that the GoC would pursue for the next four years.

At this meeting, an Assistant Deputy Minister (ADM) of Transport Canada said that they were "here to discuss the modernization of the Navigable Waters Protection Act... to solicit your views and hopefully your assistance in undertaking public consultation on a proposed framework for new navigation protection legislation" (Standing Committee on Transport, Infrastructure and Communities, 2008 February 12)[38]. The ADM stressed throughout his remarks that for years Canadians, industries, and other levels of government expressed concerns about the NWPA's outdated regulatory regime. In particular he suggested that the Act, as then interpreted and applied, no long met navigational needs, was burdensome on project proponents, and regulated waterways that are not used for navigation but met the definition of 'navigable water.' He called for the "development of new navigation protection legislation" and recommended that the NWPA be renamed the NPA to fix what is deemed an imbalance between protecting the public right of navigation and ensuring timely and predictable review of projects. It is at this TRAN meeting that the

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[38] See Section 4.2.3 for more information on the resulting consultation process.

idea of rescoping the NWPA was brought to the public, and this marks the start of the incubation period.

In 2009, following some of the recommendations of TRAN's public consultation and study, select aspects of the NWPA were amended by the 2009 Budget Implementation Bill (Bill C-10). These reforms included creating a five year review of the Act, reducing the requirements for public notification and consultation, creating classes of works and waterways, removing the approval process for "named works," and exempting certain types of works and waterways from the NWPA—meaning they would no longer trigger an environmental assessment under CEAA (Ecojustice, 2012; Standing Senate Committee on Energy, the Environment and Natural Resources [SSCEENR], 2009 June).

These reforms were met with apprehension and opposition from Aboriginal groups and various stakeholders, such as canoeing enthusiasts. Yet there was no major action taken to oppose the reforms contained in Bill C-10. Following the passing of Bill C-10, there was however enough concern over public awareness that SSCEENR (2009) recommended that,

> Transport Canada develop and implement an effective communication strategy and consultation process to seek the views of waterway stakeholders on any future amendments to the Act, including any changes to regulations, and during the five year review of the Act. (p. 9)

Based on the available data, Transport Canada did not develop the recommended communication strategy.

Beyond the missing strategy, there were no further studies conducted by TRAN on the NWPA between 2009 and 2012. In fact, the archive of Transport Canada's speeches, news releases, media advisories, and media coverage indicates that there was negligible coverage of the Act at all. There was also no mainstream media coverage discussing the

proposed reforms between Bill C-10 and Bill C-45—outside of the reforms in Bill C-38. These findings suggest that reform of the NWPA was not a talking point for the GoC from 2009 to 2012. By not publicly discussing the NWPA in avenues such as in the media or in parliamentary committees, the GoC and the regulatees failed to make it a policy problem that warranted addressing. The NWPA was not problematized before the introduction of Bill C-45.

Public communication began on October 18, 2012 when the Minister of Transport announced Bill C-45's proposed reforms to the NWPA. In his speech he states that the 2009 reforms were "a good first step. But municipalities, provincial and territorial governments, and other stakeholders have urged us to do more" (Transport Canada, 2012 October 18b, para. 30). A subsequent news release from Transport Canada explains that the other levels of government have experienced problems with the regulatory regime of the NWPA and have called for its reform:

> For years, provincial, territorial and municipal governments have asked us to make it easier for communities to build important infrastructure like roads, bridges and wharfs that create jobs… The new *Navigation Protection Act* will cut through the red tape that slows down bridge work and respect navigation rights to keep Canadians moving. (Transport Canada, 2012 October 18a, para. 5)

Again, the GoC claims that for years there have been calls from three levels of government to streamline the NWPA. The available data indicates that this statement may be accurate. However the evidence is too limited to conclusively confirm broad support. For example, the Saskatchewan Association of Rural Municipalities (SARM) has raised concerns over the scope and application of the NWPA for years (Fitzpatrick, 2013 January

7) and the Canadian Federation of Municipalities fully supported the intent of the reforms. There is no evidence pointing to additional support.

Furthermore, the support from industry that the ADM of Transport Canada suggests is so strong is even less certain. While the President of the Canadian Construction Association (not registered to lobby on the NWPA) helped announce the reforms on October 18, 2012, many organizations registered to lobby on the NWPA denied seeking the 2012 reforms (Mazereeuw, 2012 October 25). Lobbyists for the Canadian Association of Petroleum Producers (CAPP), the Mining Association of Canada, the Canadian Electricity Association, and a forestry official claim they did not actively lobby for changes to the NWPA (Mazereeuw, 2012 October 25). However, CAPP, the Canadian Petroleum Products Institute, the Canadian Energy Pipelines Association, and the Canadian Gas Association sent a letter dated December 21, 2011, to the Minister of the Environment and the Minster of Natural Resources calling for regulatory reform, to "adjust several pieces of legislation" and that "planned and taken together, these changes can create a more modern, integrated, efficient framework of environmental legislation" (Energy Framework Initiative, 2011 December 21). They specifically point to CEAA, SARA, the Migratory Bird Convention Act, and the NWPA. Accordingly, there is evidence that some major industries, specifically the petroleum industry, supported the GoC's reformation agenda, but not in a public way that could have afforded incubation.

While the governmental records indicate that the idea to overhaul the NWPA into the NPA has been in the public domain since 2008, this mention at a meeting of TRAN is insufficient to launch a meaningful incubation period. While some information is readily

available on the Internet, it is unreasonable to presume that citizens are actively reviewing the transcripts of committee meetings to glean insights into the GoC's legislative agenda. Having an idea buried in the transcript of a HoC Committee meeting cannot reasonably be considered agenda setting for the public sphere. Moreover, the failure of the GoC to frame the 2009 reforms as an initial step rather than their response to TRAN's study allowed onlookers to reasonably assume that no additional reforms were coming before the newly enacted 5-year review. In other words, it is fairly likely that one of the main reasons the substantive reforms were unexpected in 2012 is because the 2009 reform included the introduction of a five-year review. Based on this review timeline, one would reasonably assume that major reforms would not be brought forward before the first review was completed in 2014.

Overall, the GoC and the proponents failed to create a sufficient incubation period. Major policy reforms were raised at HoC committee meetings four years prior to Bill C-45, but a subsequent omnibus bill addressed many of the policy problems and there were no further consultations following the changes. There was little to no public discussion on the need to further amend the NWPA until the introduction of Bill C-45. This series of events fails to qualify as an adequate incubation period. The ideas behind the reforms were not properly problematized. They did not undergo full agenda setting. Concerns raised to a parliamentary committee cannot reasonably be expected to be on the public radar. This is not to suggest the changes to the NWPA have not been in the works for years, but rather that the failure to clearly and publically articulate the need for the changes resulted in an

insufficient incubation period. The GoC failed to make it an issue, a problem, and an agenda item.

Indian Act

Bill C-45's reforms to the land designation process under the *Indian Act* have been discussed for some time between various First Nations Chiefs and Councils, such as the Penticton Indian Band, the Assembly of First Nations, and AANDC (Standing Senate Committee on Aboriginal Peoples, 2012 November 7). Four direct and indirect references problematizing the land designation process were found in the long-term public record before Bill C-45 was introduced. First, Chapter 9 of the Auditor General of Canada's 2003 Report referred briefly to the added time that the designation process creates (Office of the Auditor General of Canada, 2003). Second, based on testimony from numerous First Nations representatives, a 2007 report by the Standing Senate Committee on Aboriginal Peoples found that "slow and burdensome *Indian Act* processes, particularly around designating land for commercial purposes, often results in lost business opportunities" (Standing Senate Committee on Aboriginal Peoples, 2007 March, p. xiii). Third, the fifth 'step for action' generated at the January 2012 Crown-First Nations Gathering spoke generally to improving economic development. This indirect linkage was emphasized by the Minister of AANDC who stated that these amendments specifically "deliver on the Prime Minister's pledge at the Crown-First Nations Gathering…to provide options for practical, incremental and real change for First Nations to overcome the obstacles of the *Indian Act*" (Standing Senate Committee on Aboriginal Peoples, 2012 November 7). The

Crown-First Nations Gathering Progress Report 2013 further links this set of reforms to the economic development action item:

> As part of the *Jobs and Growth Act, 2012*, our government introduced amendments to the land designation provisions of the *Indian Act* that will allow First Nations to speed up the process for leasing portions of reserve land to a third party for the purposes of economic development while retaining ownership of their lands. The proposed amendments respond to First Nations who have expressed frustration at the cumbersome and time consuming process that had existed previously, which had negatively impacted their ability to attract and retain investors. (Aboriginal Affairs and Northern Development Canada, 2013 January 24, para. 57)

Finally, fourteen days before Budget 2012 was released on March 29, 2012, the National Aboriginal Economic Development Board addressed the HoC Standing Committee on Aboriginal Affairs and Northern Development (AANO). During its testimony the witness stated, "First Nations do not have an ability to move swiftly in developing their lands as a result of the restrictions that arise under the *Indian Act* and the red tape that comes with them" (Standing Committee on Aboriginal Affairs and Northern Development, 2012 March 15, para. 48). The National Aboriginal Economic Development Board pointed to the process to designating "as one of the most problematic barriers, due to the length and complexity of the process, which adds time and cost to transactions, and has placed First Nation financing in jeopardy on a number of projects" (Government of Canada, 2012a).

In summary, the policy problems and solutions around the land designation process were discussed at and recommended by committees, referenced by the Auditor General, and encompassed the commitments by the Crown-First Nations Gathering. The idea to streamline the designation process was incubating since 2003 at the earliest, and March 2012 at the latest. However, it was not publicized in an accessible way to the grassroots. This is in part due to minimal media coverage of the policy problem. Again, while these

reports and meetings are in the public sphere, they are not on the radar of the average Canadian. Moreover, reforming the designation process was not a regular talking point for the GoC, nor was it a campaign promise. While there was some general effort to problematize economic development barriers on reserve, and consequentially the land designation process, this was not done in a specific, predictable way. There was only moderate policy incubation in the long-term.

b. Relationship Between the Contents of Budget 2012 and Bill C-45 (Medium-term)

Regardless of the longer-term efforts at agenda setting or problematization discussed above, the explicit incubation period for any budget implementation bill, such as Bill C-45, begins with the introduction of a budget. In this case, the release of Budget 2012 marked the beginning of the incubation period for the contents of both Bill C-38 and Bill C-45. Consequently, the time between the release of Budget 2012 (March 2012) and the introduction of the implementation bills (April and October 2012) is the set timeframe for the public to read the budget, deliberate on its implications, and come to terms with its proposed changes. In essence, a budget implementation bill should contain content that the public has had months to digest. There should be no surprises.

The GoC fervently argues that the substance of Bill C-45 was included in Budget 2012, meaning they had months to incubate. Jim Flaherty, the then Minister of Finance, addressed this concern on October 18, 2012 in the HoC debate. He contended that Bill C-45 contained no surprises because its contents were introduced six months earlier in

March,[39] and that those who doubt this fact failed to read and understand Budget 2012[40] (Parliament of Canada, 2012 October 18).

NWPA

Beyond these two general arguments, Minister Flaherty stated that the reforms to the NWPA fell under the 'deficit reduction action plan' (DRAP) pillar of the budget[41] and that the changes to the NWPA are on page 282 of Budget 2012 (Parliament of Canada, 2012 October 18). These statements did not quell the doubt over the relationship between Budget 2012, Bill C-45 and the NWPA. Concerns were regularly raised by numerous New Democratic Party (NDP) MPs during debate in the HoC.[42] This statement by Hoang Mai in the HoC debates exemplifies the opposition's concern about the missing link between Budget 2012 and Bill C-45:

> We read his budget a long time ago. When it came out in March, we took notes. He said that everything that was in Bill C-45 was in the budget. We had a briefing session with senior officials last Monday from 7 p.m. until 1 a.m. just to review Bill C-45 in its entirety. I asked those senior officials and the Parliamentary Secretary to the Minister of Finance where in the budget the changes to the Navigable Waters Protection Act in Bill C-45 were mentioned. According to the government and even according to the Department of Transport, the purpose of that act is to protect the environment. She referred me to page 282. Here is an excerpt from this page where the transportation portfolio is mentioned. I asked for the exact reference because, of course, there is no reference to the environment or to navigable waters protection. She mentioned one line: "Transport Canada, 2012-13,

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[39] "The budget is a wonderful document. Here it is. We delivered it in March. There is nothing new. What is in the bill today is in the budget."

[40] "If you have not read the budget, I say to my hon. friends on the other side, I do not know what you did all summer. You got paid. You had a good pension plan. So, do your work; do your job."

[41] "One of the pillars of the budget was the deficit reduction action plan. Part of that dealt with the issues at environment and the Navigable Waters Protection Act."

[42] Examples include Thomas Mulcair (Leader of the Opposition), Mike Sullivan (York South—Weston, NDP), Hoang Mai (Brossard—La Prairie, NDP), Ms. Hélène LeBlanc (LaSalle—Émard, NDP), Lysane Blanchette-Lamothe (Pierrefonds—Dollard, NDP), Élaine Michaud (Portneuf—Jacques-Cartier, NDP), Pierre-Luc Dusseault (Sherbrooke, NDP), Rathika Sitsabaiesan (Scarborough—Rouge River, NDP) and Jinny Jogindera Sims (Newton—North Delta, NDP).

