THE CANADIAN STATE-AS-MEDIATOR
IN DEEP CONFLICT:
THE IMPLICATIONS OF
KYOTO PROTOCOL RATIFICATION

by

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DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

In the
School of Communication

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SIMON FRASER UNIVERSITY

June 2004

APPROVAL

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DEGREE   PhD

TITLE OF DISSERTATION: THE CANADIAN STATE-AS-MEDIATOR
                                  IN DEEP CONFLICT: THE
                                  IMPLICATIONS OF KYOTO PROTOCOL
                                  RATIFICATION

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ABSTRACT

Conflict relating to global climate change is a matter of urgency. Management, rather than resolution, of such conflict leaves humans in an unsustainable relationship with the environment and jeopardizes the well-being of present and future generations. A framework is proposed for understanding the connection between the processes of policy formation and the Canadian state's intervention in conflict, including the conflict generating, and generated by, global climate change. In this type of intervention, the Canadian state facilitates and steers the participation of public- and private-interest collective actors in the review of certain conflicts' underlying norms. The Canadian state warrants the name *state-as-mediator* because its role as intervener parallels that of a mediator. This intervention resembles an exaggerated form of mediation, and warrants the name *hyper-context mediation.*

Hyper-context mediation typically assures the persistence of conflicts rooted in norms; such persistent conflict is distinguished as *deep conflict*. The dissertation argues that deep conflict is characterized by three factors. First, equal treatment admits participants into hyper-context mediation despite differences in ability and willingness to pursue mutual understanding. Second, the Canadian state-as-mediator is unable to steer all participants into cooperative behaviour, exacerbating the unevenness of the playing field. Third, the Canadian state's partiality to private interests encourages policymaking that maintains the status quo and, thus, deep conflict.

The dissertation's content analysis of news items in Canadian national newspapers reveals the societal discourse behind Canada's ratification of the Kyoto Protocol, which addresses global warming and climate change. The dissertation argues that Kyoto Protocol ratification, a rare instance when hyper-context mediation resolves deep conflict, provides a

template for reform of the Canadian state's conflict intervention and identifies eight sites where such reform is needed: inadequate opportunities for participation in the review of norms; acceptance of wilful distortion of communication; resignation concerning present forms of free market liberalism; submission to counterproductive societal expectations; state commitment to, but not compliance with, global regimes in the public interest; indifference regarding public communication rights; disinterest in other forms of alternative dispute resolution as models for conflict intervention; and approval of the standard decision-making practices of collective actors.

DEDICATION

To Kevin Madill, words cannot express my appreciation of your involvement in this project. None of this would have been possible without your intelligence, patience, and love.

ACKNOWLEDGEMENTS

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DEFINITIONS

best interests • the decisions and actions that are for an actor's own wellbeing • The actor's wellbeing is gauged in terms of satisfaction of basic human needs and equal respect for all members of the community.

bias • the disposition to favour one set of interests over another, consciously and/or unconsciously •

collective actor • a group that conveys a sense of character by virtue of its organization and pursuit of goals • A collective actor's efficacy of action exceeds that of its individual constituents, should those constituents pursue similar goals on their own.

communicative action • the attempt at mutual understanding that involves making claims and supporting them with reasons • Communicative action is conducive to conflict resolution and obtaining consent. It is presumed essential of actors participating in hyper-context mediation. *Compare* **strategic action**.

communicative action requisites • seven traits essential for an actor to participate in communicative action and hyper-context mediation, namely **communicative consistency** (i.e., avoidance of contradiction, reliable use of language, and assertion of what one believes to be true); **continuity of character** (i.e., reasonable rate of change for an actor's identity or character); **a cooperative nature** (i.e., providing what is called for in an exchange of information and ideas); **liability to values** (i.e., holding particular principles and qualities in high esteem); **rationality** (i.e., reliance upon, and respect for, justified claims), **reliable memory** (i.e., the ability to access knowledge of the past on demand); and **trust** (i.e., the expectation that others attempt communicative action in earnest, unless proven otherwise) •

conflict • excessive or unacceptable shaping of the spaces and practices of everyday life • The shaping exceeds or differs from what is required of social actors to realize their goals by reasonable means. Excessive or unacceptable shaping is referred

to as **distortion**. Distorted spaces and practices are designated **manifest conflict** if they incite a corrective response. Distorted spaces and practices are designated **latent conflict** if they are (a) undetected or (b) detected, but do not incite a corrective response. *Compare* **power**.

deep conflict • conflict rooted in norms that persists because (a) it does not invite intervention or (b) intervention does not adequately address conflict's underlying norms • **Latent conflict** is defined as deep conflict if it goes undetected or interested parties lack the initiative to resolve it. **Manifest conflict** is distinguished as deep conflict if intervention fails to bring about conflict resolution.

distorted norms • prevalent and entrenched ways of thinking and doing that foster morally and ethically problematic consequences such as human suffering, injustice, social dissonance, unsustainable practices, and destruction of the environment • *Compare* **norms**.

distortion • the process of configuring spaces and practices of everyday life being such that those spaces and practices become far-removed from what a considered and informed moral critique of social relations would prescribe •

equal treatment • the theory of presumed interchangeability of any one actor with another • Equal treatment admits participants into hyper-context mediation despite differences in ability and willingness to reach mutual understanding.

essential capacity • a capacity that is inextricable from an actor's identity • Equal treatment wrongly presumes that all actors have an essential capacity for communicative action.

free market liberalism • norms that privilege actors' freedom to pursue private interests and objectives without restraint by the state and without respect for community •

fundamentals for coerced cooperation • four features of collective actors that allow the state to coerce them to cooperate, namely **causal visibility** (i.e., an actor's unmistakable effect upon another actor's ability to realize particular goals), **detection of harm** (i.e., an actor's recognition that particular actions appear not to be in her best interest); **rational response** (i.e., an actor's understanding of which behaviour invites harm, promoting a considered response to harm's source), and **recognition**

of agency (i.e., an actor's knowledge of others who are in a position to threaten harm and offer terms for harm's avoidance) •

fundamentals for consensual cooperation • four features of collective actors that allow the state to win their consent to cooperate, namely **empathy** (i.e., an actor's emotional and cognitive consonance with others); **self-limitation** (i.e., an actor's refusal to pursue available opportunities); **second-order desires** (i.e., wanting to be different in preferences, purposes, and will from what one presently is); and **strong evaluation of desires** (i.e., an actor's attribution of worth to desires on the basis of, and in harmony with, social perceptions of what is good) •

the good society • the way actors feel their collective lives should be led and their nation should be • The **managerial framework** sees the good society as well-ordered and smoothly running. The **moral framework** sees the good society as privileging social justice and fostering strong bonds of community.

hyper-context mediation • state facilitation of societal review of certain social conflicts' underlying norms • The process exaggerates mediation: the participants include real, as well as imagined, actors; the time frame is protracted, rather than contained; the mediation arena encompasses all commercial and public communication media; and discussions concern norms, rather than individual conflicts. The process is comprised of six phases of activity: sustaining **the 'stage'** for all actors, **allegation** that certain norms are distorted, society-wide **deliberation** concerning those norms, state **simulation** of the deliberation as if continued under ideal conditions, state **assessment** of the norms in question, and **policy production** that reflects the assessment. *Compare* **normal-context mediation**.

imaginary actor • the impression of the existence of a group as a monolithic entity that is coherent in thought and action when such uniformity and coherence are not the case • Such an impression is fostered through generalizations and intentional fabrications such as opinion polls, statistics concerning particular professions and demographics, and façade groups created by public relations firms.

managerial framework • an administrative schema for apprehending conflict • The managerial framework is informed by the perspective that society is like an enterprise, something to be directed and kept in smooth running order. Only

manifest conflict requires intervention in this schema; latent conflict is not recognized.

mediator • the third party that instigates and manipulates dialogue between conflicting parties in an effort to ameliorate their conflict •

mediation • a third-party intervention intended to guide the parties implicated in a conflict into dialogue intended to ameliorate their conflict •

moral framework • a justice-centred and mutual-respect schema for apprehending conflict • The moral framework is informed by the perspective that society is a community of equals. Latent and manifest conflicts require intervention in this schema.

neutrality • the temporary suspension of values and ideology so as to advance comprehension of the surrounding reality •

noise • strategic action that interferes with the goals of communicative action • Such interference can be intentional or by accident, recognizable as strategic action or mistaken for earnest attempts at communicative action.

normal-context mediation • third-party facilitation and steering of conflict's stakeholders in their establishing a mutually acceptable settlement • *Compare* **hyper-context mediation**.

norms • societal ways of thinking and doing that are prevalent and entrenched • Norms limit the goals that are imaginable by society and influence the means by which society realizes those goals. *Compare* **distorted norms**.

power • shaping of the spaces and practices of everyday life, conforming to what is required by social actors to realize reasonable goals by reasonable means • Three types of power are distinguished on the basis of who brings about, and who is affected by, the shaping: (a) **power to** refers to an actor's ability to develop and realize potential; (b) **power over** refers to an actor's capacity to shape the spaces and practices that affect others; and (c) **structural power** refers to forces independent of, and far-removed from, human agency that shape actors' spaces and practices. *Compare* **conflict**.

private interest • thought and action at the expense of others in the community •

public good • services and resources that are equally accessible, usable, shared, owned, experienced, and/or recognized as heritage by all members of the community •

public interest • thought and action that benefits the entire community equally •

SAM • *See* **state-as-mediator**.

the 'stage' • the space for deliberative processes by which the underlying norms of certain social conflicts are reviewed by all members of society • The 'stage' is a physically and temporally exaggerated version of the mediation arena, comprised of all public and commercial communication media and cultural production.

the state • a heterogeneous ensemble of elected and unelected actors and structures that brings order to society • The net behaviour of the state in relation to its citizens and other states is referred to as **demeanour**.

state-as-mediator (SAM) • the role of the state in hyper-context mediation • The designation state-as-mediator acknowledges the similarity between what a mediator does concerning inter-actor conflicts and what the state does regarding distorted norms.

strategic action • the attempt to influence the behaviour of others by means of coercion or manipulation • Strategic action is conducive to conflict creation and conflict management. *Compare* **communicative action**.

INTRODUCTION

The Kyoto Protocol

"CANADA SIGNS ON TO THE KYOTO PROTOCOL."[1] The December 16,

2002 headline is remarkable given

- the uneven distribution of support across Canada for Protocol ratification;
- the personal and corporate gains to be made by some actors from business as usual operations;
- the shortage of information and abundance of misinformation concerning global warming and the details of the proposed international agreement to combat it;
- the vagaries of both protocol implementation and allocation of burden in Canada;
- the rejection of the proposed agreement and trivialization of its supporting science by Canada's largest trading partner, the United States;
- the shortfall of signatories, accounting for 44% of global greenhouse gas (GHG) emissions rather than the target 55%;[2] and
- the tendency for most nation states to waive commitment to any public good that clearly would have a deleterious short term effect on the economy.

The documents signed by Prime Minister Jean Chretien and presented by Environment

Minister David Anderson to UN officials in New York set into motion Canada's

participation in a patchwork global framework to reduce emissions of GHGs. The

framework includes global standards for emissions monitoring, national targets and

deadlines for reduction of GHG emissions, a nation-state's accrual of emissions credits

based upon its outperforming set reduction targets, means for trade in these emissions

credits, and non-compliance and dispute resolution procedures pertaining to various aspects

of the framework.[3]

The Kyoto Protocol adopts the following logic. First, GHGs such as carbon

dioxide, methane, and nitrous oxide[4] affect the rate at which the Earth dissipates heat energy

into space. As the Earth is warmed naturally by solar radiation, unnaturally increased

amounts of GHGs impede the rate at which the Earth radiates that energy back into space.

Increased amounts of these gases in the atmosphere contribute to an overall warming trend

of the planet. Second, this warming trend matters for reasons that include damaging fragile

ecosystems by altering their temperatures, affecting the sustainability of communities

through resultant changing weather patterns and rising shorelines, temperature-related

emergence and spread of infectious diseases into new demographics,[5] and in-creased

energy-intensive efforts to create pockets of comfort as unbearably hot temperatures

become the new standard. Third, although some amount of these gases is of natural origin,

their dramatically increased concentration in the atmosphere is mostly due to the burning of

coal, oil, gasoline, and other hydrocarbon fuels by industry and consumers.[6] Fourth, since

humans are the cause of this loss of equilibrium, humans are able to modify their actions to

minimize any further contributions to global warming. Fifth, and most importantly, even if

all nation states do not initially participate in the Kyoto Protocol and its globally

orchestrated reduction of GHG emissions, those that do participate will presumably set an

example for the hold-out countries, inspiring them to come on board eventually.

The Kyoto Protocol continues to be a hot-button issue in Canadian politics. Strong

feelings remain attached to it after its ratification in 2002, and well after ratification's

precursor: the intensive society-wide discussion concerning global warming and climate

change that spanned, roughly, 1988 through 2002 (discussed in chapter 9). The federal

election held on June 28, 2004, attests to continued volatility surrounding Kyoto. Instead of

there being a resurgence of discussion to clarify points regarding how to implement the

accord, the election was marked by explanation-free name-dropping of "Kyoto" by various

parties, signalling that previously established positions and feeling on the subject remain

unchanged from 2002. During the election campaign, the mention of "Kyoto" by the

Liberals,[7] New Democrats,[8] Greens, and Bloc[9] indicated those parties' willingness to

cooperate at least on implementing the accord in the context of what was expected to be a

minority government. Mention of "Kyoto" by the Conservatives[10] invoked their refusal to

accept the accord, determination for Canada to rescind from it, and optimism that the

election would result in a Conservative minority or majority government capable of realizing

such goals. Liberal loss and Conservative gain of Parliamentary seats resulting from the election serve as a reminder that today's public policy achievements, Kyoto and otherwise, are always under threat of being undone at a later date, eventually subject to some other ruling party's policy caprice.

Deep Conflict

Our production of GHGs constitutes an ensemble of *ways of thinking and doing* concerning production, consumption, transportation, and energy production. Such prevalent and entrenched societal ways of thinking and doing are called *norms*. While not all norms have bad consequences, some norms distort thought and practices away from what a considered moral critique of social relations would prescribe, thus earning their designation as *distorted norms*. Such is the case with GHG production whose consequences include our self-imposition of discomfort and disease, the jeopardizing of communities' livelihoods, the unwitting eradication of natural species, the unnecessary reduction of crop yields,[11] and, possibly, the unprecedented numbers of heat-related deaths in Europe in 2003.[12] Harm, injustice and social dissonance that ensue from norms earn the designation *norm-based conflict*.

The Canadian state plays an important role in norm-based conflict. It accepts the role of intervener, overseeing social deliberation regarding norms that cause conflict, and it acts to ameliorate the effect of those offending norms through informed policy production. The process of intervention bears resemblance to mediation, albeit exaggerated in some respects and abstracted in others. Exaggeration and abstraction refer to the physical disembodiment of stakeholders, the protraction of time frame, the vastness of the mediation arena, the indeterminacy of deliberative input, and participants' unawareness of their participation in the process. Because its role as intervener parallels that of a mediator, the Canadian state warrants the label *state-as-mediator*. The intervention, because of the extent

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it exaggerates and abstracts from mediation, warrants the label *hyper-context mediation*. The acronym SAM substitutes as a form of shorthand for the term *state-as-mediator*.

From a moral perspective, hyper-context mediation has a propensity to failure. This is because of the inability of hyper-context mediation to correct the distorted norms entrusted to it. Fault lies in both the performance of the Canadian SAM and the process of hyper-context mediation.

For the Canadian state, *the good society* is usually the well-oiled society whose goodness is gauged in economic terms: level of employment, standard of living, financial stability, and participation in the global economy.[13] The Canadian state's affinity for the economic jeopardizes serious consideration of the norms of capitalism as distorted norms. The economic vision takes as given and accepts extreme wealth and poverty, wide divergence of incomes, presumptuous treatment of labour, and elite control over the means of production. Harm, injustice, social dissonance, and the norms that give rise to them endure. The Canadian SAM, as intervener, is prone to preserving distorted norms and norm-based conflict.

The process of intervention contributes to failure because it harbours an irreconcilable tension. The tension exists between mutual understanding and the participatory all-inclusiveness of hyper-context mediation. Mutual understanding is crucial to the correction of distorted norms in that it allows actors to "coordinate their actions, pursue their particular aims."[14] The absence of such coordination and inability to pursue reasonable aims leads to harm, injustice, and social dissonance. Participatory all-inclusiveness is obligatory for hyper-context mediation in that the correction of norms implicates all members of society as stakeholders, and democracy in Canada leads stakeholders to expect a say in matters that affect them. The absence of such blanket participation raises allegations of repression and misrepresentation. The tension between mutual understanding and participatory all-inclusiveness arises because characteristics essential for the attainment of mutual understanding are not possessed by all actors included

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in hyper-context mediation. Accordingly, the quality of the process's deliberative input and concomitant policy production suffers. Policy production is not informed policy production. Distorted norms persist. In this respect, it can be said that the process of hyper-context mediation s prone to preserving distorted norms and norm-based conflict. Failure has five far-reaching consequences. First, failure buries alternative visions of the good society. Conspicuously disadvantaged is the moralist vision which measures goodness in terms of justice: the sacrificing of personal gains that deprive others, the equal sharing of burdens by all people, the reasonable distribution of powers, and recognition of others in the global community. Second, failure further entrenches the economic vision of society. De-emphasis and invisibility of alternatives to economic logic entrench the norms of capitalism, making capitalism's norms appear less a matter for contestation. Third, failure invites damage control rather than repair. The Canadian state embraces an economic logic which solves norm-based conflict with attention to efficiency. In "the efficient society,"[15] *solution* of conflict does not amount to the *resolution* of conflict; it amounts to conflict *management*. The only refinements to the norms of capitalism during times of crisis and conflict are the policy bandages that prevent the internal contradictions of capitalism from reaching unacceptable friction. Fourth, failure is ultimately self-destructive. Conflict management tames conflict into less conspicuous forms, diluting societal and state concern over the persistence of norm-based conflict. Dilution of concern creates a false sense of security. Such management makes for a society that can preserve short term gains, but defers inevitable crises of cooperation and confidence in the system. Ultimately, the heritage of future generations is compromised. Fifth, and most importantly, failure accounts for a political landscape of *deep conflict*. Conflict is said to be deep conflict if it successfully defies the processes that are supposed to correct it.[16] Norm-based conflict becomes deep conflict because hyper-context mediation, the official means presently applied to correct norm-based conflict, consistently fails. The formidable *depth* of this deep conflict is accounted for by its entrenchment and redundancy of causes.

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Learning From Mediation and Kyoto

Canada's ratification of the Kyoto Protocol is of interest from the perspectives of environmental responsibility, international negotiations, sensational politicking, and manipulation of the media. But ratification is especially noteworthy as a rare instance of the Canadian state resolving deep conflict. Kyoto Protocol Ratification challenges economic benchmarks, reaffirms the importance of well-being of humankind, and acknowledges intrinsic worth of the natural environment. The offending norms are corrected via new policies and their enforcement. Conflict is resolved and society is moved towards the good.

With an eye to rehabilitation of the Canadian SAM, the resemblance of *hyper-context mediation* to *mediation* provides us with a model from which lessons can be learned and improvement can be gleaned. The pitfalls of mediation offer lessons in the complexity of levelling the playing field such the importance of acknowledging essential differences between actors; what constitutes distorted communication; the limits of empathy; the lack of mediator autonomy; the unintentional supplanting of one bias with another; and, counter-intuitive to democratic practice, the inappropriateness of bringing all relevant parties into a mediation-like process. This last point is not so much about the irreconcilability of conflicts of belief systems as it is about actors' capacities for, and commitment to, communicative action. The Canadian state's intervention in deep conflict aspires to be all-inclusive, inviting a mix of communicative and strategic action that is conducive to managing conflict, but failing to actually resolve it.

Canada's ratification of the Kyoto Protocol provides an opportunity not only to understand what is entailed in deep conflict resolution, but also to consider the reform of state institutions for the purpose of better enabling them to resolve deep conflicts. The ultimate goal of such reform is to make conflict resolution the rule rather than the exception. The purpose of this dissertation is to critique the Canadian state's intervention in deep conflicts and to propose reform for that intervention.

Outline of the Dissertation

The dissertation is tripartite. Part I, titled "The Canadian State-as-Mediator," is comprised of chapters 1 to 4. In these chapters, I establish the conceptual framework of the process of hyper-context mediation in deep conflict. Part II, titled "Deep Conflict," is comprised of chapters 5 to 8. In these chapters, I demonstrate the flaws that analysis of hyper-context mediation can reveal. Part III, titled "Fixing Deep Conflict," is comprised of chapters 9 and 10. In these chapters, I put forward that the flaws identified in Part II can be corrected when informed by what is revealed through mediation-process analysis of the Canadian state's Kyoto Protocol Ratification as an instance of deep conflict resolution.

Conceptual Framework of the Process of Hyper-Context Mediation

Chapter 1 examines the concepts of *conflict* and *the state* that are crucial to discussion of hyper-context mediation. Understandings of, and attitudes toward, conflict distinguish two mindsets which provide criteria for identifying the participants in hyper-context mediation (chapter 3) and apprehending their contributions to the Canadian state's Kyoto Protocol Ratification (chapter 9). The state is explicated in relation to society, with emphasis on how the Canadian state organizes society and, conversely, society organizes the Canadian state with respect to deep conflict — a relation examined in greater detail in chapter 4. The relation determines why hyper-context mediation is the way that it is (chapter 2) and what obstacles face attempts to correct the process's flaws (chapter 10).

Chapter 2 describes the Canadian state's intervention in deep conflict, contrasting and comparing it with the mediation that one associates with alternative dispute resolution (ADR). Contrast and comparison are realized according to the following criteria: institutionalization of process, formality of process, the types of conflict to which the process is applied, categories of actors implicated in the process, description of the process,

the arena in which deliberation takes place, the traits of the 'mediator' overseeing the process, and the content and quality of outcomes of the process. Explication of the process of hyper-context mediation enables recognition of the process's pathology (chapters 5 and 6), analysis of specific events that contribute to the Canadian state's Kyoto Protocol Ratification (chapter 9), and identification of specific parts of the process where correction is to be applied (chapter 10).

Chapter 3 identifies collective actors as the main participants in hyper-context mediation and differentiates them according to public and private interests. Examination of the differences between these collective actors is necessary in order to make sense of the flaws of the process and SAM identified in chapters 5 to 7, flaws leading to the placation of private interests and disappointment of public interests. The distinction between public and private facilitates comprehension of actor behaviour in the analysis of the Canadian state's Kyoto Protocol Ratification (chapter 9).

Chapter 4 elaborates on how the Canadian state's intervention in deep conflict is, in part, shaped by the expectations placed upon it by public- and private-interest collective actors. Responsiveness of the Canadian state to these expectations limits the efficacy of the SAM in resolving deep conflict (chapters 5 and 6). Attempts to reform hyper-context mediation's failure to resolve deep conflict must be cognizant of, and endeavour to change, these expectations (chapter 10).

Three Flaws of Hyper-Context Mediation

The process of hyper-context mediation shares certain affinities with that of mediation, including some of its flaws. Likewise, the SAM exhibits similarities to a flesh and blood mediator, sharing failings and vulnerabilities relevant to conflict intervention. The dissertation identifies three flaws in the process and the SAM. These flaws express themselves in the content and quality of hyper-context mediation, and assure the persistence

of deep conflict.

Chapter 5 examines how the process of hyper-context mediation averts mutual understanding. Aversion of mutual understanding is the result of the state's (a) commitment to equal treatment of hyper-context mediation's participants and (b) inability to distinguish differences between those participants, specifically their possession of particular traits which make communicative action possible. The aversion of mutual understanding is presented as the fundamental flaw of hyper-context mediation. Analysis of the Canadian state's Kyoto Protocol Ratification (chapter 9) informs the correction of this fundamental flaw of hyper-context mediation (chapter 10).