$37 million." According to the Minister of Finance, we should have understood that this was a direct reference to the protection of navigable waters, of all of Canada's lakes and rivers. He seemed to be saying that environmental protection is covered in one tiny little line that mentions $37 million. By the way, $37 million is the amount cut from the budget for transport. Go figure. The Minister of Finance said we had not done our homework. It is very difficult to do our homework when the minister himself hides what is happening. The other side is improvising. This is why we are faced with a bill which now includes things that were not originally in the budget, things that we need to ask questions about. (Parliament of Canada, 2012 October 26)

As the Finance Minister correctly points out, it is the job of MPs to know the contents of the Budget, so any lack of understanding and concerns is alarming. If MPs do not see how the reforms relate to Budget 2012, how could the general public? How could those who formed and joined INM?

The Finance Minister's initial positions were repeated and elaborated upon by numerous Conservative Party of Canada (CPC) MPs to defend Bill C-45.[43] For example, Shelly Glover expressed frustration at the requests from opposition MPs to identify the location of the references to the NWPA in Budget 2012:

> Mr. Speaker, I have answered these questions from my colleagues on the other side many times. Questions such as: What page is it on in the budget? Quite frankly, I am shocked. By now, we have given them every page through a briefing that lasted six and a half hours and they are still asking this. I will refresh their memories as to where they are. The Navigable Waters Protection Act is on page 282. This is a DRAP measure. It is clearly indicated on page 282. I would suggest that the member actually look at the annex part of the page because that is exactly where it is. (Parliament of Canada, 2012 October 24)

In explaining its connection to the Budget, Cheryl Gallant said that,

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[43] Examples include Shelly Glover (Saint Boniface, CPC), Richard Harris (Cariboo—Prince George, CPC), Costas Menegakis (Richmond Hill, CPC), Mike Wallace (Burlington, CPC), Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC), Lois Brown (Parliamentary Secretary to the Minister of International Cooperation, CPC), Bob Zimmer (Prince George—Peace River, CPC), and Merv Tweed (Brandon—Souris, CPC).

> The Navigable Waters Protection Act is being amended to allow for jobs and growth. This budget is specifically about ensuring that jobs increase and that those people who have jobs can sustain them.

and,

> Sky-high electricity rates have led to plant closures in Ontario, for example. This means that people are on employment insurance, a federal responsibility. This is the jobs and growth act, 2012, so it is directly related to electricity, which in turn is related to the Navigable Waters Protection Act. (Parliament of Canada, 2012 October 30)

That same day, Merv Tweed pointed to the reforms in 2009's Bill C-10: "in reality, most of the changes [to the NWPA] that we are now talking about were implemented in 2009, when they were first introduced, so it is not a shock to people" (Parliament of Canada, 2012 October 30). While the logic of this statement is questionable—the reforms in Bill C-45 could not have been implemented in 2009 and were not introduced in 2009—he does point to the larger history of the effort to create the NPA. Later that day Bob Zimmer provided his own assessment of where the linkage was between Budget 2012 and the reforms to the NWPA. He correlates the reforms to the NWPA to the responsible resource development plan and the GoC's "efforts to streamline the regulatory process" (Parliament of Canada, 2012 October 30). In sum, Conservative MPs used five different rationales to defend the relationship between Budget 2012 and the reforms to the NWPA:

1. Claiming it met the overarching goals of jobs and growth,
2. Linking it to the 'DRAP pillar',
3. Pointing to page 282 of the Budget: "Transport Canada, 2012-13, $37 million."
4. Relating it to the 2009 reforms, and
5. Linking it to the Budget's effort to modernize the regulatory system for project reviews.

The last justification is the most concrete. It is true that Budget 2012 does not explicitly mention reforming the NWPA or navigation related legislation. Nevertheless, it does mention modernizing the regulatory regime that governs project reviews, an initiative

Budget 2012 claims the GoC has been working towards since 2006. Specifically, there is a section under the Budget's Responsible Resource Development chapter entitled "Modernizing the Regulatory System for Project Reviews." This section clearly states that "The Government will propose legislation to streamline the review process for major economic projects" (Government of Canada, 2012b, p. 89). The GoC is targeting the potentially slow and cumbersome project approval process that often involves dozens of federal departments, and does not follow the idea of 'one project, one review'. The central message of this section is that CEAA will be reformed to bring about a

> modern regulatory system that support[s] progress on economically viable major economic projects and sustain Canada's reputation as an attractive place to invest, while contributing to better environmental outcomes. (Government of Canada, 2012b, p. 91)

Importantly, however, Budget 2012 does not limit itself to only reforming CEAA to achieve these policy goals. There are four areas the GoC targets for reform and none are exclusive to CEAA:

1. Making the review process for major projects more predictable and timely;
2. Reducing duplication and regulatory burden;
3. Strengthening environmental protection; and
4. Enhancing consultations with Aboriginal Peoples.

In fact, in order to meet these broad-brush objectives, Budget 2012 notes that:

> …the existing system needs comprehensive reform. The Government will bring forward legislation to implement <u>system-wide</u> improvements to achieve the goal of "one project, one review" in a clearly defined time period. Economic Action Plan 2012 proposes to streamline the review process for major economic projects… [Emphasis added, Government of Canada, 2012b, p. 88]

The use of the vague terms 'system-wide' and 'comprehensive reforms' expands the scope of the proposed amendments beyond CEAA to other legislation that may inform the approval process. Yet it does not actually provide further examples, such as the NWPA.

Therefore, while Budget 2012 did not explicitly talk about reforming the NWPA or navigation (see Hall, 2012 October 19), reforming this regime, as part of the wider 'system' targeted for reform, could be interpreted as implicit in the text. Implicit references, however, do not provide a strong basis for incubating specific reforms. This wide-cast net creates somewhat of a slippery slope as a myriad of reforms could be justified under the guise of modernizing the regulatory system for project reviews.

Lastly, it is notable that the reforms to the NWPA included in the *Budget Implementation Act, 2009* were explicitly noted in the Budget 2009. Specifically it said that:

> Efficiencies will be introduced through legislative amendments to the *Navigable Waters Protection Act,* which has not been substantially amended since 1886. The proposed amendments reflect the recommendations that were made in June 2008 by the Standing Committee on Transport, Infrastructure and Communities after an exhaustive review of the Act (Government of Canada, 2009, p. 144).

Even this general, noncommittal language presents a signal of forthcoming reforms. Budget 2012 lacked such a signal.

Indian Act

Like the NWPA, Bill C-45's reforms to the *Indian Ac*t are not explicitly mentioned in Budget 2012. They are not included in the four 'opportunities for Aboriginal Peoples to fully participate in the economy,'[44] nor are they expressly included in the section on 'Improving Economic Potential on First Nations Lands.' The latter section states that the

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[44] Investments to Improve First Nations Education, Helping First Nations on Reserve Access the Labour Force, Supporting First Nations Fishing Enterprises, and Urban Aboriginal Strategy.

GoC has the intention to "explore with interested First Nations the option of moving forward with legislation that would allow private property ownership within current reserve boundaries" (Government of Canada, 2012b, p. 165). This is a clear reference to the proposed *First Nation Property Ownership Act* (FNPOA), or a similar regime. The *Indian Act* amendments do not accomplish this stated aim. They are for designating, not privatizing land.

There are, however, two nuances that may support the argument that the reforms to the *Indian Act* were included in Budget 2012. First, the pluralization of 'initiatives':

> The recent Crown-First Nations Gathering underscored the Government's commitment to work with First Nations on shared priorities. Economic Action Plan 2012 supports this commitment by introducing initiatives to enhance economic potential on First Nations lands. (Government of Canada, 2012b, p. 167)

While only FNPOA and the *First Nations Land Management Act* (FNLMA) are discussed further, this non-descript pluralization opens the door to interpretation as to what the GoC actually meant to commit to.

Second, Budget 2012 states that the GoC "will continue to work with First Nations to address barriers to economic development on reserve" (Government of Canada, 2012b, p. 171). This general commitment could provide a rationale for the *Indian Act* reforms, as they were done in the name of 'economic development.' In fact, this is essentially the line used in the October 19, 2012 press release from AANDC:

> In Economic Action Plan 2012, our Government committed to taking further steps to create the conditions for First Nation communities to participate more fully in Canada's economy… Amending the land designation provisions of the Indian Act is a practical approach to increasing opportunities for First Nations to tap economic development opportunities, reduce red tape, and allow First Nations to operate at the speed of business. (Aboriginal Affairs and Northern Development Canada, 2012, para. 2)

The Minister of AANDC also repeated it on November 7, 2012 at the Standing Senate Committee on Aboriginal Peoples. The Minister stated that the "amendments in Bill C-45 that will enhance economic development opportunities on reserve… [and] will address barriers in the *Indian Act* that stand in the way of economic progress on First Nation lands."

Yet, both of these references in Budget 2012 are inadequate to send a clear message of policy intent. They are vague commitments that would lead no one to expect the specific reforms made to the *Indian Act*. Again, slotting the specific reforms to the *Indian Act* under these general, wide-reaching commitments raises questions of reasonableness, and does not help create a sufficient incubation period.

Like the NWPA, the reforms to the *Indian Act* were not explicitly mentioned in Budget 2012. Again, Budget 2012 did not send a clear signal of a forthcoming reform to the *Indian Act.* The fact that the full title of Bill C-45 is *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament On March 29, 2012 and other measures* (emphasis added) demonstrates that Bill C-45 contains measures not included in the budget (Cockram, 2014), some of which include the reforms to the NWPA and the *Indian Act*— the substantive amendments that INM focused on.

c. Time Span Between the Introduction Of Bill C-45 and Its Passing

Even without adequate long-and medium-term agenda setting, the duration between the formal introduction of a policy and its final approval may provide sufficient time for incubation. In other words, hastened process will not inherently lower its legitimacy, for

example if the initial stages of problemization and agenda setting are robust. As shown above, this was not the case with the reforms to the NWPA and the *Indian Act*. Due to these long-term term insufficiencies, the length of the time between Bill C-45's first reading and royal assent is meaningful for its incubation period, since the policy ideas were not fully on the public agenda before introduction. In cases like these, an expeditious legislative process may not enable a sufficient incubation period.

As shown in Table 8, Bill C-45 was introduced in the HoC on October 18, 2012, and received royal assent on

Table 8. Timeline for the Legislative Process for Bill C-45

Stage in the Legislative Process	House of Commons	Senate
	Date	
First Reading	October 18, 2012	December 6, 2012
Second Reading	October 30, 2012	December 12, 2012
Committee Report Presented	November 26, 2012	December 11, 2012
Third Reading	Royal Assent	December 5, 2012	December 14, 2012

December 14, 2012. It took 58 days, eight of which were spent in the Senate, for Bill C-45 to become law.

Table 9. Summary of Budget Bills from 1997 to 2013, numbers of days and pages

Year Range	a - Average Number of Days	b - Median Number of Days	c - Average Number of Pages	d - Median Number of Pages	e - Average Pages Per Day	f - Median Pages Per Day
1997 - 2005	80.56	87	81.11	79	1.53	1.20
2006 - 2013	69.43	65	328.36	186	7.64	4.38
1997 - 2013	70.71	75	221.96	132.5	4.97	1.91

Table 9 provides context for how short or long that relates to budget implementation bills from 1997 to 2005 (Liberal leadership), 2006 to 2013 (Conservative leadership), and 1997 to 2013 (the full data set).[45] Bill C-45's 58 days is below all of the average and median values, columns **a** and **b** respectively. Bill C-45 went through the legislative process 18% faster than the average budget implementation bill since 1997. Bill C-45 also exceeded the average and median number of pages of budget implementation bills. As shown in column **c**, at 428 pages, Bill C-45 is 428%, 30%, and 92% longer than the average number of pages from 1997-2005, 2006-2013, and 1997-2013, respectively.

Lastly, based on the number of days (n= 58) and number of pages (n=428), the average number of pages per day for Bill C-45 was 7.38. That is, in order to understand its content, MPs, Senators, and the public would have to review and comprehend the content of 7.38 pages per day from first reading to royal assent. This value is 48.5% greater than the average for 1997-2013, and 382% larger compared to 1997-2005. Overall, Bill C-45 was debated and approved more quickly than the average budget implementation bill since 1997, and MPs and Senators had to review more pages in a shorter time period.

While there may be numerous variables that influence the duration of a legislative process (e.g. if an election is called), Bill C-45's quick approval was called for early on by Minister Flaherty (Kirkup, 2012 December 6). Following this signal, there were two time allocation motions in the HoC and one time allotment motion in the Senate to limit debate—see Appendix C for the motions. The Leader of the Government in the HoC justified these

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[45] 1997 was selected because it was the first year with the full information on first reading and royal assent on LEGISinfo.

motions by suggesting that Bill C-45 needed to pass quickly to ensure Canada's economic recovery. Following the second motion, the president of the Treasury Board told the media that the review by eleven HoC committees provided the time for proper examination and that it was time to act (Fekete, 2012 December 4). The Leader of the Government in the Senate similarly suggested that previous studies by Senate committees (six committees, 62 hours, 30 meetings, 135 witnesses) is why "an additional six hours will be more than enough time to proceed with passing this bill" (Parliament of Canada, 2012 December 13). He further submitted that the opposition leader's speech on the Bill demonstrated a deep analysis, meaning there must have been "enough time to conduct a rather comprehensive review of the bill" (Parliament of Canada, 2012 December 13). Time (i.e. debate) limiting motions were strategically used to hasten the passing of Bill C-45.