Chapter 6 examines a second flaw of hyper-context mediation: the Canadian SAM's forfeiture of the means to effectively steer hyper-context mediation's participants into cooperative behaviour. Forfeiture is seen as a consequence of state responsiveness to societal expectations, including those discussed in chapters 1 and 4. Analysis of the Canadian state's Kyoto Protocol Ratification (chapter 9) informs the correction of this second flaw of hyper-context mediation (chapter 10).

Chapter 7 shows that, despite an arsenal of various resources, despite any good intentions of elected officials and bureaucrats, the Canadian SAM still succumbs to both bias and encroachments upon its autonomy. The bias and encroachments lead the state to favour private-interest collective actors, comprising the third flaw of hyper-context mediation. Analysis of the Canadian state's Kyoto Protocol Ratification (chapter 9) informs the flaw's correction (chapter 10).

Chapter 8 considers the three flaws discussed in chapters 5 to 7 and how, when qualified in a particular way, those flaws guarantee deep conflict. Recognition that the three flaws of hyper-context mediation require satisfaction of background conditions in order to preserve deep conflict illuminates why Kyoto Protocol Ratification, as conflict resolution, was able to occur (chapter 9) and what conditions need to be changed in order to assure deep conflict resolution in other circumstances (chapter 10).

Correcting the Flaws of Hyper-Context Mediation

Change is recommended concerning hyper-context mediation's propensity for preserving deep conflict. Recommendation is informed by the preceding account of flaws, failings, and vulnerabilities. The objective of the recommendations is to enable better movement towards, and construction of, the good society.

The Canadian state on occasion finds itself in the position of resolving deep conflict; this, despite its vulnerabilities and reliance on a fundamentally flawed and failing conflict intervention. Canada's ratification of the Kyoto Protocol is such a case and is described in terms of hyper-context mediation in chapter 9. The description focuses on society-wide discussions that are not specialized in the sciences, as documented by, and taking place within, Canada's national newspapers. Descriptions of specialized scientific and intergovernmental environmental policy negotiations that inform the lay societal debate are available from Schröder;[17] Oberthür and Ott;[18] and Grubb, Vrolijk, & Brack.[19] Looking at Canada's ratification of the Kyoto Protocol allows us to discover what the Canadian state does when it guards its autonomy, compensates for its bias, and circumvents the flaws of hyper-context mediation, thereby not just solving but *resolving* deep conflict.

Chapter 10 shows that deep conflict is the rule, rather than the exception, based on successes and failures of the Canadian SAM in resolving deep conflict. Recommendations are made: reform of hyper-context mediation, inspired by mediation and other ADR practices more aggressive than mediation; making better use of the Canadian state's room to manoeuvre within the bounds of its legitimacy; and changing the collective actors themselves to countervail the incapacity or reluctance of some with regard to mutual understanding. Conclusions and recommendations show promise for the rehabilitation of distorted norms and the reform of hyper-context mediation. Evidence of the reform would be in Canada's capacity to downgrade deep conflict to conflict, and make *solution of deep conflict* synonymous with *resolution of deep conflict*.

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[19] Grubb, M., Vrolijk, C., & Brack, D. (1999). *The Kyoto Protocol: a guide and assessment.* London: The Royal Institute of International Affairs.

Part I
THE CANADIAN STATE-AS-MEDIATOR

CHAPTER 1

Organizational Context for the Canadian State-As-Mediator

Conflict

There are two dominant frameworks for apprehending conflict. A discussion of both frameworks is necessary for a number of reasons: first, to provide criteria for distinguishing the actors who are engaged in deep conflict; second, to distinguish the modes of logic that the Canadian state adopts during its interventions in deep conflict; third, to indicate that the persistence of deep conflict is due in part to the tension between these two frameworks; fourth, to provide criteria for distinguishing conflict interventions; and finally, to explain my privileging of one framework over the other.

One framework is *managerial,* informed by the perspective that society is like an enterprise, something to be directed and kept in smooth running order. Conflict within this framework comes into existence when actions of a person or group overtly impact other persons or groups, when that impact is perceived as undesirable or disruptive of an otherwise peaceful or smoothly running state of affairs. People and institutions are compelled to address the undesirable or disruptive state of affairs in order to restore the peace, reinstate the smooth running of things, and extinguish conflict. Conflict, in this perspective, is framed as a general nuisance whose pathology and remedy fill the pages of applied psychology books and "how to get to yes!" management manuals. The epithet is attributed to any of imperfect or insufficient communication; emotions interfering with rationality and compromise; values being at cross-purposes to each other; and an inherently hostile lifeworld (e.g., scarcity of resources, stressful time constraints, and contingency).[1] Within the managerial framework, conflict draws attention to itself for practical reasons. Human pain and suffering stand out because they threaten to turn persons into social

liabilities (e.g., the legitimately depressed adding to the workload of the health care system, persons resorting to crime, etc.), or some manner of social dissonance interferes with the making of a profit (e.g., labour disputes, protests regarding an environmentally insensitive development, etc.).

An alternative framework for understanding conflict is *moral*. The moral framework differentiates itself from the managerial framework through a more complex analysis of conflict, and a different distinction between power and conflict.[2]

Both frameworks recognize two different types of conflicts — manifest and latent — but respond to them differently. *Manifest conflicts* are the obvious conflicts that overtly disarrange societal order and compel some manner of corrective response. These bear the usual outward signs such as ill feelings, spilled blood, inordinate weeping, boycotts, work stoppages, inflammatory rhetoric, picket signs, the hurling of invective, pepper spray in the eyes and nostrils, and the like. These obvious conflicts are the sole subject of attention for the managerial framework. However, the moral framework attends another type of conflict ignored by the managerial framework and its practical rationale. This type of conflict is *latent conflict,* distinguished by being either undetected, not bearing the usual outward signs; or detected, but neither inspiring nor provoking correction.

How are we to understand a type of conflict which can be detected but does not provoke correction? The academic, following the insight that is expected of his vocation, might express his awareness of latent conflict by means of conference- and publication-bound verbalism, but not necessarily activism. The political strategist cashes in on his awareness of an undesirable situation by playing it to political advantage. Lay thinkers, over the course of work, leisure, and other activities, can have moments of insight regarding injustices in power relations of the existing social order. But, for reasons that include distraction, physical and mental exhaustion, cynicism, insufficient information, and having sour personal experiences regarding activism, they can respond with acquiescence, indecisiveness, and political inertia.

When latent conflict provokes correction, latent conflict is transformed into manifest conflict. Detection of latent conflict and the concomitant catalysis of its correction include the work of critics, journalists, lawyers, politicians, cultural producers, philosophers, socially-minded clerics, and lay thinkers. Those who detect conflict and feel compelled to address it subscribe to the logic of the moral framework. Such actors often include those who experience some manner of injustice, disrespect, suffering, and harm that stem from the conflict. Those who resist attempts to address the underlying cause of conflict subscribe to the logic of the managerial framework, often because they benefit indirectly from the conflict's injustice, disrespect, infliction of suffering, and bringing about harm.

The moral framework is differentiated from the managerial framework not only through its complex analysis of conflict but by its distinction of what qualifies as conflict. According to the managerial framework, conflict is distinguished as disarrangement of the social order; according to the moral framework, by distortion of justice. The distinction relies on an understanding of conflict as a form of power. As described by Michel de Certeau, power is shaping of the spaces and practices of everyday life through socio-cultural production.[3] Conflict is excessive shaping of the spaces and practices of everyday life. Conflict, then, is the expression of excessive power. Fundamental differences between the managerial and moral frameworks are revealed through their contrasting definitions of *excessive*.

First, from the managerial perspective, the shaping of life's spaces and practices is deemed excessive when the smooth operation of society is thrown out of equilibrium. Poverty, for example, is an acceptable shaping of life's spaces and practices if it is rendered invisible, has services administered for it, or in other ways appears to be taken sufficient care of. However, from the same managerial perspective, poverty constitutes conflict if it undermines the compassionate reputation of society, the illusion of persons in control of their own destiny, and faith in the state's administrative competence.

Second, from the moral perspective, the shaping of life's spaces and practices is deemed excessive if it is assessed as unnecessary, morally contestable, and more distortion

than shaping. For example, the moral framework sees poverty as conflict by poverty's very occurrence and never as life's acceptable shaping: regardless of how thoroughly panhandlers are cleared from the streets and how impressively food banks stock their shelves, there is still something fundamentally wrong about poverty.

The differences between the two frameworks highlight a more fundamental distinction in analytical complexity and what they designate as conflict. This distinction is the difference in value systems. The managerial privileges order; the moral privileges social justice. The distance between their value systems leads actors to differ in their respective motivations to correct an alleged conflict and in the enthusiasm with which they pursue or resist correction of conflict. These distinctions indicate how much of conflict is not reducible to differences of opinion regarding how life's spaces and practices should be shaped, but rather is due to the more problematic category of conflicts of values. Therefore, the two frameworks not only identify the logics of actors involved in conflict, but also play a part in the persistence of deep conflict by balancing managerial actors' resistance against, and moral actors' pursuit of, conflict resolution.

Let me emphasize that not all shaping is excessive; not all shaping amounts to conflict. Rather, some measure of shaping, some extent of organization to the spaces and practices of everyday life is necessary in order for something, for *anything* to be accomplished. This baseline of shaping is what Hannah Arendt sees when she discusses power in pro-social terms: "Power is what keeps the public realm, the potential space of appearance between acting and speaking men in existence ... [P]ower springs up between men when they act together and vanishes the moment they disperse."[4] A minimal amount of shaping is not only necessary, but also makes possible moral pursuits and community-oriented goods. Haugaard emphasizes the unlikelihood of either pure conflict, or alternatively, pure distortion-free power, suggesting instead that most social relations and their consequences fall somewhere between those poles.[5] The qualitative and quantitative power thresholds beyond which shaping would be discerned as excessive shaping are culture-specific.[6]

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Three forms of power can slip subtly into distortion or conflict. First, an actor's capacity as *power to* realize certain goals becomes conflict when that capacity is debilitated. Such is the case when anthropogenic GHG production causes global warming and climate change, which, in turn, deplete the biodiversity upon which many communities rely for their livelihoods. Second, an actor's *power over* another, such that the latter complies with the former in following a course of action that she would not have pursued otherwise, constitutes conflict when that course of action leads to injustice, disrespect, suffering, and harm. Such is the case when corporations both promote consumerism and downplay energy alternatives, thereby limiting choice, discouraging imagination, and fostering individuals' complicity in GHG production and concomitant detriment. Third, power, as an environment whose sedimented structures inadvertently steer choices and affect life chances,[7] constitutes conflict when it propels actors to proceed unwittingly *not* in their own best interests. The sediment of past decisions can constitute the backdrop for the present of natural and given, structurally steering one without question or challenge into paths that are not necessarily in one's best interests. Such is the case with the norms underlying our production of GHGs.

The managerial and moral frameworks concur that the major onus of addressing conflict falls upon the elected governmental component of the state — this accounts for the attention of this dissertation to the SAM. Whereas the state is being placed in the unenviable position as major intervener in deep conflict, the state is posed the further problem of having to commit to a particular framework as its guide for intervening in those conflicts. *The state's commitment to the managerial and/or the moral framework has three profound implications regarding quality and content of the conflict intervention.* First, the managerial perspective privileges the blunting of deep conflict's disruptive or consciously undesirable impact. Designated as *conflict management,* this type of intervention avoids dealing with the norms underlying deep conflict. The symptoms of deep conflict are managed by transforming the overt to the undetected, reallocating an undesirable impact to different actors, or diluting an undesirable impact among more actors. Second, the moral perspective

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privileges correction of a distortion such that it becomes shaping. This constitutes *conflict resolution*. Third, the softening of a distortion of the spaces and practices of everyday life such that it at least approaches shaping constitutes *conflict amelioration*. Amelioration improves upon conflict by at least partially correcting the distortion at hand, but falls short of conflict resolution itself. From the moral perspective, conflict amelioration is a good second-best to conflict resolution.

Even the managerial perspective would have to admit that there is a much broader palette of things that are societal wrongs than those that imperil social stability and efficiency. The moral perspective is preferable in this respect. It recognizes a broader palette of actors as being affected by or involved in conflict and is less hypocritical than the other. While both frameworks can lay claim to working towards the good of society, the managerial framework is too comfortable with overlooking portions of society that experience the bad. While both frameworks are ultimately fuzzy regarding the threshold beyond which shaping becomes excessive shaping, the moral framework's threshold endeavours to be more generous, more accommodating in recognizing the pain of others. Regarding conflict intervention, I privilege the moral framework's imperative to push for the resolution of conflict, rather than just masking or rotating its symptoms.

The Canadian State

Two facets of the organizational abilities of the Canadian state are relevant to its 'mediator' role: (a) the Canadian state produces the tools that it needs — it establishes and supports a framework for social interactions that is crucial to its mediation of conflicts and (b) the Canadian state is an effective agent — it is capable of purposeful action and interaction with society.

The Canadian State as 'Stage'

Recalling Arendt, some measure of shaping, some extent of organization to the

spaces and practices of everyday life is necessary in order for even the most basic sustained

social interaction to be possible. The Canadian state secures that minimal amount of

organization by participating in the establishment and support of a framework for social

interaction. That framework is comprised of practices, resources, services, relationships, and

functions. In this respect, and using the metaphor *the theatre*, it can be said that the

Canadian state is a 'stage': an acting area, complete with props, blocking, and roles. This

'stage' is discussed here to establish its relevance to conflicting actors and their actions, and

within the overall schema of the SAM.

As a 'stage,' the Canadian state does not conform to fixed geographical bounds.[8]

Rather, it conforms to practices, resources, services, relationships, and functions that, by

their availability and effectiveness, comprise the *acting area*. The lay of the 'stage' varies in

accordance with Canada's effective exertion of the following factors

- *economic influence* — stable currency in an international context, an affordable cost of living, a modest inflation rate, acceptable levels of taxation, and tax revenue that invests into infrastructure and universal opportunity;
- *legal influence* — a framework of laws;
- *judicial influence* — law courts for the formal administration of justice;
- *cultural presence* — public spheres, cultural markets, producers, critics, consumers, and audiences;
- *mapping of physical reality* — paradigm construction via participation in conferences, research, and monitoring
- *strategic involvements* — the CSIS spy agency and a military intended to ensure the safety of Canadians from domestic and foreign threat;
- *remote influence* — Canadians working in other lands and Canadian travelers deriving tangible reassurances from their Canadian citizenship; and
- *restraint upon force* — by holding a monopoly of force, the state impresses a disciplinary chill upon society, thereby guaranteeing our negative liberties.

In one sense, the 'stage' is *passive:* the Canadian state allows all members of

society equal freedom to realize their capabilities[9] and pursue their interests. This freedom

is the hallmark of liberal democracy. It leaves room for actors to make both right and wrong moves — it allows actors to improvise. This licence aspires to be divorced from and even opposed to personal powers of the Canadian state's elected, appointed, and hired human components.[10] Diverse possibilities realized on the passive 'stage' include the following

- some actors live their lives in peace with respect to each other;
- some participate in practices that distort other spaces and practices;
- the distorted spaces and practices of some latent conflicts persist;
- some conflicts fester; and
- some conflicts move toward correction.

In another sense, the 'stage' is *active:* it exerts structural power. Actors' interactions on the 'stage' are subtly guided by the framework in which they pursue their interests — referencing the theatre, think of blocking, stage direction, and choreography. Actors' practices are reasonably constrained by the environment in which they act — in the theatrical sense, think of the preordained roles that actors play, and the actors' actions having to make sense respective of the physical construction of the stage and the props situated throughout. In the context of the Canadian state as a 'stage,' actors are not allowed to engage in just any economic, cultural, personal, or political activity. Laws, norms, established policies, and other sedimented structures set the tone for how actors' pursuits are actually to unfold, and which pursuits they will even consider. For example, the actors are shaped independently of, and antecedent to, their engagement in economic activity by the sediment of trade dependencies and protocols, investment opportunities in Canada, the apparent universality of market capitalism, and interpellation into roles that reproduce the mode of production.

The passive 'stage' relates to the SAM to the extent that it contains the equivalent of the arena that one associates with mediation: the space for deliberative processes by which conflict correction is worked out. Meanwhile, since it shapes actors prior to their actions, *the active 'stage' is complicit in the conflicts that transpire on the passive 'stage.'*

The Canadian State as Agent

The Canadian state is monolithic in image only. In actuality, the Canadian state is comprised of "a heap of loosely connected parts or fragments."[11] It consists not just of elected representatives, government bureaucracies, appointees, and experts, but also the citizens of Canada, social movement organizations, corporations, any group that ever partakes in the lobbying of Members of Parliament, any actor who commands moral authority, any actor who commands attention, any group that is considered a major player in Canadian economy, culture, or politics. The image suggests that the Canadian state operates singularly, rationally, and intentionally (i.e., with a will of its own). For example, "Canada declines military involvement in Iraq" and "Canada props up the falling dollar." In actuality, the Canadian state operates as the complex aggregate of the differently directed free wills of a heterogeneous ensemble of actors. This aggregate of different wills yields the *net* agency of the Canadian state.

All levels of Canadian society respond to, retaliate against, threaten, depend on, co-operate with, engage, influence, and are influenced by the thought and action of official and unofficial government. This means all levels of Canadian society participate in their own organization and governance. If the state is the organizing force that brings order to society,[12] then all of Canadian society is potentially coterminous with the Canadian state. It follows that *all of Canadian society participates to varying extents in the activities of the SAM.*

Hereinafter when referring to the state I bracket out the society-wide influences that extend all around the elected governmental core of the Canadian state. This is acceptable because circumstances that involve conflict are likely to find Canadian citizens deferring to their elected government. This deference of Canadian citizens is due to their recognition of the following: elected government, if legitimate, holds authority relevant to dispute settlement; elected government has privileged access to information, communication resources and experts; and elected government has control over society-ordering

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institutions. Accordingly, I have limited the meaning of the Canadian state to be its ensemble of elected representatives, governmental bureaucracy, appointees, and experts — and their powers, capacities, and resources

Demeanour of the Canadian State Regarding Conflict

The *demeanour* of the Canadian state is its behaviour in relation to its citizens and other states. Demeanour matters in that it bears on the Canadian state's response to conflict within Canada. The present demeanour of the Canadian state demonstrates its acceptance of certain levels and duration of conflict within Canada. This is evident from the liberality of the 'stage' on which actors not only pursue their interests but also are allowed to create conflict. The Canadian state also demonstrates a commitment to the correction of any conflicts that exceed accepted levels and duration. This is evident from the reliability of that same 'stage' on which actors can partake in the correction of conflict, as well as the dedicated conflict intervention provided by the SAM.

Recalling that the agency of the Canadian state is the aggregate of differently oriented free wills, demeanour is always the outcome of their contest and negotiation. The power relations of those various loosely connected elements of the Canadian state are relatively stable. As such, the Canadian state's demeanour is predictable and reliable. This is so for several reasons: policy networks entrench themselves; the apportionment of various resources and capitals changes at a subtle rate; elected federal governments usually endure for four years at a time; and bureaucracies, corporations, and social movement organizations exceed the terms of any single elected federal government. A conflict-averse demeanour of the Canadian state prevails.

Evidence of a Conflict-Averse Canadian State

Canadians clearly see their country as privileging peace over conflict on the international stage. Canada is more committed to acts of international peacekeeping and peacemaking than military engagement. Notable in this respect are Canada's past commitment of troops to Bosnia, Trudeau's buffer diplomacy regarding cold war nuclear proliferation of the Soviet Union and the United States, and Chretien's alternative proposals and timetables for Britain and the United States regarding the *disarmament* of Iraq.[13] Nor is a demeanour of military aggressor expected any time soon to displace that of peacekeeper for Canada. Critics consistently assess Canada's commitment to its armed forces as under-funded and shoddy: observe the reluctance to upgrade the dilapidated 40-year-old Sea King helicopters,[14] the second-hand submarine HMCS Corner Brook that sprang a leak soon after being commissioned in 2002, and the declining annual budgets for Canada's armed forces.[15] This peace-keeping image burns deeply into the Canadian psyche. Home-grown diplomatic indiscretion born out of anti-war sentiment still garners widespread nods of approval among Canadians. I cite the positive reception awarded by Canadians to the comments of PM Jean Chretien's communication director Françoise Ducros,[16] and MP Carolyn Parrish[17] — both inspired by perceived U.S. war-mongering over Iraq.

Canadians see Canada as being consistent, not only privileging peace over conflict on the international stage, but also being similarly disposed on the domestic stage. A domestic conflict-averse demeanour is evinced by Canada's multiculturalism being both a set of consciously steered policies and, seemingly, a naturally occurring state of affairs. Canada's multiculturalism functions as barometer and guide-post for acceptable levels and forms of conflict within Canada. An example of this is the aggressive government funding and endorsement of different cultural community events. Expressions contrary to the spirit of "harmony within difference" are discouraged. Canada's "Day Against Racism," high school anti-racism poster and video contests, the multicultural protections available via the

Charter of Rights and Freedoms, and the special category of hate crimes are of relevance in this respect. Expressions of intolerance are subject to official censure. This is evident by the official and popular outcries concerning Ernst Zundel's 2003 plea for Canadian refugee status,[18] and rancour over David Ahenekew's continued Order of Canada status following his anti-Semitic remarks.[19]

The compassionate character of Canadian social policies further underscores Canada's domestic commitment to peace. This is a particular instance of image and actuality being in rough correspondence. Circumstances that exacerbate socio-economic inequities consistently and consciously receive redress by the Canadian state. Compassion is evident by the existence of Canada's social safety net. It spans well beyond the term of any elected government. The safety net's provision of universal health care meets with fierce public pride and an overwhelmingly high approval rating, shown at 98% support in polls concomitant to Roy Romanow's 2002 report as head of the Commission on the Future of Health Care in Canada.[20] Other facets of the social safety net are on equally solid ground. Welfare persists despite provincial variants on its administration. Low income single mothers receive *generous* tax credits and a monthly National Child Benefit income supplement.[21] Parents in general receive assistance from the federal government as "affordable, quality regulated early learning and child care."[22] At least one Member of Parliament continues as appointee to address the plights of the homeless, while the National Homelessness Initiative continues to disburse funds to municipalities in order to help fund services for the homeless.[23] Health Canada seriously contemplates as of 2002 the establishment of safe injection sites in the interest of reducing the transmission of blood-borne diseases among intravenous drug users.

The preceding examples demonstrate that the policies of elected Canadian government endeavour to ensure that Canadians are less vulnerable to the consequences of economic disparity, less prone to hurting each other and hurting themselves. The commitment of the Canadian state to universal well-being reveals its intrinsic aversion to the

latent conflict that may come out of socio-economic inequity. By implication, the Canadian state is averse to any manifest conflict that would follow from mobilization around socio-economic inequity.

A Conflict-Conducive American State and Its Relevance to Canada

The United States is simultaneously Canada's most significant trading partner, strongest external cultural influence, closest neighbour, and strongest military ally. As such, its demeanour is relevant to Canada. To the extent that American domestic policy influences Canadian domestic policy, to the extent that the territorial boundaries of both countries fuzzily exceed their respective geographical borders, aspects of the American demeanour regarding conflict have the potential to influence the Canadian demeanour regarding conflict, and vice versa. Insofar as the Canadian state's demeanour is gradually evolving, and the Canadian state's role as mediator is not immutable, the United States offers both possibility and gravitational pull regarding change in Canada's conflict-relevant demeanour.

History provides dramatic evidence of America as a conflict-averse state. At various moments in history, American society experiences the revelation that social inequities have grown to unhealthy levels. Robert William Fogel christens these revelatory moments "Awakenings." The American state responds to Awakenings by constructing reform pro-grams of an egalitarian character.[24] The reforms are truly corrective of latent and manifest conflict. Their list of moral accomplishments includes the abolition of slavery of African Americans,[25] the granting of women's suffrage,[26] and the beginnings of the welfare state.[27]

Despite these and other distortion-corrective accomplishments, despite attempts at social engineering by means of image manipulation and public relations, a conflict-conducive demeanour of the United States prevails. Awakenings represent moral crests in American history. However, attention easily diverts to the troughs. A sampling of historical moments implicates American elected government as being conflict-conducive. These

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moments include state sanctioned discrimination and violence against the American people: (a) CIA and military experiments that exposed civilians and military personnel unawares to psychotropics, germ pathogens, and radiation;[28] (b) federal governmental conflation of the Kent State University protesters with the then much-loathed Communists, the protesters therefore deserving the violence that was wrought upon them; (c) policy inaction when the AIDS epidemic's affected demographic early on was primarily homosexual men and intravenous drug users; (d) the faith-based administration of public services; (e) the imprisonment of a disproportionate number of blacks and Hispanics; and (f) the gutting of the Environmental Protection Agency, negatively impacting upon the health of future generations and the sustainability of communities.