As demonstrated by the historical comparison and the use of time allocation motions, the data suggests Bill C-45 was expedited through the legislative process. While there can be a debate over the merits and implications of this decision, the fact remains that the GoC purposefully limited the timespan between introduction and royal assent. Given the limited understanding the general public, and members and supporters of INM, had about the reforms to the NWPA and *Indian Act*, this hastened process did not allow for proper incubation of its more contentious policy reforms.

Building from the brisk legislative process for Bill C-38 (Gibson, 2012; Kirchhoff, et. al, 2013), Bill C-45 was introduced, debated and passed unusually quickly. This decision by the GoC did not afford the opportunity for the ideas to be fully considered, understood, and potentially accepted by the public. While this has happened in the past and did not

result in protests and social movements, it is important to consider the additional factors discussed that influence the overall legitimacy of public policy. Bill C-45 and the specific reforms targeted by INM did not have an adequate incubation period in the long, medium or short term, which reduced its procedural legitimacy.

d. The Emphasis INM placed on Policy Incubation

INM's narrative of Bill C-45 includes numerous references to a lack of policy incubation. For example, Tanya Kappo stated that "the people in our communities had absolutely no idea what we were facing, no idea what plans Stephen Harper had in store for us" (Idle No More, 2012 December 13). Many supporters and members of INM contend that the measures to reform the NWPA and the *Indian Act* were not in Budget 2012. Doug Cuthand, a Cree columnist, said exactly this in his December 7, 2012 column: "Bill C-45, the omnibus budget bill, was tabled and it contained amendments to the Indian Act and to the Navigable Waters Protection Act that caught our people off guard;" he went on to say, "These two amendments were buried in the omnibus budget bill and have nothing to do with the budget" (para. 9). A resident of Rama, Ontario (a First Nations community in the Chippewas of Rama First Nation reserve) and INM supporter reiterated this concern, stating, "everything was just kept so quiet and I don't think people realized what was in the Bill when it came to the land" (Ross, December 21, 2012, para. 8). Moreover, one of the main overarching discourses in the early days of INM was Bill C-45 as an erosion of democracy and the democratic process as it was sped through the parliamentary process (Bradshaw and McCarthy, 2013 January 1; Kirkup, 2012 December 6). Sheelah Gordon

said that "the legislation [is] being pushed through undemocratically" (Warren, 2012 December 19, para. 7). Signs protesting Bill C-45 at INM events spoke specifically to the issue of democracy, such as "Fighting to Keep Democracy Alive! #IdleNOMore" (Fort McMurray, 2012 December; see Chilliwack, 2012 December 21; Salish, 2012 December 11; Toronto, 2012 December 10). While part of their democratic concerns likely stems from the size and scope of the Bill, given adequate time those apprehensions would be addressed. The concern over time is inherent in their alarms about democracy. INM did contest the amount of time given to the consideration and approval of Bill C-45 as a bill, but also the long-term incubation of its content. There was a disconnect between long-term policy incubation, the content of Budget 2012, citizens' expectations, and Bill C-45.

4.2.2 Emotive Appeals

Like the incubation period, the GoC's use of emotive appeals when introducing, debating, and passing Bill C-45 is important because it helps to frame the issues and speaks to why four women would form INM. How the amendments and the Bill at large were constructed through the GoC's discourse, symbols, and framing processes directly impacts the public's perception of legitimacy. The use of emotive appeals likely had implications for why INM emerged. Consequentially, is it necessary to identify the discourse used by the GoC to try to construct the issues and galvanize the public's support for Bill C-45, and, in this case, explore why they failed to do so.

Starting with the Department of Finance's official press release on Bill C-45, the GoC attempted to develop a narrative. The narrative was about continuing on the road to

economic recovery by focusing on communities, creating jobs, supporting families, promoting clean energy, making the tax system neutral, and respecting taxpayers' money (Department of Finance Canada, October 18, 2012). It further suggests that the amendments contained in Bill C-45 are specifically designed to ensure Canada maintains its economic recovery and that new jobs would be created. Bill C-45 was part of the 'pro-growth' agenda. As such, it was presented as a holistic vision for the country, from a whole-government approach.

The reforms that INM targeted were not mentioned in the Department of Finance's official press release, nor were they included in the Sponsor's Speech which mirrored the same themes as the press release (Parliament of Canada, 2012 October 24). The specific amendments to the NWPA were instead framed by a Transport Canada (2012 October 18b) press release that employed strong discourse and symbols to justify the amendments:

1. The historic and modern intent of the NWPA was exclusively for the safe and efficient movement of marine traffic (so 'boats and bridges can co-exist');
2. The current scope of the Act on all navigable waterways means "significant delays and unnecessary red tape"; and
3. Logically, then, it must be amended to make job creation easier.

These claims presented a well thought out attempt to construct the NWPA, its purpose, and the reforms brought forward in Bill C-45. AANDC released a similar statement on the amendments to the *Indian Act*. It emphasized its link to Budget 2012 and its demand by First Nations (Aboriginal Affairs and Northern Development Canada, 2012 October 19). These three press releases were the initial emotive appeals put forth by the GoC and focused on economic growth. The emotive appeals deployed by the GoC changed somewhat over

time and became more defensive in response to criticisms from INM, opposition MPs and Senators, the media, and the general public.

Beyond the discourse relating to incubation period and Aboriginal consultation (See sections 4.2.1 and 4.2.3, respectively), there are three main discursive themes that the GoC used throughout the legislative process to frame the amendments to the NWPA and *Indian Act*. First, the NWPA is about protecting navigation, not the environment. Second, the NWPA and *Indian Act* must be amended to ensure economic growth. Specifically, the NWPA needs to reflect contemporary realities and reduce unnecessary bureaucracy, and the land designation process under the *Indian Act* needs to happen more rapidly to reflect industry's timelines. Lastly, First Nations want the reforms to the *Indian Act* because it removes a layer of government control. Due to the scope of this research, only the first theme is examined for its framing capabilities and the degree to which the public, specifically INM, was convinced by or contested this narrative.

Framing the NWPA

One of the first major framing exercises the GoC undertook was stating that the NWPA is about protecting navigation, as demonstrated in Transport Canada's press release (2012, October 18a). There was no mention of the environment, just navigation. This focus was mirrored in the backgrounder the GoC released on Bill C-45, which provided an entirely navigational and economic rationale for the NWPA and its amendments:

> In line with the Government of Canada's commitment to streamlining the regulatory process and encouraging long-term economic growth and job creation, the proposed amendments to the Act not only usher in a risk-based approach to the regulation of works and obstruction and build on the 2009 amendments, but seize the opportunity to create a

> modern, robust, and flexible legislative scheme that is effectively responsive to the needs of Canada in the future. Ultimately, re-focusing the scope and application of the legislation to better balance the efficient movement of marine traffic with the need to construct works, such as bridges, wharfs and transmission lines. (Government of Canada, 2012a, p. 34)

This 'rescoping' seeks to balance navigation with economic growth, not environmental protection. The shift is exemplified by changing its name from the *Navigable Waters Protection Act* to the *Navigation Protection Act*. The former implies protection of navigable waters whereas the latter implies protection of navigation.

While discussing the NWPA, the GoC did not mention the environment until INM, environmental groups, and opposition MPs raised the issue. These actors put forth two related arguments to contest the GoC's framing of the NWPA as having no environmental implications. First is the idea that any act or policy that regulates water has environmental consequences. This is the basic premise found in much of the INM protest materials. Regulating water to ensure there is clear navigation cannot be untangled from protecting water for environmental concerns. Protecting water from pipelines in the name of navigation still has environmental outcomes. Moreover, exempting pipelines has environmental forethought and potential consequences. This perspective reflects a worldview where water is not separated into water for different purposes—water is simply water.

The second argument is that case law concludes that the NWPA has clear ties to the environment. This position is largely based on a Supreme Court of Canada (SCC) case, the *Friends of the Oldman River Society v. Canada [Minister of Transport]*. In its decision, the SCC concluded that

> …it defies reason to assert that Parliament is constitutionally barred from weighing the

broad environmental repercussions, including socio-economic concerns, when legislating with respect to decisions of this nature. The same can be said for… navigation and shipping. [Sections 22 and 23] … of the *Navigable Waters Protection* Act are aimed directly at biophysical environmental concerns that affect navigation…As I mentioned earlier in these reasons, the [*Navigable Waters Protection*] *Act* has a more expansive environmental dimension, given the common law context in which it was enacted.

It follows that the legislation need not be interpreted narrowly as ignoring current realities. Based on these nuanced and critical reactions, the GoC's initial emotive appeals did not prompt support of its reforms to the NWPA, and instead resulted in skepticism and criticism.

Once these concerns were raised about the impact of the reforms on the environmental integrity of waterways, the GoC discourse turned from exclusion to refutation. The GoC dismissed any linkage between navigation and water protection. All Conservative MPs and Senators maintained the apparent official position: the intent of the NWPA was to protect the right of navigation—nothing else. As MP Cathy McLeod stated: "It is not about environment. Navigable waters is about navigation" (Parliament of Canada, 2012 October 25) and "It is a 100-year-old piece of legislation that does not speak to the environment at all. It is really about navigation on our waterways" (Parliament of Canada, 2012 October 29). MP Jim Hillyer followed suit, responding that the reforms do "not eliminate environmental controls or protections… This is not a move against environmental protection; it is a move against useless regulations that neither protect the environment nor help the economy" (Parliament of Canada, 2012 October 29). Unfortunately for the GoC, the continued and growing INM movement demonstrates that these emotive appeals failed to convince the public, and change the minds of many already questioning the environmental repercussions of the changes to the NWPA.

4.2.3 Aboriginal Consultation

The GoC has a common law duty to consult and, where appropriate, accommodate when it "contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights," which are recognized and confirmed under section 35 of the *Constitution Ac*t, *1982* (Aboriginal Affairs and Northern Development Canada, 2011, p. 1). The duty to consult is rooted formally in the Honour of the Crown and the special relationship between Canada and First Nations which seeks further reconciliation. As such, it exists beyond statutory (statutes and regulations) and contractual (land claims, self-government, or consultation agreements) obligations for consultation. This legal duty has been interpreted and clarified in numerous SCC rulings, specifically Haida (2004) Taku River (2004), Mikisew Cree (2005), Rio Tinto (2010), Little Salmon (2010).

There is a three-part test to determine if the duty to consult has been triggered:

1. Contemplated Crown conduct,
2. Potential adverse impact, and
3. Potential or established Aboriginal or Treaty rights (Aboriginal Affairs and Northern Development Canada, 2011, p. 12).

The threshold for triggering the duty is low, but all three elements must be present. Moreover, while the strength of the claim of Aboriginal or Treaty rights and the seriousness of the adverse impacts on those rights determine the scope of consultation, there must always be contemplated Crown conduct. Importantly, the duty to consult requires that consultation occur early in the planning, design, or decision-making process. That is, well before any action is taken.

In *Rio Tinto* the SCC confirmed that Crown conduct includes 'higher level strategic decisions' that may have an impact on Aboriginal claims and rights, including "structural or organizational changes that reduce the Crown's oversight and decision-making ability" (Aboriginal Affairs and Northern Development Canada, 2011, p. 36). However, the SCC opted to "leave for another day the question of whether government conduct includes legislative action" (Rio Tinto Alcan Inc. *v.* Carrier Sekani Tribal Council, 2010, para. 44). There is currently no clear duty to consult on bills like Bill C-45.

While the duty to consult is often referenced, as shown in Table 10, it is just one reason the GoC may decide to consult Aboriginal Peoples. Consultation can be used for strategic reasons, including political motivation, or to increase legitimacy,

Table 10. Reasons to Consult (Aboriginal Affairs and Northern Development Canada, 2011, p. 5)

Good Governance / Policy Reasons	Legal Reasons
Make informed and appropriate decisions	Statutory requirements
Create and improve working relations with all those affected	Section 35 of the *Constitution Act, 1982*, common law requirements (applies exclusively to Aboriginal peoples)
Address new business and policy developments	Agreements / Contractual requirements

transparency and accountability in otherwise closed-door activities. Regardless of any legal obligation, the GoC may consult, or at least engage, with Aboriginal communities or groups about potential Crown conduct in the name of good governance.

The purpose here is not to determine if the GoC had and met a constitutional duty to consult on Bill C-45—that is for the Federal Court's ongoing (at the time of writing)

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judicial review to determine.[46] However, the fact that this question is being considered in federal court is significant. Since consultation is an element of good governance regardless of legal requirements, this research aims to establish if Aboriginal Peoples were consulted and how that consultation was perceived by INM. Did the GoC consult specifically on the reforms to the NWPA and the *Indian Act*? Were the members and supporters of INM concerned with the consultation process of Bill C-45? These questions are answered below.

a. Consultations for the NWPA Reforms

Following the previously discussed TRAN meeting on February 12, 2008, the committee proceeded to seek input from some stakeholders (provincial governments, municipalities and an environmental group) on proposed amendments to the NWPA. They presented their recommendations to the HoC on June 12, 2008. In their report TRAN stated that "this is the first stage in our process in dealing with amendments to the NWPA. Once we receive the government's proposed amendments we will be undertaking further consultations on this piece of legislation" (Standing Committee on Transport, Infrastructure and Communities, 2008 June, p. 5). However, there is no evidence that further consultations took place between 2009 and 2012. TRAN's consultation informed the 2009 reforms, but it is uncertain whether there is a direct link to the 2012 reforms. Importantly, given the implementation of the 2009 amendments, new consultations would likely be necessary to assess their effectiveness, efficiency, and performance.

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[46] An application for a judicial review on Bill C-38 and Bill c-45 was filed by the Mikisew Cree First Nation and Frog Lake First Nation.

During the summer 2011 pre-budget consultations for Budget 2012, the HoC Standing Committee on Finance (FINA) received 771 submissions. Two of these submissions mentioned navigable water or the NWPA. One is a submission from SARM and the other is from the Canadian Energy Pipeline Association. SARM's recommendations include reviewing the NWPA and modifying the definition of 'navigable water' (Saskatchewan Association of Rural Municipalities, 2011 August 12). The Canadian Energy Pipeline Association lists new regulations under the NWPA as a 'positive change' and that "more can and should be done to continue these improvements, and further initiatives should be undertaken through Budget 2012" (Saskatchewan Association of Rural Municipalities, 2011 August 12). As the outcome of the 771 submissions, FINA's December 2011 report recommends that "the federal government work with municipalities, especially in rural Canada, to continuously review the *Navigable Waters Protection Act*" (Standing Committee on Finance, 2011 December, p. 48). This appears to be the only open and public consultation process that fed directly into its inclusion in Bill C-45. It does not call for reforms in Budget 2012, but rather for continued, collaborative review.

Then in the summer of 2012, Transport Canada consulted with provinces and territories on the NWPA amendments that would be included in Bill C-45 (Transport Canada, 2012 October 18a). During TRAN's study of Bill C-45, the Director General of Transport Canada's Navigable Waters Protection Task Force said the provinces and territories were aware of the reforms, but clarified that he "wouldn't categorize them as consultations; I would categorize them as in-depth discussions" (Standing Committee on Aboriginal Affairs and Northern Development, 2012 November 12). In his official

announcement of the reforms, the Minister of Transport noted these limited 'consultations' and assured that "technical briefings will be held through the fall with industry and Aboriginal groups, and other interested parties" (Transport Canada, 2012 October 18a). As stated by the Minister of Transport and top public servants, the GoC did not consult the public or Aboriginal groups on its proposed reforms to the NWPA.

b.   Consultations for the Indian Act Reforms

The GoC similarly failed to consult First Nations on the reforms to the *Indian Act*. Starting with the public pre-budget consultations, not one of the 771 submissions received by FINA mentioned reforming the land designation process or the *Indian Act* generally. Consequentially, FINA did not recommend reviewing or reforming the *Indian Act* as part of Budget 2012. It did however recommend examining "the concept of a *First Nations Property Ownership Act* as proposed by the First Nations Tax Commission" (Standing Committee on Finance, 2011 December, p. 48), which the GoC did explicitly include in Budget 2012.

There were no pre-introduction consultations during the summer of 2012. AANDC's 'proposed outreach on budget implementation act II' used a four-prong approach to 'outreach' on the land designation amendments.[47] A letter was to be sent from the Minister of AANDC to 'stakeholders' within 24 hours of introduction. On the day of introduction, the Deputy Minister was to email his provincial counterparts, the Minister's

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[47] As AANDC's 'proposed outreach on budget implementation act II,' was accessed through the ATIP request on the consultation record for Bill C-45.

office was to telephone 'stakeholders,' and the AANDC website was to post a public press release. This 'outreach' strategy does not include engagement or consultation during the development of policy, but only information sharing after the fact. This finding is further confirmed by an internal email from the Lands Modernization Directorate of AADNC, accessed through an ATIP request. It said:

> As you know, there has been no official consultation process specific to these [land designation] amendments, however First Nations have officially and off-the-record maintained (for several years now!) that the Department's land designation process is too lengthy.

This email was from early September 2012—a month before Bill C-45 was introduced. The lack of consultation is something AANDC recognized before introducing the amendments.

On November 7, 2012, the Minister of AANDC admitted this fact to the Standing Senate Committee on Aboriginal Peoples when he said "there was never a consultation engagement process" (para. 59). Instead, the GoC proceeded with what the Minister called a "no-brainer" and sent a letter to "every chief and council across Canada explaining what we were doing with sections 37, 39 and 40 of the *Indian Act*" on October 22, 2012—4 days after the introduction of Bill C-45 (Standing Senate Committee on Aboriginal People, 2012 November 7, para. 70). This process was justified, according to the Minister, because "the consultation came to us," suggesting that there were previous requests, from unspecified, unquantified actors, for these changes (Standing Senate Committee on Aboriginal People, 2012 November 7, para. 55). The lack of consultation was further justified by what the Minister characterized as a lack of 'push back' from Chiefs and Councils.

However, as the representative from the AFN told the Standing Senate Committee on Aboriginal Peoples on November 20, 2012, some First Nations opposed the changes

based on procedural concerns, specifically the lack of formal consultation. She explained

that the AFN "opposes the bill for the lack of integrity in the process by which we get here,"

specifically because the missing consultation processes "foreclosed any options or any

examination of options that might have been advanced by First Nations" (Standing Senate

Committee on Aboriginal People, 2012 November 20, para. 41). In summary, based on all

accounts the GoC did not consult First Nations on the reforms to the *Indian Act*.

c. Consultation Concerns Expressed by INM

The relationships between consultation; democracy; free, prior, and informed

consent[48]; the Honour of the Crown; and Aboriginal and Treaty rights are often referenced

by members of INM, including by its founders, in early materials. McAdam expressed her

concerns over the lack of consultation, which was one reason that compelled the founders

to organize an opposition. In an interview with the press she said that "we need to let the

government know that they are doing this without consultation, which is contrary to the

principles of democracy" (Graney, 2012 November 19, para. 6). She further explained that,

> the biggest part of this is that the government has decided to put those powers into place
> without even consulting the indigenous people who this is going to affect… If the
> government wants to make changes to the *Indian Act*, then sure, but in its place we must
> fully implement the treaties and they must consult with us. (Graney, 2012 November 19,
> para. 8)

The INM website provides similar criticisms. For instance, it states that because

"Indigenous peoples and nations have not been consulted" on Bill C-45 it violates Article

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[48] Free, prior, and informed consent is substantively different than consultation. However they are linked
and thus included for analytical purposes.

19 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which says that

"States shall consult and cooperate in good faith with the indigenous peoples concerned

through their own representative institutions" (Idle No More, 2013 January 1; Idle No

More, 2012 December 11a). The lack of consultation, stemming from both domestic and

international legal obligations, was deemed unacceptable by INM.

Additionally, a template letter to send to Senators was posted by Jessica Gordon to

the INM website in early December. It is one of the most telling pieces of information about

how INM viewed consultation:

> Dear Senator,
>
> We are part of a grass roots movement happening across Canada titled Idle No More. We have held teach-ins, rallies and protests in numerous provinces, and we have petitioned the House of Commons regarding the Omnibus Bills, and specifically Bill C-45. We are aware that the lack of consultation regarding the changes to the Indian Act, as well as the changes to land and water protections on First nations lands are unconstitutional. Section 35 of The Constitution Act, 1982 clearly states that government of Canada have a duty to consult with First Nations people in Canada. This consultation process has not occurred and as a result The Chiefs from The Assembly of First Nations marched on Parliament at 1:00pm on December 4th, 2012. As well, this lack of consultation defies the First Nations rights entrenched in the United Nations Declaration on the Rights on Indigenous Peoples, which the Canadian government signed and endorsed on November 12, 2010.
>
> We urge the Senate to stop the recent Omnibus Bill that was passed through the House of Commons until there is legitimate consultation with First Nations leaders and communities. This movement will continue to grow as we educate the public regarding the imminent and grievous threats to democracy, The Treaties, Indigenous rights, and environmental protections emanating from the process of passing these Omnibus Bills. (Idle No More, 2012 December 5b)

The lack of consultation is the entire basis of this letter on Bill C-45. It cannot be

misconstrued or minimized. Consultation mattered to INM during its emergence stage.

Other data sources further suggest that members and supporters of INM believed

that Bill C-45 was developed unilaterally, without consultation, and infringes or has

adverse effects on Aboriginal and Treaty rights (For examples see Dunn, 2012 December 22; Tasker, 2012 December 28; Smith, 2012 December 31; Scoffield, 2012 December 27; Rice, 2012 December 21; Howell, 2012 December 22; Hopper, December 26, 2012). Many protest signs likewise speak to concerns over consultation and consent:

- "Harper you do not have my consent" (Bellville, December 31, 2012)
- "Free, prior and informed consent" (Edmonton, December 21, 2012)
- "Consult" (Kenora, December 10, 2012)
- "Did not consent to any legislation" (Peterborough, December 2, 2012)
- "Duty to consult and accommodate" (Toronto, December 21, 2012)
- "Honour the treaties, Stop C-45" (Vancouver, December 26, 2012)

Finally, the advance unedited version of the *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in Canada* likewise found that Aboriginal Peoples have had limited participation of in decision-making at the federal level:

> …in recent years, indigenous leaders have expressed concern that progress toward this goal has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them. These actions in part sparked in December 2012 the "Idle no More" protests throughout the country.
>
> Most notable were concerns expressed about a lack of effective participation of indigenous peoples in the design of legislation that affects them. In 2012, the federal Government enacted or amended a number of statutes affecting Canada's indigenous peoples, including the Canadian Environmental Assessment Act, National Energy Board Act, Fisheries Act, Navigable Waters Protection Act, and the Indian Act, through two "omnibus" budget implementation acts, the Jobs and Growth Act 2012 (Bill C-45) and the Jobs, Growth and Long-term Prosperity Act (Bill C-38). Despite the vast scope and impact on indigenous nations of the omnibus acts, there was no specific consultation with indigenous peoples concerning them. (Anaya, 2014, p. 14-15)

The lack of consultation for Bill C-45 was a driving factor for the emergence of INM. This finding is consistent with the analysis of Inman et al. (2013), who conclude that the lack of

Aboriginal consultation on the 2012 budget implementation bills may be "why the Aboriginal peoples of Canada stood up and refused to be *Idle No More*" (p. 285).

4.3 Overall Legitimacy

During its formative days, INM members and supporters were predominantly protesting the substantive and procedural elements of Bill C-45. In particular, they protested the substantive reforms to the NWPA's new list of regulated waterways and to a lesser and more inconclusive degree, the new land designation process under the *Indian Act*. These policy reforms failed to resonate and align with the values and beliefs of enough Canadians that they mobilized under the name INM. This was in part due to the belief that they would enable increased development and infringe upon Aboriginal and Treaty rights. Dramatically reducing the number of waterways protected under the NWPA regime—in the name of economic development and expediency—runs counter to the values and belief systems of some Aboriginal Peoples and environmentalists. Consequentially, this change was protested more often than any of the other amendments. It was deemed so important that nearly half of the protest signs chose to dedicate some of the limited space to the environment—mostly water. Moreover, the perceived changes made to the voting requirements for designating reserve land under the *Indian Act* did not fully reflect the beliefs and values about ownership of First Nations territory. While these amendments make up only a fraction of the Bill, Bill C-45 cannot be said to be completely substantively legitimate as a result.

As important as the content of the policy reforms were to the emergence of INM, the data suggests the major legitimacy gap was in terms of procedure. Bill C-45 and the reforms targeted by INM were procedurally illegitimate.

First, there was not sufficient time allotted for policy incubation because the political actors failed to put the policy problems on the public agenda, the policy problems were not clearly included in Budget 2012, and the timespan from first reading to royal assent was accelerated. The reforms to the NWPA were talked about in the public sphere, despite being first mentioned in 2008 at a meeting of TRAN. The Indian Act had better, but still inadequate, long-term incubation. Moreover, the relationship between Budget 2012 and Bill C-45 is important because, despite claims by the GoC, the reforms INM focused on were not explicitly referenced in the Budget. Even the title of Bill C-45 acknowledges this fact: *A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*. The use of the phrase "Other Measures" is significant. The GoC has included measures beyond the provisions of the official Budget since 2009—see Appendix A. Lastly, Bill C-45 was sped through the legislative process in part due to the use of time allocation/allotment motions that limited debate. These factors undermined the legitimacy of Bill C-45 and did not go unnoticed by INM. The lack of a proper incubation period for these policy reforms resulted in shock, confusion, concern, and outrage—culminating in the rise of INM.

Second, while the government's emotive appeals were successful in constructing Bill C-45 as a pro-economic growth bill, this unfortunately meant that the GoC was seen as staging an indirect attack on environmental protection. Essentially the GoC's discourse

was imbalanced and filled with clear speaking points. For example, navigable water is about navigation, not the environment, was a common discourse used by the GoC. Suggesting that a regulation governing the navigation of waterways is divorced of any implications for the environmental integrity of those waterways is taking a narrow interpretation of the environment.