America can also be shown as conflict-conducive abroad: (a) the United States' refusal to commit to Kyoto Protocol ratification, making America complicit in both the rising of shorelines elsewhere on the planet, and the resultant dwindling livelihoods; (b) U.S. application of "the global gag rule" by which aid agencies are ineligible for federally disbursed funds if those agencies are in any way connected to abortion providers or counsellors, thus derailing the promised $15-billion Africa AIDS initiative of 2003;[29] (c) U.S. allegation in 2003 that Iraq possesses weapons of mass destruction, the same categories of weapons that the United States provided Iraq under past administrations; (d) a history of the United States providing military aid to regimes, ignoring a regime's human rights track record, but basing its decision of support on the military or economic significance of a regime to the United States;[30] and (e) the 2003 U.S.-UN deadlock regarding the justification for military action in Iraq, indicative of at least the U.S. administration's tendency toward unilateralism, an approach in itself antithetical to conflict resolution.

Comparison finds Canada more conflict-averse than its southern neighbour. Compare Canadian and American treatment of the same policy matters. That the United States is exceptionally conflict-conducive is argued in the spate of post-9/11 critiques of American foreign and domestic policy, including the 2002 documentary *Bowling for Columbine*.[31]

In Canada, the existence of manifest conflict would seem to make state and society squirm. Elected government expeditiously moves to end conflict when pro-social gains can no longer be expected as manifest conflict's side-effect. In America, the state carries on with business as usual despite abundant unresolved *domestic* conflicts. America's blasé demeanour finds possible explanation in four phenomena. First, their two-party system cultivates extremes of political position and animosity by the distance between those positions. Both the Republican and Democratic parties create their own versions of conflict. Think of the racist undercurrents implied by Trent Lott's loose lips.[32] Think of the violence of the Democratic National Convention immortalized in the film *Medium cool*.[33] Second, American elected government is buffered from conflict by means of an isolation effect.[34] The lack of *tangible* immediacy of conflicts relies in part upon their dilution into the vastness of the U.S. economy, population, and geography. Third, the agenda of issues currently circulating in popular consciousness can become overcrowded. The glut of newsworthy and attention-commanding subject matter that various conflict stakeholders keep tirelessly in circulation throughout the American political discourse lessens the likelihood that all will receive appropriate attention. The *vicarious* immediacy of various conflicts becomes diluted and muted to the point of their losing attention-gaining impact. Each becomes instead a single droplet in an ocean of news. Fourth, a no-nonsense attitude regarding conflict suggests austere conflict management practices rather than conflict resolution. This reflects post-9/11 overcompensation for being trod upon and under 24/7 terrorist threat.

The economically modest[35] and less populous Canadian state, juggling a smaller repertoire of politicized issues in the news agenda, cannot afford to be comparably conflict-blasé. Should Canada find itself a terrorist target, at such time a coercive and conflict-conducive rather than conflict-averse or conflict-corrective demeanour could be expected to prevail — recall invocation of the *War Measures Act* during the FLQ crisis. Nevertheless, one still should not discount the power of ties based upon economy, culture, and other forms of territorial overlap to reorganize Canada's demeanour with respect to conflict.

Summary and Application to Kyoto

Chapter 1 identifies two frameworks for apprehending conflict: the managerial and the moral. The managerial framework privileges conflict management, recognizing conflict as an explicit disruption of the smooth running order of society. The moral framework privileges conflict resolution, recognizing conflict as the production of both explicit and subtle forms of injustice, disrespect, suffering, and harm. Resolution is argued as being preferable to management, especially in the case of global warming where conflict resolution constitutes a matter of survival and conflict management only postpones disaster.

The intricacies and complexity of conflict as a form of power are discussed in order to appreciate how the two frameworks differ in what qualifies as conflict, how they locate conflict in global warming and climate change (chapter 9), what is needed to transform the conflict around global warming into reasonable expressions of power, and what is needed to reform the Canadian state's presently flawed intervention in deep conflict (chapter 10).

The two frameworks are shown to reflect the mindsets and intentions of opposing actors in deep conflict and, by the dissonance between these mindsets and intentions, account for the tenacity of deep conflict. Corporations, business associations, and other private-interest collective actors (chapter 3) comprise the majority of those committed to the managerial framework in the deep conflict centred in global warming and climate change. Environmental NGOs, SMOs, and other public-interest collective actors (chapter 3) comprise the majority of those committed to the moral framework in the same deep conflict. Chapter 9 examines the managerial and moral actors' thoughts and actions with respect to this deep conflict as precursors to Kyoto Protocol ratification.

Chapter 1 justifies the claim that the Canadian state is conflict-averse. This long-time demeanour persists, despite conflict-conducive influence from the neighbouring United States. It is argued that Canada's conflict-averse demeanour leads Canadians to expect their state to intervene in deep conflict. Canadians' appraisal of global warming as deep conflict

targets it for such intervention. The state complies through the role of SAM. A part of this role is to make possible a safe and sanguine space for social interaction — a space designated as the 'stage.' A complex society-wide discussion around global warming evolves on this 'stage,' benefiting from a particular feature of the 'stage': the Canadian state's involvement in environmental knowledge acquisition via conferences, research, publications, education, and atmospheric monitoring (chapter 9).

The SAM's affinity to the managerial logic strengthens deep conflict's tenacity. This affinity is the status quo that the dissertation identifies as a problem. The Canadian SAM's out-of-character *moral* response to the deep conflict around global warming and climate change (chapter 9) points to reforms that address this problem (chapter 10).

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[1] Mayer, B. (2000). *The dynamics of conflict resolution: a practitioner's guide* (pp. 8-16). San Francisco: Jossey-Bass.

[2] There are other significant consequences of the differences between the managerial and moral frameworks for apprehending conflict. First, representative of managerial practitioners of "conflict resolution," Mayer claims that conflict exists if at least one person believes it to exist. The moral perspective disagrees. A subjective position that refuses others' reasonable justification that the state of affairs is neither undesirable nor disruptive does not amount to conflict. The disagreement matters. The managerial claim allows for mischief in the form of an arbitrary resetting or bypassing of the threshold by which 'acceptable' is distinguished from 'undesirable' and 'disruptive,' mischief that would be passed off as a valid detection of conflict. This can also be thought of in terms of threshold between shaping and distortion of practices and spaces. Second, Mayer alleges that "in conflicts, it does not take two to tango." But surely it does! Power and conflict are comparative phenomena in that shaping and distorting only become distinguishable after assessing the relative states of affairs of at least two actors. If one actor is absurdly better off than another, if some players consistently act in their own best interests while others do not, any of these and other disparities reveal that life's spaces and practices are distorted. This disagreement matters in that some claims of conflict that are valid from the managerial perspective would amount to false allegations of distortion when considered within the moral framework. The 'crying wolf' detracts from the moral import and urgency of dealing with actual conflict.

[3] Engel, D. M. (1998). How does law matter in the constitution of legal consciousness. In B. G. Garth & A. Sarat (Eds.), *How does law matter* (p. 131). Evanston: Northwestern University Press. The author more eloquently paraphrases Michel de Certeau from *The practice of everyday life* than does Steven Rendall in his translation of de Certeau from French to English.

[4] Arendt, H. (1958). *The human condition* (p. 200). Chicago: University of Chicago Press.

[5] Haugaard, M. (1997). *The constitution of power*. Manchester: Manchester University Press.

[6] Moore, B. Jr. (1978). *Injustice: the social bases of obedience and revolt*. New York: Sharpe.

[7] Lukes, S. (1977). *Power: a radical view*. London: The MacMillan Press.

[8] (Lukes, 1977, 19)

[9] MacPherson, C. B. (1977). *The life and times of liberal democracy* (p. 1). Oxford: Oxford University Press.

[10] Nettl, J. P. (1968). The state as a conceptual variable. *World Politics, 20,* 560.

[11] Migdal, J.S. (2001). *State in society: studying how states and societies transform and constitute one another* (pp. 15-16). Cambridge: Cambridge University Press.

[12] van Erp, H. H. H. (2000). *Political reason and interest* (p. 4). Burlington: Ashgate.

[13] Sallot, J., Cernetig, M. & McKenna, B. (2003, February 20). PM aims to broker Iraq deal. *The Globe and Mail*, pp. A1, A13.

[14] LeBlanc, D. & Cox, K. (2003, February 28). Crash casts pall over aging Sea Kings. *The Globe and Mail*, pp. A1, A4.

[15] LeBlanc, D. (2003, February 19). Surge in funding a victory for McCallum. *The Globe and Mail*, p. A20.

[16] LeBlanc, D. & Sallot, J. (2002, November 22). PM urged to fire aide for insult to Bush. *The Globe and Mail*, pp. A1, A18.

[17] Galloway, G. (2003, March 4). Parrish applauded on Bullard talk show. *The Globe and Mail*, p. A4.

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CHAPTER 2

The Canadian State-As-Mediator

Mediation as it is understood by lay persons and practitioners of ADR will be referred to as normal-context mediation. Mediation as it pertains to the state-as-mediator will be referred to as hyper-context mediation. Hyper-context mediation is both an extension and an abstraction of normal-context mediation. Any discussion of hyper-context mediation requires prior grounding in normal-context mediation. While the two bear similarities, they are markedly different from each other. In this chapter, normal-context mediation and hyper-context mediation are compared and contrasted according to the following criteria: (a) institutionalization and formality, (b) the conflicts to which they are applied, (c) the relevant actors, (d) the process, (e) the mediation arena for participants in the process, (f) mediator traits, and (g) the content and quality of the outcome of the process.

Normal-Context Mediation

Robert A. Baruch Bush provides a concise definition of normal-context mediation:

> a process, either voluntary or court-ordered, in which a neutral third party (court-appointed or privately selected) conducts an informal and non-adversarial meeting to help the parties identify the issues in dispute and reach a mutually acceptable settlement on their own terms. The mediator has no power to impose a settlement and ordinarily does not even make recommendations.[1]

Institutionalization and Formality of Normal-Context Mediation

Baruch Bush asserts that normal-context mediation should be understood as an informal process, but with respect to the qualifications of its mediators and the high degree of institutionalization of its services, it is to a degree formal. The major providers, standard-

and convention-setters of normal-context mediation in Canada are member-funded organizations that include the Canadian Institute for Conflict Resolution, Ottawa; the Canadian Bar Association National ADR Section, Ottawa; and ADR Institute Canada, Toronto. The set of mediation organizations is complemented by a constellation of individuals who offer their services as dispute resolvers — evinced by numerous telephone yellow page listings under the heading "mediators."

The Canadian state counts itself among those who prescribe and provide normal-context mediation for conflicting actors. This aspect of the Canadian state warrants mention because, counter-intuitively, it is not an aspect of the SAM. The Canadian state provides normal-context mediation in four different circumstances.

First, the Canadian state provides normal-context mediation concerning disputes among its own employees. The mission statement of the Department of Justice promises "high quality legal services and counsel to the government and to client departments and agencies."[2] The counsel that the Department of Justice offers comes from the repertoire of ADR, given the Department's present aspiration to be "a leader (within the federal government) in promoting the use of (dispute resolution) processes."[3] The Dispute Resolution Services of the Department of Justice offers a Program by which federal "departments and agencies ... pool the services of in-house mediators,"[4] as well as offering seminars and workshops on the art of mediation. Harassment and conflict in the federal governmental workplace are in these ways guaranteed recourse to normal-context mediation.

Second, the Canadian state provides normal-context mediation for disputes between its own federal Agencies and the parties with whom those Agencies have ongoing dealings. For example, Canadian Food Inspection Agency employees

> are thrust into dealings with food producers, processors, suppliers and other 'regulatees' which are often if not generally ongoing — a no-escape relationship. ... Failure to resolve disputes as they arise could cripple inspectors and other staff as they face their duties working beside those whose products they inspect — and sometimes reject — on a day-to-day basis.[5]

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Third, the Canadian state promotes normal-context mediation as a means for settling disputes between citizens of the state. For example, employee allegations of unjust dismissal receive federal governmental response in the form of free mediation services. This option is available if the accused employer is a federally regulated industry. These services are provided under the auspices of Human Resources Development Canada and the Canada Industrial Relations Board.[6]

Fourth, the Canadian state attempts to guarantee that normal-context mediation is available to citizens of the state for any of their disputes that would benefit from such a process. The Canadian state achieves this by funding dispute settlement organizations. For example, Conflict Resolution Network Canada, Waterloo, receives core funding from the Office of the Solicitor General of Canada. While the Network submits proposed mediation projects for federal governmental approval, the federal government essentially rubber-stamps the Network's proposed courses of action.

Conflicts to Which Normal-Context Mediation is Applied

Mediators from the various ADR organizations, private practices and the Canadian state oversee normal-context mediation for the actors who are engaged in a particular manifest conflict. These manifest conflicts are of modest scale and limited circumstance. They pertain to the zoomed-in view of power relations: circumstances of manifest conflict that are localized eruptions of underlying, far-reaching, and systemic distortion. Sample conflicts of modest scale and limited circumstance that prompt recourse to mediation include the difference between the CUAW and Daimler-Chrysler over closure of their Windsor, Ontario auto plant, the Surrey School Board of Surrey, British Columbia, and its refusal to include gay-affirmative literature in school library holdings, PETA and the Vancouver Aquarium, Vancouver, British Columbia, conflict over public display of a killer whale.[7] These circumstances of manifest conflict are unintelligibly symptomatic of the

bigger picture: deep conflict that owes to societal norms such as unfair treatment of labour, discrimination, and censorship, and the unethical treatment of animals.

Manifest conflicts to which normal-context mediation is applied are distinguished in five respects. First, all are framed as relationships between the aggrieved and the aggriever. While some conflicts are such that all members of society are worse off for an unnecessary or excessive shaping of life's spaces and practices, grievance is inherent of those distortions in which one set of actors reaps unacceptable rewards while another set of actors accordingly experiences undue demerit and deprivation.

Second, many of the conflicts entail escalation. This is hardly surprising, given that a managerial framework for thinking about and dealing with conflict prevails. Since the managerial framework only takes notice of that which is socially disruptive, escalation[8] of conflict is a way of securing attention within that framework. Consider the following circuit of distortion and mediation: (a) A distortion of the spaces and practices of everyday life is detected — the conflict at this stage is still latent; (b) the distortion is treated dismissively because it does not disrupt the social order, mere awareness and declaration of the distortion are insufficient to inspire cooperation of all the relevant parties to correct it; (c) sympathetic persons and those who are aggrieved by the distortion mobilize and initiate attempts at the distortion's correction; (d) the attempts at correction deliberately create new distortion that *is* disruptive of the social order; and (e) the condition for existence of the new deliberately caused distortion is the continued existence of the distortion that was first detected. The latter point amounts to a form of *conflict blackmail:* if a particular distortion is pragmatically insignificant — call this the *primary* distortion — then the aggrieved can deliberately conflate it with some other conflicts that *are* pragmatically significant — call these other conflicts *secondary* distortions. The secondary distortions amount to the committing or abstaining from acts that frustrate an established mutual dependence involving the aggrieved and the aggriever. Such distortions guarantee that a sensation of the intolerable is experienced by all, and not just by the aggrieved. This ensures that mediation becomes an

attractive option to all.[9] For example, inadequate wages in relation to the amount and quality of labour is not enough for the managerial actor to be convinced that mediation is needed, let alone that a problem exists. Add to this a work stoppage brought about by that same unfairly treated labour, along with bad press. The problem then not only shows up on the managerial actor's radar but demands redress. No change takes place regarding social norms that condone exploitation of labour to the brink of labour effectively pushing back.

Third, for those conflicts that do not entail actual escalation, many entail *threat* of escalation. The imminent threat that the social order will be disrupted is sufficient cause for managerial actors to invoke or encourage normal-context mediation. Consider the following circuit of distortion and mediation: (a) A primary distortion is detected; (b) the distortion is assessed as no threat to the existing social order; (c) sympathetic persons and those who are aggrieved by the distortion threaten the existing social order with secondary distortions that likely would disrupt the social order; and (d) the condition for carrying out the threat is the continued existence of the primary distortion — sometimes the threat of a work stoppage is sufficient to encourage employer and employee to participate in mediation.

Fourth, many conflicts requiring normal-context mediation entail the threat of *forced* conflict resolution. Conflicts framed as matters of injustice or wrong-doing can be submitted to either normal-context mediation or adjudication (i.e., the courts). If the aggrieved chooses to bypass the strategies of either escalation or threat of escalation, but still seeks redress for a particular perceived injustice or wrong, in many cases she can enlist the help of the courts. Such a manoeuvre constitutes a guarantee, a bluff, and a form of conflict blackmail. As a guarantee, the courts are always on hand for the oppressed and those who have been wronged. They are a means of forcing the other actor(s) to participate in a dispute settlement process. Unless normal-context mediation has been court-ordered, it relies on the voluntary participation of all relevant actors. The uncertainty of waiting for a conflict settlement process is effectively removed by engaging the courts for litigation. As a bluff, neither the aggrieved nor the aggriever is thrilled by the prospect of going to court.

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The courts are unattractive as an option because of long waits before trial dates, the protracted time frames of trials, substantial court and legal fees, and the gamble involved in lose-win court outcomes. As conflict blackmail, if the aggrieved has the power to commit all relevant parties to the dismal process of litigation, then that power constitutes a bargaining chip to persuade all relevant parties to enter promptly instead into normal-context mediation. Normal-context mediation is more appealing than adjudication in that it boasts relatively concise time frames, modest costs, and win-win outcomes.

Fifth, many conflicts are submitted to normal-context mediation because they unambiguously fall into categories of conflict for which normal-context mediation has been proven efficient and effective (e.g., landlord-tenant disputes, employee harassment, debtor-creditor disputes, and family disagreements).

Actors Implicated in Normal-Context Mediation

Actors relevant to the conflicts that normal-context mediation is expected to cure include those who produce or contribute to the distortion in question; those who experience an unacceptable gain inherent of that distortion; those who experience an unacceptable loss inherent of that distortion; and those whose sympathies lie with the casualties of the unacceptable loss — this last group is relevant to conflict by their complicity in the second order distortions that are intended as provocation to instigate *any* process of conflict settlement. These actors can be individuals (e.g., employees, managers, citizens) and groups (e.g., labour unions, corporations, citizens' coalitions). Recall that even individual employees of the state and groups such as state agencies can be among the disputants in the conflicts that are submitted to normal-context mediation. The involvements of the Canadian state here should be seen as distinct from the Canadian state's involvement in the hyper context.

Actors who participate in the process of normal-context mediation do so of their own volition or by court order. They include any of the actors themselves from the preced-

ing four categories; representative teams and spokespersons selected from those actors; professionals who are independent of those actors but are recruited as negotiators by any of those actors to represent their interests; and those who "[h]ave the capacity, (even) if they are not involved, to reverse or damage a negotiated settlement"[10] — the latter include experts, witnesses, media and lawyers.[11] The roster of participants in normal-context mediation is influenced by the normal-context mediator insofar as "[m]ediators can often suggest the number of representatives appropriate to participate in the dispute resolution process, the type of expertise that would be beneficial, and a decision-making process for selecting team members."[12] The roster of the participants also depends upon how thoroughly the more obvious actors — usually the aggrieved and the aggriever — identify other less obvious candidates as being relevant to the situation. Saying that the conflicts of normal-context mediation are of modest scale and limited circumstance implies a relatively small number of representative interests associated with a particular conflict and, therefore, from the mediator's point of view, a manageable number of participants within normal-context mediation.

The Process of Normal-Context Mediation

The process of normal-context mediation procedurally and temporally organizes its participants — it is not a case of anything goes. The organization is such that certain conflict ameliorative stages of development[13] take place. These stages progress from one to the next with limited freedom as to how they can be treated to creative interpretation, selective omission, and permutation of sequencing. The progression of stages is steered, but not dominated, by the normal-context mediator who ensures that the necessary developmental stages of normal-context mediation take place, that they unfold at a particular level of quality, and that they do so in a timely manner conducive to conflict amelioration. From the vantage point of the mediator, Moore and Gulliver identify the typical sequence of stages in normal-context mediation: (a) establish a relationship with the disputing parties,

(b) select a strategy to guide mediation, (c) collect and analyze background information, (d) design a detailed plan for mediation, (e) establish the mediation arena, (f) build trust and cooperation between the disputants, (g) commence the mediation session, (h) define issues and set an agenda, (i) uncover hidden interests of the disputing parties, (j) generate options for settlement, (k) assess those options, (l) final bargaining, and (m) formal settlement.[14] Relevant aspects of some of these stages are raised as points of comparison elsewhere in this chapter when discussing the hyper-context and the state-as-mediator.

Leonard L. Riskin suggests that the normal-context mediator's latitude steering the process brings about different levels of engagement of the disputing parties. Normal-context mediators choose strategies and techniques that are to differing degrees facilitative or evaluative. Emphasis on either a facilitative or evaluative approach is based upon the mediator's assessment of what best suits the conflict situation and the participants at hand:

> (Facilitative strategies and techniques are) intended to allow simply the parties to communicate with and understand one another. ... The mediator who facilitates assumes that the parties are intelligent, able to work with their counterparts, and capable of understanding their situations better than the mediator and, perhaps, better than their lawyers. ... [T]he facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do. ... (Evaluative strategies and techniques are) intended to direct some or all of the outcomes of the mediation. ... The mediator who evaluates assumes that the participants (in mediation) want and need her to provide some guidance as to the appropriate grounds for settlement — based on law, industry practice or technology — and that she is qualified to give such guidance by virtue of her training, experience and objectivity.[15]

The Normal-Context Mediation Arena as a Site for Deliberation

The *mediation arena* is the environment in which the actors who participate in normal-context mediation endeavour to settle their shared conflict.[16] They do so by means of deliberation. As defined by Adam Przeworski, deliberation "is a form of discussion intended to change the preferences on the bases of which people decide how to act. Deliberation is political when it leads to a decision binding on a community."[17] The

mediation arena as an environment organizes its participants to conform to the procedural requirements of normal-context mediation. The mediation arena consists of a tangible localized physical space, and resources to assist deliberation.

Kolb suggests that the normal-context mediation space upon which actors physically converge must accommodate all imaginable configurations of participant deliberation. It must be possible for the participants to engage in open and closed meetings, joint and separate meetings, on-the-record and off-the-record meetings.[18] Moore suggests that the location of the space affects the potential for success of the deliberation. Distance from one's typical environment may create a particular psychological vulnerability that makes one receptive to different ways of thinking, as well as decrease the possibility of impropriety such as bugging and eavesdropping.[19]

Resources of the mediation arena that abet the intended deliberations include the physical architecture of the space and its various accouterments that are conducive to face-to-face communication — size of the space, comfort of its furnishings, "seating patterns, the shape of the table, the amount of physical space allocated to and between disputants, (and) physical objects that indicate authority or differences in power."[20] Also abetting the intended deliberation are communication media such as telephones, e-mail, faxes, printers and photocopiers — these are necessary to create virtual spaces by which on-site participants can link with each other as well as others off-site. Information resources are accessed by means of those communication media such as the on-line archives, data bases, information analysts, and the news.