Third, the GoC failed to consult with Aboriginal Peoples on the changes to the NWPA and with First Nations on the reforms to the *Indian Act*. For the NWPA, new meaningful consultations, either by TRAN or Transport Canada, should have been held. Relying on the consultations from 2008 is inadequate because the regulatory regime was substantially changed since TRAN's report and because of concerns over the adequacy of consultation for the 2008 consultations. The Standing Senate Committee on Energy the Environment and Natural Resources (2009 June) recommended that,

> Transport Canada develop and implement an effective … consultation process to seek the views of waterway stakeholders on any future amendments to the Act, including any changes to regulations, and during the five year review of the Act. (p. 9)

Like the communication strategy, it does not appear that Transport Canada developed and implemented a general and effective consultation processes. While the reforms were informed by the 2008 FINA process and two submissions to the pre-budget consultations, the GoC should have consulted with stakeholders and Aboriginal groups early in the decision making process to ensure good governance.

Similarly, the GoC did not consult, or even engage, with First Nations about Bill C-45's reforms to the *Indian Act*. In fact, First Nations received notice of the legislative changes days after the reforms were introduced, with the assumption that they supported

the content of the reforms. This official notice by AANDC was essentially a check-in to verify their assumed support. In their report on Bill C-45's reforms to the *Indian Act*, The Standing Senate Committee on Aboriginal Peoples did not mince words about this process:

> This [lack of consultation and use of a letter], in the opinion of your committee, is insulting to First Nations and is unacceptable. The committee is very concerned that the manner in which these amendments were introduced represents a missed opportunity to meaningfully engage with First Nations people and to achieve consensus on an issue of importance to all First Nations with reserve lands governed by the *Indian Act*. (Standing Senate Committee on Aboriginal Peoples, 2012 November 29, p. 5)

For the reforms both to the NWPA and to the *Indian Act*, Wotherspoon and Hansen (2013) point to the lack of Aboriginal consultation as a grievance and an expression of continued colonialism and social exclusion. They suggest,

> Idle No More as a response to the Conservative government's Bill C-45 that represents, in the face of recurring broken promises by governments to engage in meaningful consultation with Indigenous people on matters that concern their land, communities and people, yet another unilateral decision that excludes Indigenous people and perspectives. Idle No More is the manifestation of resistance to colonialism. (Wotherspoon and Hansen, 2013, p. 30)

This finding reinforces the idea that procedural legitimacy is fundamentally important. Bill C-45 lacked procedural legitimacy on all fronts and INM focused on these failings. As Wallner (2008) concluded, even if people agree with the substance of policy decision, lackluster or end-of-the-line consultation may result in criticism from those who were deprived of the opportunity to provide meaningful input. Input legitimacy is just as important as output legitimacy. In order for a policy to be legitimate, it must be both substantively and procedurally legitimate. The data suggests, without question, that Bill C-45 lacked both procedural and substantive legitimacy because of its amendments to the NWPA and the *Indian Act*. It is significant that these were the main issues that INM rallied around. Had there been greater procedural legitimacy, through proper incubation, framing

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and consultation, Bill C-45's substantive legitimacy would have likely been improved.

These findings are summarized in Tables 11, 12, and 13.

Table 11. Legitimacy of Bill C-45 – *Indian Act*

Legitimacy Type	Core Elements			
Substantive	Inconclusive alignment			
Procedural		*Incubation*	*Emotive appeals*	*Aboriginal Consultation*
	Long-term	Moderate - numerous parliamentary references	Failed to gain the support of members and supporters of INM by suggesting First Nations want this reform and that the land designation process must be expedited to reflect industry timelines and remove a layer of government bureaucracy	No Aboriginal consultation
	Medium-term	Minimal - indirect references in Bill C-45		
	Short-term	Minimal - rushed through the parliamentary process		

Table 12. Legitimacy of Bill C-45 – NWPA

Legitimacy Type	Core Elements			
Substantive	Limiting the number of waterways protected by the NPA regime did not align			
Procedural		*Incubation*	*Emotive appeals*	*Aboriginal Consultation*
	Long-term	Minimal - outdated parliamentary initiatives	Failed to gain the support of members of members and supporters of INM because it first ignored then repudiated the environmental linkages of the NWPA	No Aboriginal consultation
	Medium-term	Minimal - indirect references in Bill C-45		
	Short-term	Minimal - rushed through the parliamentary process		

Table 13. Legitimacy of Bill C-45 – Overall

Legitimacy Type	Core Elements		
Substantive	The use of a budget bill to amend non-budgetary related matters did not align		
Procedural	*Incubation*	*Emotive appeals*	*Aboriginal Consultation*
	Inadequate - Not all of its contents were directly referenced in Budget 2012 and it was sped through the parliamentary process	Failed to gain the support of members of members and supporters of INM because it was advertised as a bill to create jobs and growth and did not recognize its full implications	No Aboriginal consultation

Chapter 5 – Conclusion

Using an interdisciplinary approach, this research provides an explanation for the emergence of INM in the fall of 2012. By exploring the idea of a 'mobilizing grievance', as per Snow and Soule's (2010) framework on social movement emergence, this research confirmed Bill C-45 as the mobilizing grievance for INM. Members and supporters of INM overwhelmingly pointed to 2012's second omnibus budget implementation bill as the reason for their novel collective action.

In order to explain why Bill C-45 would be deemed so serious that it prompted collective action, it was assessed against a framework of public policy legitimacy. The results suggest that Bill C-45 was a mobilizing grievance for INM because it lacked substantive and procedural legitimacy. Specifically, a small fraction of Bill C-45's content lacked substantive legitimacy: select reforms to the NWPA, and to a lesser degree the changes to the *Indian Act*. While the content of Bill C-45 may have aligned with the values

and beliefs of many Canadians, it did not with thousands of others. Thousands of Canadians were compelled to join INM and challenge the Bill directly. These two reforms greatly reduced the substantive legitimacy of Bill C-45. INM members and supporters also protested the procedure of the bill.

The data suggests that Bill C-45 as a whole and the noted reforms lacked procedural legitimacy. The incubation periods were insufficient. Despite parliamentary discussions with stakeholders, the political actors did not make the reforms to the *Indian Act* or the NWPA agenda items in the long-term. Despite mentions in parliamentary documents and conversations with stakeholders, there were no efforts (e.g. campaign promises, speaking points, mentions to the media) to make the reforms a publically known issue. Moreover, the linkages to the 2012 Budget – the clear start of the incubation period for Bill C-45 – were at best indirect or unclear and at worst not originally intended. Given these factors, the choice to limit debate and speed Bill C-45 through the HoC and the Senate further eroded the possibility for a short-term yet sufficient incubation period.

This lack of time and understanding was compounded by the use of emotive appeals. Bill C-45 was constructed as a pro-economic growth bill, at the cost of environmental protection, Aboriginal and Treaty rights, and parliamentary process. The GoC's emotive appeals only antagonised the future members and supporters of INM; they produced opposition rather than support. The GoC failed to undertake meaningful Aboriginal consultation on the amendments to the NWPA and the *Indian Act*. The lack of consultation was a consistent grievance expressed by INM. Whether or not the GoC had a

legal duty to consult, widely accepted standards of good governance should have compelled them to consult on such historically and contemporarily significant legislation.

In summary, Bill C-45 was deemed serious enough to warrant collective complaint and corrective action because it failed to meet the requirements for legitimate public policy. Given the legacy of Aboriginal mobilization in Canada, the continued tensions between the GoC and First Nations, and the procedural and substantive illegitimacy of Bill C-45, it is unsurprising that Bill C-45 prompted collected outrage and social mobilization.

Returning to Beetham's (1991) *The Legitimation of Power,* he argues that a policy decision or instrument is legitimate if it meets three requirements. Based on these requirements, Bill C-45,

1. Is legitimate because it conformed to the established rules—unless the Federal Court rules that the GoC failed to meet its duty to consult;
2. Has a legitimacy deficit because the exercise of power cannot be justified by reference to beliefs shared by both the dominant and the subordinate; and,
3. Delegitimizes the federal government because of the opposition by INM and others.

Consequentially, Bill C-45 has a 'deep legitimacy deficit' because its content and the process behind it are out of line with the beliefs of INM and resulted in delegitimation through the mobilization of INM. This research thus suggests that Bill C-45 was the mobilizing grievance for INM because it lacked substantive and procedural legitimacy, producing a deep legitimacy deficit that resulted in INM as a manifestation of delegitimizing power. Bill C-45 in fact was a perfect example of policy illegitimacy. INM was the ensuing result.

INM did not begin as an Aboriginal movement with environmental elements, nor did it start as an environmental movement that took up Aboriginal issues. What INM was

originally is linked to why it emerged in the first place. INM began as a movement to stop Bill C-45. The integrations and nuances of INM, which often confounded pundits who suggested it must be unfocused, merely reflected its mobilizing grievance. Its concerns over environmental protection and Aboriginal issues are not mutually exclusive and are not contradictory. Most of the statements on INM's website and nearly all media articles combine these issues in the same sentence. Twelve percent (12%) of the protest images explicitly integrated both the environment and Aboriginal issues with Bill C-45:

- Put First Nations, Water and Soil Before Dirty Oil! (Toronto, December 10, 2012);
- One People – One Voice – One Earth – One Future #IdleNoMore for the next 7 generations (Unknown Location, January 28, 2013); and,
- Environment (check), 1st Nations (check), Bill C-45 (crossed out) (Salish, December 13, 2012).
- Bill C-45 is an insult to the environment, to democracy, to First Nations. Shame" (Salish, December 11, 2012).

INM began as a social movement to protect environmental outcomes, to ensure the fulfillment of Aboriginal and Treaty rights, and to challenge democratic processes in Canada. This relationship however must not be extrapolated to argue that Aboriginal and environmentalist interest inherently align.

While INM has clear links to the environment, as McAdam says, "When you begin to go into that realm of Idle No More is 'save the gophers,' then you're losing the vision" (Blaze, 2013 January 15). INM relates to the complexity and overlap of environmental protection and management, Aboriginal and Treaty rights, sovereignty, jurisdiction, representation, and good governance. INM was never simply concerned with protecting the environment. It is deeply rooted in the fight for Aboriginal and treaty rights. In fact, INM claims that Bill C-45 violates Articles 18, 19 and 20 of the United Nations Declaration on

the Rights of Indigenous Peoples (Idle No More, 2012 December 11a, para. 2). For reasons such as this, Woons (2013) expresses concern with the trend to equate INM with the environmental movement. He believes that people,

> fail to consider challenges that might arise given Idle No More is not simply or most fundamentally about environmental protection… The Indigenous claim to sovereignty and national self-determination is much broader than, though certainly inclusive of, environmental protection. (Woons, 2013, p. 174)

INM emerged to contest a specific grievance. Its goals and measures of success derive from its initial aim: protesting Bill C-45. Given the existence of the necessary contextual factors, the relationship between INM and Bill C-45 suggests that policies that lack legitimacy can become mobilizing grievances for social movements. This is a significant theoretical finding that suggests that policy actions can be critical events in the development of a social movement.

5.1   Policy Implications of the Findings

Beyond the more theoretical findings of this research, its practical findings provide a number of lessons that policymakers should heed if they want to ensure future policy reforms are legitimate and thereby minimize the probability that they produce another movement like INM. The research suggests that,

1. Policies should be legitimate, not just legally defendable;
2. The minimal standard for amending legislation directly related to Aboriginal governance should be consultation;
3. Budget implementation bills should contain clearly related parts that are expressly traceable to the official budget,
4. Major reforms should be openly discussed with the public to mitigate confusion;
5. Debate limiting motions should be used cautiously and sparingly on multifaceted bills; and

6. Policies without direct environmental intentions may still have environmental consequences.

Each of these findings is elaborated below.

5.1.1 Policies should be legitimate, not just legally defendable

McConnell (2010) suggests that "a policy that is produced through constitutional and quasi-constitutional procedures will confer a large degree of legitimacy on policy outcomes, even when those policies are contested" (p. 41). The findings of this research suggest that governments must ensure their policies are fully legitimate. Even if they meet the requirements to be constitutionally or quasi-constitutionally sound, they may still result in widespread contestation. It is not enough that the political actor has the legal authority to act. As McAdam told the media, "even if (the government) has been voted in, they still have a duty to consult people about these kinds of things that impact them" (Graney, 2012 November 19, para. 12). Winning an election does not mean a government has unilateral and ultimate authority to drive the policy direction. The government remains accountable to its citizens. This becomes even more important if some citizens contest their authority over them, as many First Nations do of the Crown (Papillon, 2008; 2012).

To ensure political actors maintain public support, policies should meet the requirements for legitimacy. The research findings on substantive legitimacy are quite compelling. Following Beetham's 1991 work on legitimacy, the INM case study further supports Montpetit's (2008) position that a 'deep legitimacy deficit' may occur when a policy does not align with the public's values and beliefs. The findings further suggest that this deficit can result in the delegitimation of political actors, in this case the GoC and

possibly the AFN, through mass mobilization. Criticisms of the GoC throughout various

protests and documents often lead back to the 2012 omnibus budget bills and their erosion

of democracy (Cockram 2014).

Snow and Owen (2013) contend that collective grievances produced by government

actions, like Bill C-45, are "typically associated with… political decisions and policies that

are seen as morally bankrupt or advantaging some interests to the exclusion of others" (p.

293). Bill C-45 exemplifies this proposition. Bill C-45 was seen to advance economic

interests at the cost of environment protection and Aboriginal and Treaty rights.

Importantly, while injustice may be the driver behind social movements,

> The kinds of events and conditions constitutive of injustices are rarely self-evident or
> incontestable. Rather, the designation of some condition as an injustice is typically a matter
> of interpretation. (Snow and Soule, 2010, p. 48)

This returns to the normative, subjective nature of mobilizing grievances and policy

legitimacy. It speaks to why some people were dismissive of INM, why others joined, and

why many others were confused about what the problem was and why social mobilization

was a valid answer.

Ensuring the legitimacy of public policies, not just their efficiency, efficacy, or

alignment with party values, should be a priority for democratic governments when

designing and implementing policy (Hanberger, 2003; Smoke 1994; Wallner, 2008). While

political actors cannot please everyone, they can act strategically to ensure their actions

have a basis in legitimacy. This matters because if a policy proves to be illegitimate, society

may lose "confidence in the fairness and suitability of their government… and damage the

specific party in power" (Wallner, 2008, p. 423). Legitimacy matters because it may be the

reason why people deem an otherwise unremarkable policy as being serious enough to

prompt collective, corrective action. It matters because in order for the government to have the unequivocal support of its citizens, it must be perceived as legitimate (Bakvis and Skogstad, 2012). Since public policy is typically viewed as a reflection of the government, if their policies lack legitimacy then the government itself is perceived to lack legitimacy. Consequentially, the acceptance of the public to be governed by the government's rules is a clear manifestation of policy legitimacy (Issalys, 2005). That is, obedience is "the behavioural expression of legitimacy," whereas disobedience is the expression of illegitimacy and has "implications for the stability of a political system" (Grimes, 2008, p. 525).

Hence, governments who want to ensure the stability of their regime and political systems at large should pursue legitimate, not just legal, public policies. Policies should reflect the values and beliefs of the public. They should be developed in consultation with the public and affected stakeholders. They should not be rushed. They should be framed by the political in a way that allows for widespread understanding and support. They should be seen as fair, reasonable, expected, and in the public interest. If a policy is legitimate, the political actor is likely following the values of good governance.

5.1.2 The Minimal Standard for Amending Legislation Directly Related to Aboriginal Governance should be Consultation

Given the general support for the substantive changes to the designation process under the *Indian Act*, it may have been a good-news story if, amongst other changes, the GoC had broadly consulted with First Nations. By doing so, the GoC could have developed

a clear call for change, based on First Nations priorities and experiences. This would have resulted in greater acceptance due to a sense of ownership from 'input legitimacy'.

The fact that AANDC failed to consult on the reforms to the *Indian Act* is a particularly notable violation of the basis of good governances and policy legitimacy. Beyond the historical and reconciliation rationales, at the Crown-First Nations Gathering in January 2012 the Prime Minister committed to not doing exactly what Bill C-45 did. In his opening remarks he stated:

> To be sure, our Government has no grand scheme to repeal or to unilaterally re-write the Indian Act: After 136 years, that tree has deep roots - blowing up the stump would just leave a big hole. However, there are ways, creative ways, collaborative ways, ways that involve consultation between our Government, the provinces, and First Nations leadership and communities, ways that provide options within the Act, or outside of it, for practical, incremental and real change. So that will be our approach, to replace elements of the Indian Act with more modern legislation and procedures, in partnership with provinces and First Nations. (Prime Minister of Canada, 2012 January 24)

Given the commitment between the AFN and the GoC through the Crown-First Nations Gatherings, and the GoC's subsequent failure to uphold their end, it is unsurprising that First Nations people would feel like they need to mobilize outside of the usual power structure. This implication echoes a recommendation from Anaya's (2014) report:

> New laws, policies and programmes that affect indigenous peoples should be developed in consultation and true partnership with them. The federal and provincial/territorial governments should not push forward with laws, policies or programmes where significant opposition by indigenous governments and leadership still exists. (p. 25)

Policymakers thus should not act unilaterally, even given presumed substantive support, to amend Aboriginal-specific policies, like *the Indian Act* or the *First Nations Land Management Act,* or legislation with specific Aboriginal requirements, like SARA. Given the commitments to reconciliation and the recent history of the SCS decisions on

consultation under section 35 of the *Constitution Act, 1982*, the GoC ought to consult broadly when it contemplates conduct that may have potentially adverse effects on established or potential Aboriginal or Treaty rights. Consultation is not just a legal duty, it is an important element of good governance and political legitimacy.

5.1.3 Budget Implementation Bills Should Contain Clearly Related Parts that are Expressly Traceable to the Official Budget

One of the main reasons INM reacted to the reforms was because they were unexpected. This fevered reaction could have been mitigated had there been specific references to the reforms in the 2012 Budget. This inclusion would have ensured incubation since its introduction. Bill C-38, as an omnibus budget bill, was widely criticized as an inappropriate avenue to repeal and replace the CEAA with CEAA 2012. However, the policy intent behind the reform was clearly laid out in Budget 2012 and therefore was not entirely unexpected. The same can be said for the 2009 reforms to the NWPA. While some objected for substantive reasons, changes to the NWPA in 2009 were included in that year's budget and were thus expected. Clear, unambiguous connections between the federal budget and its implementation acts will help to ensure the public does not feel a sense of concern upon their introduction.

In addition to the three indicators of Wallner's framework, the mechanism used for the reforms also eroded the legitimacy of the substantive reforms. Using an omnibus budget bill to amend diverse, unrelated, non-financial legislation was regularly contested by INM. Omnibus budget bills are increasingly long and complex, amending non-financial legislation (Cockram, 2014). Omnibus bills require a clear theme to bind their separate but

related parts (Marleau and Montpetit, 2000). Bill C-45's theme of 'jobs and growth' became a catch-all that could be applied to nearly anything.

Despite historical precedence and contemporary practice, policies without a clear relationship should not be included in omnibus budget implementation bills. The clear linkage is that they were in the budget and/or are financial or budgetary reforms. An MP recognized this in 1994 when he rose in the HoC on a point of order and said:

> … I submit to you that it has become a standard practice with governments to bring in omnibus legislation following every budget under what we might call the kitchen sink approach.
>
> […]
>
> Mr. Speaker, I would argue that the subject matter of the bill is so diverse that a single vote on the content would put members in conflict with their own principles.
>
> In this present case, the drafters of Bill C-17 have incorporated in the same bill the following measures: public sector compensation freezes; a freeze in Canada assistance plan payments and Public Utilities Income Tax Transfer Act transfers; extension and deepening of transportation subsidies; authorization for the Canadian Broadcasting Corporation to borrow money; and changes to unemployment insurance with respect to benefits and the payroll taxes.
>
> First, there is a lack of relevancy of these issues. The omnibus bills we have before us attempt to amend several different existing laws.
>
> Second, in the interest of democracy I ask: How can members represent their constituents on these various areas when they are forced to vote in a block on such legislation and on such concerns?
>
> We can agree with some of the measures but oppose others. How do we express our views and the views of our constituents when the matters are so diverse? Dividing the bill into several components would allow members to represent views of their constituents on each of the different components in the bill.
>
> The bill contains many distinct proposals and principles and asking members to provide simple answers to such complex questions is in contradiction to the conventions and practices of the House.
>
> […]

> I would also ask the government members, particularly those who have spoken on precisely this question in the previous Parliament with precisely the same concerns, to give serious consideration to this issue of democracy and the functionality of this Parliament now. (Parliament of Canada, 1994 March 25).

There are a many striking elements of this point of order. First, this is largely the discourse used by opposition MPs and to a lesser extent INM to try to stop Bill C-45. Second, the content of the 1994 Bill only contained financial amendments. There was a much clearer connection between the separate elements here than in Bill C-45. Third, this budget had no 'other measures' outside of the 1994 Budget.[49] Fourth, it was only 21 pages, including the Annexes. Lastly, the MP was Stephen Harper. Problems that INM protested against at the end of 2012 were recognized by the Prime Minister when he was an MP. Even if these reforms may spur 'jobs and growth', their inclusion in a budget bill places principles of efficiency above procedural and substantive legitimacy. The connection between the budget and the budget implementation bill is lost—as is the democratic integrity of the bill.

Consequentially, it may have been wiser for the GoC to pursue separate omnibus legislation to specifically amend legislation to ensure responsible resource and economic development. Alternatively, the major overhaul of the NWPA could have been introduced using a standalone bill (i.e. a bill containing major revisions of existing Acts). The *Indian Act* could have similarly been amended using a bill containing amendments to existing Acts. Bills do not need to be one hundred pages. They should be developed to ensure proper parliamentary review and decision-making. INM can be seen a response to the approach

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[49] An Act to amend certain statutes to implement certain provisions of the budget tabled in Parliament on February 22, 1994.

taken by the GoC to "govern by omnibudget, cramming all kinds of unrelated legislation in massive bills" (Ottawa Citizen, 2012 December 31, para. 4).

5.1.4 Major Reforms should be Publically Discussed to Minimize Surprise and Confusion

As a long and complex omnibus budget bill, Bill C-45 was not an ideal candidate for a thorough explanation of its parts. Unlike other bills to amend existing acts, legislative summaries are not produced for omnibus budget bills. A legislative summary is an official GoC document that clearly explains the bill. Ideally, they make the legalese more accessible. Bill C-45 did not have this beneficial document that would have provided a clear, non-partisan description. Regardless, it would have been a cumbersome task for the GoC to ensure clarity and understanding of its proposed reforms because they were so far reaching, removed from their specific legislative context, and put in a financial bill.

While this method may have been chosen for efficiency reasons, the result was confusion and misunderstanding of the policies, both in the HoC, on the streets, and online. Based on the information furnished by the GoC and the media, many members and supporters of INM misunderstood and mischaracterized the reforms to the *Indian Act* and the NWPA. In large part, this was because the reforms were not incubating in the medium to long term and were not initially explained in detail by the GoC. Neither the amendments to the *Indian Act* nor the NWPA were touted in Finance Canada's overview or in the initial speeches by Conservative Party of Canada MPs.

When the *Indian Act* reforms were introduced, AANDC published a brief press release on its website. On October 22, 2012—four days after the introduction of Bill C-45—AANDC mailed out letters to inform First Nation communities of the amendments. Even then, this communication was not public; it is not something the founders of INM could readily obtain. The need to amend the designation process under the *Indian Act* was raised by parliamentary committees, by the Auditor General, and by band councils. However, it was not publicized in an accessible way to the grassroots. This is in part due to minimal media coverage of the policy problem. Again, while these reports and meetings are in the public sphere, they are not on the radar of the average Canadian. Reforming the designation process was not a regular talking point for the GoC; it was not a campaign promise. While there was some effort to generally problematize economic development barriers on reserve, then theoretically linked to the land designation process, this was not done in a specific, predictable way. In particular, it is questionable to assume that the commitment to economic development by the Crown-First Nations Gathering would incubate specific reforms to the designation process. It was not explicitly problematized to the point that the public clearly accepted it as a problem that needed fixing. If it had been, the public would not have confused designation with surrender. The GoC failed again to make it an issue, a problem, and an agenda item.

An avoidable outcome of this failure to widely communicate was the confusion over what the amendments to the *Indian Act* did. A number of quotes demonstrate this misunderstanding within INM:

When it comes to the Indian Act, McAdam said she is most worried that the bill would allow the Aboriginal Affairs minister to call a referendum to consider the surrender of a band's reserve lands. (Graney, 2012 November 19, para. 7)

Bill C-45 Job and Growth Act (Omnibus bill includes Indian Act amendments regarding voting on-reserve, land surrender/designations). (Idle No More, 2012 December 11a)

The Bill brings forward changes specifically to the Indian Act that will lower the threshold of community consent in the designation and surrender process of Indian Reserve Lands. (Idle No More, 2012 December 13, para. 2)

Two provisions in particular upset them: the reduction in the amount of federally protected waterways and a fast tracked process to surrender reserve lands. (Kinew, 2013 January 17, para. 3)

The only mention of the Indian Act in the federal budget has to deal with direct taxation arrangements, but Bill C-45 would change the way band members vote on and approve the surrender of land. (Smith, 2012 October 18, para. 7)

Why is government policy and legislation always wanting us to surrender the land? To cede and surrender? (Chief of Onion Lake Cree Nation in Woods, 2013, p. 173).

Importantly, these misunderstandings would have been avoided had there been proper consultation and framing. The apparent concern expressed by members of INM over its content might reflect a communications deficit between leading Aboriginal organizations, the federal government, and the public (or grassroots). This may be explained in part by the limited public discussions about the need for the amendments to the *Indian Act*. The GoC opted for a minimal engagement and communication strategy despite the fact that AANDC, as demonstrated in a document released in the ATIP request, recognized that land designation and land surrender are commonly confused. It is probable that if these reforms had been consulted on and introduced in a manner that allowed for better understanding and scrutiny, amongst other factors, more First Nations may have supported them.