Normal-Context Mediator Traits

The steering role performed by the normal-context mediator with respect to the stages of normal-context mediation implies the mediator's essential possession of certain characteristics. In order to secure the cooperation of the intended participants, the mediator

must be trustworthy, reasonably neutral, omnipartial,[21] competent, qualified, seriously committed, non-threatening, and non-coercive. The mediator must have access to information resources, the means for analyzing information, the means for interpreting that analysis, and the means of conveying the same to the participants to make possible their informed choice. In order to commence, lead, and bring the process to closure, the mediator must command authority with respect to the participants. Empathy, persuasiveness, optimism, persistence, flexibility,[22] intuition, and possession of related experience are assets with respect to the minutiae of steering. Confirmation that the above traits are essential to an effective mediator comes from consistent reference to them in the standards of conduct for mediators as formulated by various professional ADR organizations.[23]

Based on her loyalty to one framework or the other for understanding conflict, the normal-context mediator expresses professional preferences and creatively interprets the rules of mediation within established limits such that any of several contemporary specialized approaches to normal-context mediation is realized. The managerial framework accommodates traditionalist,[24] facilitative, evaluative,[25] bureaucratic,[26] community, and pragmatic[27] mediators and mediation. The moral framework accommodates activist, accountable,[28] transformative,[29] and revisionist[30] mediators and mediation.

I conclude this summary of traits of the normal-context mediator with a statement of the obvious. That is, the normal-context mediator is a person. Even though some specialized approaches to normal-context mediation push the envelope — community mediation has been known to use more than one mediator[31] — any normal-context mediator is nonetheless an individual human being. This obvious trait is emphasized here because it is a distinctive contrast with hyper-context mediation.

Outcomes of Normal-Context Mediation

When modest scale and limited circumstance manifest conflicts are tackled by the courts, there is the potential to gradually rein in the systemic distortions that underlie them by means of the accumulated weight of precedent. Normal-context mediation has no such power. At best, its application to similar conflicts manages localized injustices (i.e., primary distortions) and puts an end to the order-disruptive conflicts strategically attached to them (i.e., secondary distortions). Successful completion of normal-context mediation leaves the system unchanged that produced the localized injustices — think of the underlying system as ground zero for both the primary and secondary distortions. The unaltered system — a particular way of thinking and doing — amounts to a distorted foundation upon which certain social relations continue to be lived and built, but cannot help doing so in a distorted manner. This underlying distortion contributes to recurrence of the recently managed injustice or the surfacing elsewhere of comparable new injustices, each then demanding its own normal-context mediation, court-based remedy or some other ADR-based attention. Mediation in this sense can never be more than cosmetic repair or band-aid.

Some theorists and practitioners of ADR frame the outcomes of normal-context mediation in terms of win-win, win-lose, compromise, and impasse.[32] These assessments of outcome all hinge upon whether or not the actors in conflict "feel that their interests have been satisfied."[33] This framing emphasizes the actors' feelings rather than the reality of their situation. Feelings matter to the managerial actor in that ill feelings can amount to the creation of secondary distortions and social disruption. The moral actor is more attentive to the reality that the actors' situation transcends their subjective feelings. Recall that actors can live their lives unaware of what is in their best interests, possibly being victims of injustice without themselves realizing it. The outcomes of normal-context mediation should be assessed with respect to what happens at three levels of conflict's visibility: (a) the secondary distortions — most noticeable and insufferable for the aggrieved, the aggrievers

and other members of society; (b) the primary distortion — this is noticeable and insufferable for the aggrieved; and (c) the underlying systemic distortion which made the primary distortion not only possible, but likely — this is scarcely noticeable, as if the wallpaper to our lives. Normal-context mediation produces consistent outcomes at these three levels of visibility: (a) The secondary distortions are managed, ameliorated, or resolved; (b) the primary distortions are invariably managed; and (c) the underlying systemic distortions are allowed to persist, giving sufficient cause for later resurrection of the same or a similar primary distortion, along with secondary distortions as embellishment.

Hyper-Context Mediation

Hyper-context mediation is an informal process in which all members of society deliberate upon the social thresholds that distinguish acceptable shaping of life's spaces and practices from distortion of those spaces and practices. Deliberation is no mere intellectual exercise. It arises from palpable dissatisfaction based upon lived experience and concerning societal norms that tell us what constitutes shaping or distortion. It constitutes a necessary component of political self-determination, as suggested by Habermas,[34] Rawls,[35] Arendt,[36] Dewey,[37] and other theorists of deliberative democracy. Like a mediator, the state facilitates and steers deliberation, and offers evaluative input to the process participants. The state ends hyper-context mediation by providing tangible support for the outcome of the deliberation in the form of policy.

The term "hyper" in "hyper-context mediation" emphasizes that the latter envisions mediation as pushed well beyond the bounds associated with normal-context mediation to extremes of possibility (i.e., physical scale, resources, complexity, time frame, etc.) and abstraction (i.e., what constitutes deliberation and the mediation arena). The term "mediation" in "hyper-context mediation" follows from the appropriateness of mediation

as a metaphor for what takes place when the Canadian state ameliorates those conflicts that are rooted in societal norms.

Institutionalization and Formality of Hyper-Context Mediation

Hyper-context mediation is not an entirely *planned* process. Rather, it is a constellation of conflict-relevant ways of thinking and doing that have become strongly articulated together. The relative stability, broad scale, and diffuse structure of hyper-context mediation warrants its description as an informal institution. This conflict ameliorative institution is found in democratic states where there is a sense that the people's wants with respect to the shaping of life's spaces and practices, no matter how wise or absurd, must be shown due respect and some amount of consideration by their elected representatives. Discussion here will focus on hyper-context mediation as an institution in Canada.

Conflicts to Which Hyper-Context Mediation is Applied

The conflicts to which hyper-context mediation is applied are distorted and distortion-engendering societal norms. They are systemic and generally attract little attention.[38] Nevertheless they undergird, launch, and nourish throughout society an ever-changing array of relatively conspicuous primary and secondary distortions. The hyper context conflicts are less a matter of the normal context's actor A versus actor B than they are a matter of societal commitment to ways of thinking and doing A at the expense of ways of thinking and doing B. Not addressing these conflicts leads to further canalization of life's spaces and practices in a regrettable shape and direction. Among the irrevocable and the regrettable consequences of these uncorrected conflicts are global warming, extinctions of species, exhaustion of resources, pollution of the environment, and depletion of the ozone layer. Alarm or even awareness that a way of thinking and doing constitutes conflict

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depends upon the focus of one's attention. Free market capitalism comes across as a good way of thinking and doing with respect to corporate innovation and creativity; it comes across as a bad way of thinking and doing with respect to the natural environment.

Actors Implicated in Hyper-Context Mediation

Inclusion of all members of society immediately points to how different hyper-context mediation is from normal-context mediation. Hyper-context mediation accommodates the fact that all members of society have interests with respect to where various shaping-distortion thresholds lie, whether as moral or self-centered beings, and that those members of society may wish to express or protect those interests. In contrast, normal-context mediation has been known to suppress artificially the number of its participants so as to make the process more manageable (e.g., omitting actors from the process who are nonetheless recognized stakeholders but lack sufficient power in the world to matter strategically when the deliberation turns toward bargaining and compromise).

In one sense, hyper-context mediation is voluntary. Inquiry regarding acceptable forms of behaviour and suitable organization of everyday lives is something in which all members of society freely engage. Assessments of right versus wrong, and justice versus injustice, are a part of our moral sense-making of the world, although probably not couched in terms such as "distortion" and "threshold." In another sense, one's volition in the process of hyper-context mediation is a moot point. This is so for two reasons. First, there is no outside of the process. Second, not all are necessarily cognizant of their involvement in the process by virtue of its informality. There may be a sense of one's participation in an ongoing conversation, but not necessarily a sense of the gravity of the conversation, or its being part of larger deliberation. Unlike normal-context mediation, the hyper-context mediation has neither fixed nor discernible starting times. Contributions to its deliberations

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may be temporally staggered and indeterminately sequenced, further making it less apparent as a purposeful process.

All members of society may give voice to relevant interests, concerns, and positions in hyper-context mediation. Groups do so more effectively than individuals by virtue of the efficiency that comes from organization. Of those groups, some voices are more audible than others depending upon the hyper-context mediation's distortion subject matter. A wide and receptive audience awaits End Legislated Poverty if the subject matter of a hyper-context mediation touches upon public housing or the welfare state. Mothers Against Drunk Drivers gains deliberative prominence if the hyper-context mediation in any way considers alcohol-related traffic fatalities. There are ample groups specializing in one distortion subject matter or other; this guarantees the vitality of hyper-context mediation.

The Process of Hyper-Context Mediation

The process of hyper-context mediation progresses though six phases of development. The Canadian state warrants the designation state-as-mediator by performing the steering, facilitation, evaluation, simulation, and policy construction entailed in these six phases.

The first phase of hyper-context mediation involves the Canadian state's establishment and maintenance of the 'stage' on which conflicts are created and corrected.

The second phase of hyper-context mediation entails the alleging that consequences of a particular way of thinking and doing lie on the wrong side of the shaping-distortion threshold, and do so to an unacceptable degree. This allegation is instigated by members of society who are personally affected by or care about those consequences. They widely disseminate the allegation by means of the 'stage' and its media.

The third phase of hyper-context mediation is the society-wide deliberation of the allegation. Ways of thinking and doing are typically inconspicuous because of societal

habituation to them. The media-disseminated allegation instigated by relatively few overcomes the inertia of the many with respect to taking notice of and contemplating the way of thinking and doing in question, and its consequences. Society-wide deliberation of the contested consequences and how they were brought about is encouraged by the Canadian state's provision of the 'stage' and democratic inroads through it. The Canadian state steers the deliberation insofar as it influences the structure of the 'stage' at the level of media; it maintains space- and practice-affecting policies on various issues;[39] and it always carries the bluff of coercion — a judicious monopoly of force — to ensure appropriate conduct of members of society on the 'stage.' The intent of the deliberation is to assess decisively on which side of the shaping-distortion threshold the consequences of a way of thinking and doing lie; if the way of thinking and doing is acceptable; and if its consequences that had raised concern are acceptable. As various deliberative contributions make their piecemeal way to the 'stage' via the media and relevant information (observations, interests, positions, and questions) pertaining to the ways of thinking and doing in question gradually achieve social presence. Given that hyper-context mediation is realized in a protracted time frame, and given that the 'stage' in general accommodates peace, conflict, and responses to conflict, the deliberation that takes place in hyper-context mediation can actually include experimentation to help test, refute, or confirm the allegation that the consequences of a particular way of thinking and doing add up to conflict. The experimentation consists of the creation of distortions; the detection and observation of distortions; the management, amelioration, or resolution of primary distortions; and the management, amelioration, or resolution of secondary distortions.

The first three phases of hyper-context mediation evoke the facilitative approach to normal-context mediation. In this respect, the Canadian state helps the participants to communicate with and understand one another; established policies of the Canadian state serve as reference points that help clarify and enhance communication between the participants; and the Canadian state mounts the 'stage' in order to contribute to the

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deliberation — the latter is usually in the form of social issues communication, developmental communication and public comment by Members of Parliament. The normal-context mediator may have only a limited tool-box, but the Canadian state functioning as if a mediator in the hyper context has vast resources at its disposal — normal-context mediation's wish list as if writ large.

The fourth phase addresses the reality that consensus and compromise are often difficult to achieve in mediation and deliberation. It may be easy enough for participants to emphasize their different views regarding the thinking and doing in question, but disagreement is more likely than the convergence regarding final assessment of the thinking and doing. At some point the Canadian state stops entertaining the possibility of the participants concurring to produce a singular assessment. At such time the Canadian state works from its plausible rendition of what would have been concluded if sufficient time, infinite resources, and open-mindedness of the participants had been an option. The act of simulation here extrapolates, interpolates, and conjectures a reasonable filling in of deliberation's gaps. It salvages points of argument that were not followed through, valid conclusions that were not made, admissions of mistake that never surfaced, evidence that was overlooked, positions that were not stated, compromise that was not considered, and options that were not volunteered. The Canadian state simulates its own evaluative contributions to the deliberation and mediation at hand: the relevance of law, treaties, industry practice, resource availability, technology, and even census demographics to the thinking and doing in question and any potential re-shaping of that thought and action. This simulation is an acceptable procedural short-cut and compromise if thought out in good faith by the Canadian state.