During the early days of INM, there was a similar misunderstanding and misrepresentation of Bill C-45's amendments to the NWPA. Specifically, there was the misbelief that the amendments to the NWPA directly decreased environmental protection. There are two reasons why this understanding was not as accurate as portrayed. First, waterways in Canada continue to be protected by legislation specifically designed to protect the environment like the *Canadian Environmental Protection Act, 1999*, the *Fisheries Act*, and CEAA 2012. Moreover, some transport and marine safety legislation also includes environmental protection provisions, such as the *Arctic Waters Pollution Prevention Act* (and its Arctic Waters Pollution Prevention Regulations), *Canada Marine Act,* and the *Canada Transportation Act*. Indeed, one of the explicit purposes of the *Canada Marine Act*, as per section 4, is to 'provide for a high level of safety and environmental protection.'

Secondly, there was also confusion over the reforms to the NWPA despite how early and strongly public and private sector actors raised their concerns with the GoC. Their actions failed to translate into an incubation period because they failed to actively engage the public. The specific need to reform the NWPA did not permeate through the public sphere. It does not matter that political actors discussed the need for these reforms for years. Those discussions generally cannot contribute to an incubation period because they are not public. Therefore, due to negligible speaking points, media coverage, and general awareness, the public's knowledge of these discussions was limited to non-existent. This lack of awareness, or incubation, occurred because the GoC and the regulated community failed to get their message to the masses. It resulted in half-understandings and misplaced outrage.

Specifically, since the summer of 2012, the NWPA (and the NPA) has no direct link to environmental management. INM members and supporters misconstrued the meaning of some of the amendments to the NWPA in Bill C-45. Walton's (2012 October 29) legal summary of the amendments explains why:

> …commentators have suggested the amendments to the NWPA, in essence, mean it is no longer an act that protects the environment. In reality, the NWPA is not, and has never been, a statute which provided for protection of the aquatic environment; rather, it provides for protection of navigation, over which the federal government has exclusive authority under Canada's constitution. However, due to the manner in which the Canadian Environmental Assessment Act, 1992 (CEAA 1992) was structured, there was a link between NWPA approvals and environmental protection. This is because under the CEAA 1992, any approval to be issued under the NWPA triggered a federal environmental assessment, which was required to be carried out by the authority issuing the NWPA approval – but the approval itself related to navigation, not the environment. If CEAA 1992 had not recently been repealed, then it would be accurate to state that the proposed revisions to the NWPA potentially reduces federal government protection of the environment of navigable waters. However, as NWPA approvals have already been removed as a trigger for environmental assessment, the narrowing of the scope of approvals required for works on navigable waters in the revised NPA does not have specific environmental implications – that already occurred when CEAA 1992 was repealed and replaced with a new environmental assessment regime earlier this year under Bill C-38. It is also noted that the amendments to the NWPA in Bill C-45 do not affect other federal or provincial regimes which provide protection of the aquatic environment. (Emphasis added, para. 16)

In sum, the primary environmental element of the NWPA was removed through the repeal and replace of CEAA in Bill C-38, not through its overhaul in Bill C-45. While only protecting 1% of waterways through a list may be catchier than removing the trigger for environmental assessment, the later has much more profound environmental consequences.

These two findings indicate a gap between GoC communication and public understanding; they do not diminish the inherent relationship between water for navigation and water for all purposes—see section 5.1.6. What the GoC failed to do was to explain the reforms openly and immediately. It should have been anticipated that given recent water

crises across Canada (e.g. Walkerton and boil water advisories on reserves/in rural areas) and the reaction to Bill C-38, the GoC would need to develop and execute a well-thought-out communications plan. Overall, substantive concerns may have been mitigated or potentially avoided had the GoC effectively engaged and communicated with stakeholders, the general public, and Aboriginal Peoples.

5.1.5 Debate Limiting Motions should be used Cautiously and Sparingly on Multifaceted Bills

When debating long and complex omnibus bills whose parts are not clearly related, or bills that prompt public (beyond parliamentary) debate, parliamentarians should not put forth time limiting motions. Time allocation motions do not allow for proper study, scrutiny, and democratic oversight when applied to bills with such breadth in terms of content and consequences. Bills should be open to debate and amendment during the parliamentary process. Time enables proper study and scrutiny, and thus mistakes or oversights can be caught and addressed. For example, errors in CEAA 2012 should have been found during the clause-by-clause study of Bill C-38. Bill C-45 should not have been needed to amend errors in CEAA 2012. To operate in a climate where opposition parties or members of the leading party are not given a reasonable opportunity to improve a bill with thoughtful deliberation and amendment is an affront on the basics of parliamentary democracy.

5.1.6 Policies without Direct Environmental Intentions May Still Have Environmental Consequences

The substantive reforms that INM rallied against are very relevant for understanding the broad nature of environmental policy, or policy that has environmental outcomes, even if they are not in the traditional list of Canada's environmental legislation. While the NWPA/NPA is at least one step removed from being environmental policy, its most direct environmental linkages were contingent on it triggering environmental assessments under CEAA. As noted in Section 5.1.4, this linkage was broken with Bill C-38; NWPA projects do not trigger environmental assessments under CEAA 2012. The *Indian Act* is not environmental legislation either. However, the regime of both acts can impact the environment, and that is something that INM noticed.

During the 1990s the Oka crises represented a call for Canadians to hear such absences as a historical counterpoint (or counternarrative) to the legacy of colonization. Twenty years later grassroots Indigenous movements like Idle No More continue to provoke us to reject the recent federal changes to environmental protection laws in Bill C-45 that threaten to negate negotiated treaty rights between our nations (Aboriginal and non-Aboriginal).

- Ng-A-Fook, 2013, p. 288

As shown in the data, many of the concerns about the reforms to NWPA and the *Indian Act* were because of potential negative environmental consequences. These are the changes that INM asserts will negatively impact long term environment protection and Aboriginal and Treaty rights. The founders organized the very first INM rally because they believed the amendments to the *Indian Act* "would ultimately make room for oil, nuclear and gas industries to tear up the land for profit" (Idle No More, 2013 January 1). Forty-five percent (45%) of the protest sign images directly relate to an aspect of the environment

(e.g. water, land, Mother Nature) with fifty-three individual references within those images. Indicative examples include: "Nobody wins a war on environment" (Chilliwack, December 21, 2012); "Protect the Environment 4 Everyone" (Kingston, January 28, 2013); "Protect our land, water, food, plants + animals from greed" (Saskatoon, December 21, 2012); and, "Protect our Lakes and Rivers" (Toronto, January 14, 2013). The water and the land are the overwhelming dominant subjects of the protest signs. In fact, twenty-three percent (23%) of the protest sign images made direct references to water—the most of any individual code.

Similarly, most Canadians would not include the NWPA or the *Indian Act* when listing environmental laws. However, the Energy Framework Initiative (EFI)[50] included the NWPA in a letter to the federal Ministers of the Environment and Natural Resources in December 2011. The letter, accessed through an ATIP request, includes the NWPA in a list of legislation that protects the environment. The EFI (2011) stated,

> We believe that the basic approach embodied in existing legislation is outdated. At the heart of most existing legislation is a philosophy of prohibiting harm; 'environmental' legislation is almost entirely focused on preventing bad things from happening rather than enabling responsible outcomes. (p. 2)

All of the legislation listed, with the exception of the *Migratory Bird Convention Act*, 1994, was amended in the 2012 omnibus budget bills. This is not to suggest the letter was the driving factor, but to suggest that the NWPA is not purely related to transportation. Major stakeholders recognized the interplay and broad outcomes of this legislation.

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[50] The EFI represents Canadian Energy Pipeline Association, Canadian Gas Association, Canadian Petroleum Products Institute, and the Canadian Association of Petroleum Producers.

Members and supporters of INM generally believed that the NWPA served to protect the water from development that impacted navigation, which resulted in ad hoc environmental protection. Because the regime governs water, there is an intrinsic connection to the environment. Decreasing the regulation of water, in any regard, to ease the approval process of development and projects, will likely be met with opposition. Overall, it is difficult to separate and isolate the concerns over the land designation under the *Indian Act* and the decreased number of waterways regulated by the NWPA from their potential environmental consequences. Any definitive division between governing land or water and protecting the environment is a fabrication. Water and land, after all, are inherently environmental resources. Even the perception of reducing their protection, for whatever reason, on such a large scale[51] will likely cause alarm. It is naïve to suggest or believe that parceling out legislative protection for some waterways and relying on the common law right of navigation in others would go unnoticed, or that exempting pipelines under the NPA on the one percent would not cause concern. Without overgeneralizing, water is embedded in the belief systems of many Aboriginal Peoples in Canada. Many rely on it for traditional foods, for social and ceremonial purposes, and for transportation. Water is simply water – and the belief that changing one aspect of its protection will have ripple effects is not difficult to understand.

Based on the concerns expressed by INM, analysis by Ecojustice, and lobbying by the EFI, the GoC could have been more successful with their emotive appeals if they had recognized the environmental legacy of the NWPA as recognized by the SCC, and

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[51] 99% of Canadian waterways are not listed under the NPA.

acknowledged they were limiting the scope of the Act to what they believed was appropriate. Moreover, the GoC could have done a better job of explaining *why* the amendments would not impact the environmental protection of the waterways. For example, they should have stressed that waterways continue to be protected by the *Fisheries Act*, CEAA 2012, *the Canadian Environmental Protection Act*, and various other federal marine laws, and their respective regulations. While this would not have fully addressed the delinking of navigation and environmental protection, it may have quelled some dissenters. The lesson here is that land and water, even when regulated by non-environmental laws, retain at the very minimum the appearance of being environmental.

5.2   Research Limitations

There are a number of limitations to this research. The main limitations relate to data collection. First, I was unable to schedule the planned interviews. I was unsuccessful in my attempts to contact the founders and spokespersons for INM. The interviews could have provided targeted insights into elements of Bill C-45 potentially beyond the scope of the legitimacy framework, which they felt were necessary to the emergence of INM. Thus, they could have produced new knowledge or triangulated data that could have further tested and validated the framework. Moreover, interviews could have provided additional and corroborating insights into the perceived relationship between the NWPA, the *Indian Act*, and environmental integrity.

Beyond the interviews with representatives of INM, I was unable to interview federal policymakers because of the judicial review of Bill C-38 and Bill C-45 launched by

the Mikisew Cree First Nation and the Frog Lake First Nation. Any requests for interviews would have been declined because the issue is currently before the Federal Court. Consequentially, the data on the policy changes and GoC rationales was more limited than originally designed.

ATIP requests were used to help offset this missing data, but these requests had their own limitations. The results of the completed requests redacted key documents and paragraphs that cannot be released for twenty years because they are protected by "Cabinet Confidence". [52] These documents would have been the most beneficial to review. Moreover, the original scope of the request to Transport Canada for records on the NWPA reforms had to be reduced because it was administratively unreasonable for the department to produce. Despite efforts to negotiate the request, it was extended by the maximum of 120 days.

5.3   Opportunities for Future Research

This research has uncovered several areas for future research, three of which are based on Snow and Soule's model and the limitations to this research. First, this research assumed that the necessary but insufficient contextual conditions (political opportunity, resource mobilization, and ecological factors) existed. There should be research conducted

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[52] Section 69(1) of the *Access to Information Act* means that (b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions and (d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy cannot be released in access to information requests.

to assess to what extent these variables existed (see Figure 5). What political opportunities, resources, and ecological factors were available and utilized in order for INM to emerge? Were all of these equally important? By answering these questions, a broader context of why INM emerged will be gained.
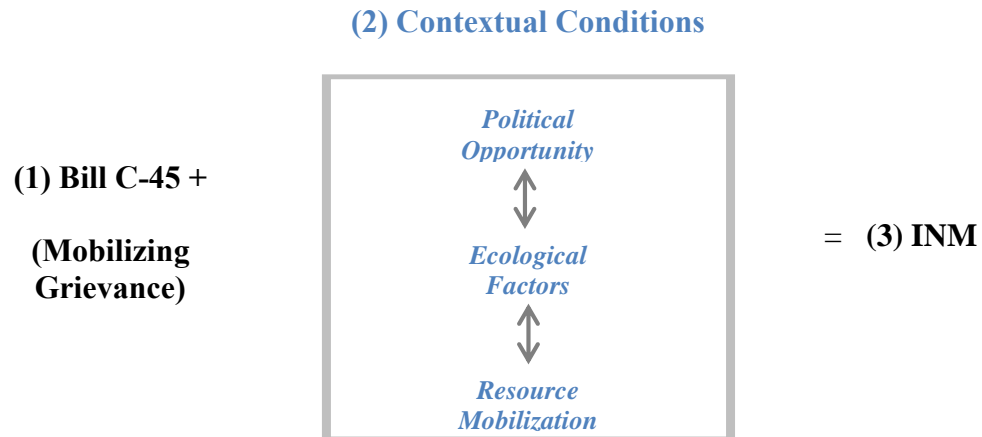
(2) Contextual Conditions

(1) Bill C-45 +

(Mobilizing Grievance)

Political Opportunity

Ecological Factors

Resource Mobilization

= **(3) INM**

Figure 5. Snow and Soule's (2010) General Model of Social Movement Emergence, with Bill C-45 and INM

Second, and on a related note, Snow and Soule (2010) suggest there are three conditions and/or processes found throughout the literature for which their convergence accounts for the generation of mobilizing grievances: structural or material conditions, social psychological processes, and framing processes. INM should be used as a case study to examine the elements theorized to be necessary to generate a mobilizing grievance.

Lastly, Snow and Soule (2010) suggest that certain grievances are neither individual nor ubiquitous, but are experienced collectively, making them central to the idea of mobilizing grievances. This policy-oriented research assumed that Bill C-45 was a collective grievance: a critical event that was experienced collectively. There should be

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additional research into what made it a collective grievance. Clearly thousands of people across Canada, and around the world, felt wronged following the introduction of Bill C-45. In order to determine Bill C-45's status as a collective grievance, its impact on collective identities, including Aboriginal identities, and collective structures/processes should be considered in detail. The importance of Aboriginal collectivist culture, rather than individualism, is well studied (Aboriginal Human Resource Council, 2007). The corresponding collective identities found in Aboriginal cultures should provide a useful basis for this analysis.

There are other areas of research needed outside of completing Snow and Soule's model. First, because the scope of this research was limited to emergence, it does not discuss the later stages of INM, which may include coalescence, bureaucratization, and decline (Christiansen, 2009). There should also be research exploring the tactics and critical events, like the teach-ins, blockades, National Day of Action, hunger strike of Chief Theresa Spence (of the north Ontario Attawapiskat First Nation) and Sovereignty Summer. Additionally, the new issues targeted by INM since its founding, including raising awareness about missing and murdered Aboriginal women (Becker, 2009), are important developments for the movement and warrant further study. The gendered aspect of INM should further be explored. This research could work from a proposition by Rootes and Brulle (2013) that,

> Women play more prominent roles in grassroots mobilizations than national environmental movement organizations, reflecting women's greater involvement with, and confidence in acting in, the local community than the wider public sphere (p. 415).

There should be research to explore the validity of this proposition across cases studies, including INM. Importantly, as part of a long history of mobilization and activism by Aboriginal women, INM is novel and noteworthy because it was a grassroots mobilization that did not remain localized but instead became a national and international phenomenon.

Finally, there should be research to explain and compare the impact and outcomes of INM. Did INM impact Aboriginal or environmental policy? Did it influence Aboriginal or Treaty rights, or the negotiation and implementation of self-government agreements and comprehensive land claims agreements? Did INM influence the GoC's use of large, wide-reaching omnibus budget implementation bills? And how was INM similar to and different from other social movements in Canada and around the world? INM remains a fruitful case study for scholarly examination.

5.4   Concluding Remarks

Unexpected consequences can emerge at any stage of the policy cycle. In many fields, including environmental policy, outcomes can be inherently uncertain. This fact reflects the complex systems environmental policies seek to govern, and also the changing state of scientific knowledge. These uncertainties are not only often scientific-related but also deeply social. Acknowledging the work of scholars on socio-ecological systems (see Berkes, Colding, and Folk, 2003; Gunderson and Holling, 2002), the social uncertainties that may result from environmental policy reforms are nevertheless generally overlooked. For instance, the possibility that a new and distinct social movement may be spurred with

the primary aim to challenge a specific policy decision is not sufficiently addressed in the literature on policy reform. While the GoC undoubtedly predicted negative responses before introducing Bills C-38 and C-45, spurring a full-fledged social movement was not likely on their respective risk assessments. Yet it happened and caught the GoC by surprise (Palmater, 2012 December 28). The emergence of social movements is something that policy makers should consider.

Overall, Bill C-45 can be framed as a manifestation of the neo-colonial relationship between the Crown and Aboriginal Peoples in Canada. The reforms are seen by many Aboriginal Peoples as taking place without consultation or consent, without meeting treaty obligations, and without reflecting Aboriginal attitudes of environmental management. Kovach (2013) notes that while the historical roots of these Aboriginal claims predate environmentalist concerns, there have been centuries of Aboriginal environmentalist ethics, with specific stewardship paid to the water and land. The overwhelming conclusion of this thesis is that the founders of INM mobilized because of their belief that Bill C-45 "disrespects treaty rights and aboriginal sovereignty and erodes protection of the environment" (Cooper, 2012 December 31, para. 2). Using an interdisciplinary theoretical approach and qualitative data analysis, this research suggests that INM emerged following legislative reform, particularly in response to amendments with environmental implications, because the reforms lacked substantive and procedural legitimacy.

These findings in no way diminish the fact that the emergence of INM has many more determining factors than a bill or a few policy decisions. The model applied in this research recognizes this fact with its contextual conditions that warrant further research

(see Section 5.3). There are a multitude of critically important historical and contemporary factors that influenced the emergence of INM. These factors may include the failure of the Government of Canada to fulfill its treaty obligations and the various socio-economic indicators that show disparity between Aboriginal Peoples in Canada and the average Canadian (see Vowel, 2012 December 12; Palmater, 2012 December 28). Without colonization, without the decades of botched "Indian policy", without an environmental ethic, and without social media, it is unlikely that INM would have unfolded as it did. It is unlikely that without the decades of accumulated collective grievances, Bill C-45 would have been the mobilizing spark that it was. Indeed, as the nuances in its name demonstrate, Idle No More reflects history, agency, and power in Canada.

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Appendix A – Omnibus Budget Implementation Bills, Government of Canada, 1997-2013

Year	Title	Bill #	Date of First Reading	Date of Royal Assent	Duration of Legislative Process	Page Count	Pages per Day
1997	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 1997	93	09/03/1997	25/04/1997	17	61	3.59
1998	An Act to implement certain provisions of the budget tabled in Parliament on February 24, 1998	36	19/03/1998	18/06/1998	92	90	0.98
1999	An Act to implement certain provisions of the budget tabled in Parliament on February 16, 1999	71	16/03/1999	17/06/1999	94	31	0.33
2000	An Act to implement certain provisions of the budget tabled in Parliament on February 28, 2000	32	07/04/2000	29/06/2000	84	34	0.40
2001	An Act to implement certain provisions of the budget tabled in Parliament on December 10, 2001	49	05/02/2002	27/03/2002	51	112	2.20
2003	An Act to implement certain provisions of the budget tabled in	28	25/03/2003	19/06/2003	87	143	1.64

Year	Title	Bill #	Date of First Reading	Date of Royal Assent	Duration of Legislative Process	Page Count	Pages per Day
	Parliament on February 18, 2003						
2004	An Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004	30	31/03/2004	14/05/2004	45	62	1.38
2004	A second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004	33	08/12/2004	13/05/2005	157	79	0.50
2005	An Act to implement certain provisions of the budget tabled in Parliament on February 23, 2005	43	24/03/2005	29/06/2005	98	118	1.20
2006	An Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006	13	11/05/2006	22/06/2006	43	186	4.33
2006	A second Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006	28	18/10/2006	21/02/2007	127	139	1.09
2007	An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2007	52	29/03/2007	22/06/2007	86	144	1.67

Year	Title	Bill #	Date of First Reading	Date of Royal Assent	Duration of Legislative Process	Page Count	Pages per Day
2007	An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2007 and to implement certain provisions of the economic statement tabled in Parliament on October 30, 2007	28	21/11/2007	14/12/2007	24	377	15.71
2008	An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget	50	14/03/2008	18/06/2008	97	151	1.56
2009	An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures	10	26/02/2009	12/03/2009	15	551	36.73
2009	An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and to implement other measures	51	30/09/2009	15/12/2009	77	58	0.75

Year	Title	Bill #	Date of First Reading	Date of Royal Assent	Duration of Legislative Process	Page Count	Pages per Day
2010	An Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures	9	29/03/2010	12/07/2010	106	903	8.52
2010	A second Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures	47	30/09/2010	15/12/2010	77	51	0.66
2011	An Act to implement certain provisions of the 2011 budget as updated on June 6, 2011	3	14/06/2011	26/06/2011	13	57	4.38
2011	An Act to implement certain provisions of the 2011 budget as updated on June 6, 2011 and other measures	13	04/10/2011	15/12/2011	73	656	8.99
2012	An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures	38	26/04/2012	29/06/2012	65	450	6.92
2012	A second Act to implement certain provisions of the budget tabled in Parliament on	45	18/10/2012	14/12/2012	58	428	7.38

Year	Title	Bill #	Date of First Reading	Date of Royal Assent	Duration of Legislative Process	Page Count	Pages per Day
	March 29, 2012 and other measures						
2013	An Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures	60	29/04/2013	26/06/2013	59	126	2.14
2013	A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures	4	22/10/2013	12/12/2013	52	320	6.15

Appendix B – *Indian Act* before and after Bill C-45

Short Description	Pre-Bill C-45	Bill C-45 Amendment	Summary of Substantive Changes
37(2) Other transactions	Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been <u>surrendered to Her Majesty</u> pursuant to subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.	Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been designated under subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.	Change from surrender to designation in order to lands to be leased or have an interest granted in them.
39(1) Conditions — surrender	An absolute surrender <u>or a designation</u> is void unless	An absolute surrender is void unless	Removal of designation in a provision– to reflect the newly added process. No change to the surrender process.
39(1)(b)(ii) Special meeting	at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender <u>or designation,</u> or	at a special meeting of the band called by the Minister for the purpose of considering a proposed absolute surrender, or	Removal of designation in a provision– to reflect the newly added process. No change to the surrender process.
39(2) Minister may call meeting or referendum	Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1), the Minister may, if the proposed absolute surrender <u>or designation</u> was assented to by a majority of the electors who did vote, call another meeting by giving thirty days notice thereof or another	If a majority of the electors of a band did not vote at a meeting or referendum called under subsection (1), the Minister may, if the proposed absolute surrender was assented to by a majority of the electors who did vote, call another meeting by giving 30 days' [sic] notice of that other meeting or another	Removal of designation in a provision– to reflect the newly added process. No change to the surrender process. Miscellaneous drafting convention updates.

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	referendum as provided in the regulations.	referendum as provided in the regulations.	
39(3) Assent of band	Where a meeting is called pursuant to subsection (2) and the proposed absolute surrender <u>or designation</u> is assented to at the meeting or referendum by a majority of the electors voting, the surrender or designation shall be deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.	If a meeting or referendum is called under subsection (2) and the proposed absolute surrender is assented to at the meeting or referendum by a majority of the electors voting, the surrender is deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.	Removal of designation in a provision– to reflect the newly added process. No change to the surrender process. Miscellaneous drafting convention updates.
39.1 Conditions — designation	N/A	A designation is valid if it is made to Her Majesty, is assented to by a majority of the electors of the band voting at a referendum held in accordance with the regulations, is recommended to the Minister by the council of the band and is accepted by the Minister.	Land designation process requires: 1. A referendum is held in accordance with the regulations; 2. The support of the majority of the electors of the band voting at a referendum; 3. The council of the band to recommend the designation to the Minister; and 4. The Minister to accept it.
40. Certification — surrender	A proposed absolute surrender <u>or designation</u> that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band, and then submitted to the Governor in Council for acceptance or refusal.	A proposed absolute surrender that is assented to by the band in accordance with section 39 shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band and then submitted to the Governor in Council for acceptance or refusal.	Removal of designation in a provision– to reflect the newly added process. No change to the surrender process. Miscellaneous drafting convention updates.

40.1 (1) Certification — designation	n/a	A proposed designation that is assented to in accordance with section 39.1 shall be certified on oath by an officer of the Department and by the chief or a member of the council of the band.	An oath by an officer of AADNC and by the chief or a member of the council of the band will certify the designation.
40.1 (2) Ministerial decision	n/a	On the recommendation of the council of the band, the proposed designation shall be submitted to the Minister who may accept or reject it.	Unlike the surrender process, the designation process does not require the results of the referendum to be submitted to the Governor in Council for acceptance or refusal. Ministerial acceptance the final step (see section 39.1).

Appendix C – Motions to Limit Time for Debate on Bill C-45

Date	Motioned By	Motion
October 25, 2012	Peter Van Loan (Leader of the Government in the House of Commons)	…not more than four further sitting days shall be allotted to the consideration of the second reading stage of the bill; and that, 15 minutes before the expiry of the time provided for government orders on the fourth day allotted to the consideration of the second reading stage of the said bill, any proceedings before the House shall be interrupted, if required for the purpose of this order, and, in turn, every question necessary for the disposal of the said stage of the bill shall be put forthwith and successively, without further debate or amendment.
December 3, 2012	Peter Van Loan	…not more than five further hours shall be allotted to the consideration of the report stage and one sitting day shall be allotted to the third reading stage of the said bill and, at the expiry of the time provided for the consideration at report stage and at fifteen minutes before the expiry of the time provided for government business on the day allotted to the consideration of the third reading stage of the said bill, any proceedings before the House shall be interrupted, if required for the purpose of this order, and in turn every question necessary for the disposal of the stage of the bill then under consideration shall be put forthwith and successively without further debate or amendment.
December 13, 2012	Claude Carignan, the Deputy Leader of the Government in the Senate	…not more than a further six hours of debate be allocated for consideration at third reading stage of Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures… the purpose of this proposal is to manage the time allocated for debate on Bill C-45. Debate at third reading of this bill has already begun, and the opposition critic had time to share his opinion. He delivered a speech that was over 45 minutes long and reflected an in-depth analysis. His eloquent speech indicated to us that he had enough time to conduct a rather comprehensive review of the bill. The bill was studied by six committees that met for over 62 hours during 30 meetings; 135 witnesses were heard by the various committee members, who asked questions and studied the bill thoroughly. That is why we think