The fifth phase of hyper-context mediation produces an outcome of the deliberation. The Canadian state reaches an informed assessment of the way of thinking and doing with respect to its consequences. It does so on behalf of those who had been actual participants in the first three phases of hyper-context mediation. The assessment is made in the cranium of the state by weighing voiced and unvoiced (i.e., simulated) arguments, positions and

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observations of those participants. The quality of the assessment is given a boost by inclusion of the Canadian state's evaluative contributions and a projection of how reasonable participants would have responded to those qualified contributions. The quality of the simulation is such that the outcome of the deliberation is essentially that of society, even if it is the Canadian state that finishes off the process.

The sixth phase of hyper-context mediation involves the Canadian state's provision of tangible support for the assessment. It is in the interest of the state to ensure that at least a type of peace endures subsequent to the process of hyper-context mediation. Although the normal-context mediator does not have the power to impose a solution regarding a distortion, the Canadian state has the power to do so by means of policy production. Deliberation here segues from being simulated to being political when its assessment outcome is rendered socially binding by means of policy production.

The Hyper-Context Mediation 'Stage' as a Site for Deliberation and Publicity

Recall that in normal-context mediation, the mediator establishes the mediation arena in which conflicting actors deliberate amongst themselves in order to work out their differences. The part of the 'stage' through which hyper-context mediation's allegation[40] and deliberation of distortion takes place is only superficially similar to the mediation arena. Deliberation as part of the 'stage' is not confined to the literal experience of bringing everybody to the bargaining table. Nor is it confined to the time frame that one would associate with human beings purposefully but not entirely cooperatively sequestered in the same face-to-face meeting space. The nodes by which members of society interface with the ongoing deliberation that is a part of any given hyper-context mediation include all manner of communication media and means of expression: Web site, the letters to the editor page in the newspaper, the fax numbers and e-mail addresses of members of government, the voting booth on election day, cultural production, the symbolic buying or selling of shares in an

enterprise, personal conversations, protest and political spectacle, consumer choice as patronage or boycott, news coverage, advertising, and public relations work. Although the communication media and information resources of normal-context mediation rely upon a variety of technologies (e.g., telephone, internet, flesh-and-blood analysts, and the news), theirs is not the same variety and complexity as demonstrated by hyper-context mediation.

Radical democratic theory offers explanation for why the media are a crucial part of hyper-context mediation's 'stage.' James Curran emphasizes the radical democratic potential of the media: at its best, the media functions "as a complex articulation of vertical, horizontal, and diagonal channels of communication between individuals, groups, and power structures"[41] by which all power is subject to our mutual critical scrutiny. The media, in this sense, sustain various public spheres; facilitate various interpretations and realizations of deliberative democracy; and accommodate the society-wide deliberation of norm-related subject matters, whether weighty or mundane, upon which hyper-context mediation relies.

Commitment of the Canadian state to the democratic potential of the media is limited. The Canadian state secures the minimal conditions necessary for this media aspect of the 'stage' insofar as the federal government holds sway over the licensing of broadcasters; Canadian content of broadcast media; the extent of concentration of ownership that is allowed for news media; the amount of foreign ownership of media within Canada; a healthy economy in which commercial media can thrive; restrictions on hurtful speech; laws concerning libel; subsidies for cultural industries; tax incentives for investing in Canadian cultural industries; and the provision of public media on television, radio, and the internet in both official languages.

Some members of society are better equipped than others to use the media in order to take position on the 'stage' of hyper-context mediation. Corporations already have ample access to the 'stage' in this way. Witness the saturated landscape of meanings generated by their advertising, lobbying, and public relations. The Canadian state, likewise, has no difficulty using the media to mount the 'stage' of hyper-context mediation. In addition to

various government agencies that have budgets to publicize their own programs and accomplishments, witness 2001's replacement of both Information Canada and the Communications Co-ordination Services Branch with Communications Canada whose first year operating budget was $125 million.[42] The majority of non-governmental and social movement organizations do not have comparable budgets allocated to accessing the media component of the 'stage.'

The Canadian state compensates for the disadvantage of non-corporate groups regarding their taking a place on the 'stage' by driving token wedges into commercial media such as public access cable channels, print space allocated for opinion pieces and letters to the editor, and the potential to revoke a broadcast licence if the broadcaster violates community standards. The Canadian state also creates spaces for deliberation that aspire to be all-inclusive. For example, the Department of Justice expresses its commitment

> to encouraging the participation of all Canadians and justice-sector stakeholders in the development of law, policy and programs, as well as in identifying emerging trends in law and policy. To this end, the Department uses many different types of public participation activities, ensuring that a broad cross-section of views are taken into consideration when developing law and policy.[43]

Accordingly, the Canadian state consulted its citizens regarding biotechnology by way of a questionnaire posted on the Canadian Biotechnology Advisory Committee web-site.[44] Availability of the questionnaire was timed to coincide with the Canadian Supreme Court case of 2002 regarding the possibility of a Canadian patent on the Harvard onco-mouse.

The Canadian state sometimes improvises outside of the established and traditional media in how it makes deliberation possible for the disadvantaged. During the Summit of the Americas held in Quebec City, April 2001, to broaden access to debate concerning the global trade regime, the federal government gave FTAA opponents "$300,000 for a People's Summit to protest against the official meeting."[45] The Justice Committee of the House of Commons established 40 hearings in 2003 to consult Canadians concerning proposed legislation for same-sex unions.[46] It could be argued that leniency regarding a pie in the face of Prime Minister Jean Chretien in Charlottetown, August 2000, would constitute

reasonable access for Evan Brown to hyper-context mediation's 'stage' regarding federal policies on social assistance and pesticide use.[47]

Hyper-Context Mediator Traits

The SAM can be distinguished from the normal-context mediator in two respects. First, the SAM is a collective actor, whereas normal-context mediators are individuals. Other differences follow from the collective-individual distinction such as life-span, complexity, and relative omniscience. Second, the SAM can be of multiple personalities. Whereas the Canadian state's net agency and predictable demeanour result from the aggregate of a multitude of differently directed free wills, official nodes of state expression have been known to contradict or be at odds with each other quite unexpectedly.

The SAM displays a managerial bias, but is known to make occasional forays into moralist territory. If attention to "what is good for society" is a condition for the Canadian state's legitimacy, either of the pursuit of order or the pursuit of justice can be rationalized as satisfying this condition.

Outcomes of Hyper-Context Mediation

Outcomes of hyper-context mediation are of two orders. The first is conceptual — a way of thinking and doing is assessed by virtue of its consequences as shaping, acceptably distorting, or unacceptably distorting life's spaces and practices. This assessment is subject to the managerial and moralist frameworks. The managerial framework tends to be strongly represented in the final assessment.

The second is tangible — policy is constructed by which the thinking and doing in question are either changed or left untouched. Members of Canadian society expect that their participation in hyper-context mediation will achieve some degree of uptake in

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Canadian state policy, even if the outcome of hyper-context mediation is by proxy out of their hands. Their expectation is satisfied for three reasons. First, a condition for retaining legitimacy is the Canadian state's responsiveness to Canadians. Second, the Canadian state would not want to appear wasteful of its investment in platforms and spaces by which deliberation is made possible — its support of the commercial media components of the 'stage,' compensation for the democratic deficiencies of the 'stage,' and provision of genuine public media. The existence of all those resources and opportunities for the mere purpose of personal therapy would be considered implausible. Something substantial would have to come out of the hyper-context mediation. Third, persons responsible for the terminus of the process are under more performance pressure and are perceived as more responsible for the outcome of the process than are those who played a significant role in earlier parts of the same process. Given that the Canadian state is responsible for the terminus of the process, and given that policy is but one of the things that the Canadian state does, policy is where the Canadian state's wrap-up of deliberation is destined. Unlike normal-context mediation, the policy product as tangible outcome does not rely upon the goodwill and agreement of the participants.

Summary and Application to Kyoto

Chapter 2 compares the mediation associated with ADR to the Canadian state's intervention in deep conflict. The former is designated "normal-context mediation," while the state's intervention in deep conflict is designated "hyper-context mediation."

The comparison of normal- and hyper-context mediation is justified. A mediator-like actor makes possible, contributes to, and steers both processes. In hyper context mediation, the role of the Canadian state specifically warrants the designation "state-as-mediator" (SAM). Both normal- and hyper-context mediation proceed stepwise, engaging those who cause, and are affected by, a particular conflict. Such engagement takes place in a

contrived communication environment: the 'mediation arena' in normal-context mediation and the 'stage' in hyper-context mediation. Such engagement in both processes emphasizes deliberation. And as well, the participatory outcomes of both processes are presumed to clear up conflict in a satisfactory manner.

The comparison is useful because solutions to problems faced by the normal-context mediator suggest solutions to problems faced by the SAM (chapter 10). Problems identifiable in normal-context mediation that find their equivalents in hyper-context mediation are discussed in chapters 5, 6, and 7.

Differences between hyper- and normal-context mediation invite caution regarding practical limitations of the extended metaphors *Canadian state-as-mediator* and *hyper-context mediation*. Hyper-context mediation is distinguished from normal-context mediation by informality; a drawn-out time frame; sole attention to deep conflict; the physical expansiveness of the 'stage'; the mediator-like role performed by a complex ensemble of actors; engagement predominately of collective actors; state completion of the deliberation on behalf of the collective actors; and the process culminating in the production of binding policy.

The process of hyper-context mediation is outlined as having six sequential phases. These phases are identified as *establishment of the 'stage'* (i.e., the state's making possible society-wide communication and interaction by nurturing and protecting a media infrastructure), *allegation* (i.e., the attempt by some to draw attention to the deep conflict), *deliberation* (i.e., the society-wide discussion concerning the norms alleged to underlie the deep conflict), *simulation* (i.e., the state's fleshing out and contributing to areas of the discussion found lacking), *assessment* (i.e., state appraisal of the norms in question, based on the fully fleshed-out discussion), and *policy production* (i.e., tangible support for the confirmation or refutation of the allegation).

Discernment of the process as six phases illuminates Canada's protracted response to the deep conflict centred in global warming and climate change, a response culminating in Kyoto Protocol ratification.

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[1] Baruch Bush, R. A. (1995). Dispute resolution - the domestic arena. In J. A. Vasquez, J. Turner Johnson, S. Jaffe & L. Stamato (Eds.), *Beyond confrontation* (pp. 10-11). Ann Arbor: University of Michigan Press.

[2] Department of Justice Canada. (2003, April 25). *Department of Justice (Canada) policy on dispute resolution*. Retrieved May 12, 2004, from http://canada.justice.gc.ca/en/ps/drs/dr/dm1892.html

[3] (Department of Justice Canada, 2003, April 25)

[4] Department of Justice Canada, (2003, July 9). *Program to share mediators in cases involving harassment or conflict in the workplace*. Retrieved September 24, 2003, from http://canada.justice.gc.ca/en/ps/drs/shared_mediators_backgrounder.html.

[5] Department of Justice Canada. (2003, April 24). *Putting theory into practice: DFIA cuts costs and builds credibility through DR*. Retrieved April 30, 2003, from http://canada.justice.gc.ca/en/ps/drs/food_inspection.html

[6] Human Resources and Skills Development Canada. (2004). *Federal mediation and conciliation service: general information*. Retrieved May 20, 2004, from http://www.hrsdc.gc.ca/en/gateways/topics/mxm-gxr.shtml

[7] Moore, C. W. (2003). *The mediation process* (pp. 25-30). San Francisco: Jossey-Bass.
Moore cites various localized phenomena as the fodder for normal-context mediation: landlord-tenant disputes, issues related to homelessness, police work with disput
ants, victim-offender issues, conflicts between citizens and police, disputes among elderly residents, nursing home owners, and adult children of aging parents, consumer disputes, farm debtor-creditor and loan restructuring disputes, disputes in correctional facilities, workplace discrimination, site-specific environmental disputes, etc.

[8] The social disruption associated with escalation does not necessarily include violence.

[9] G. Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent, 1973).

[10] (Moore, 2003, 148)

[11] (Moore, 2003, 249-152)

[12] (Moore, 2003, 428)

[13] This is not to be confused with my usage of 'stage' as a metaphor for an organizational aspect of the Canadian state.

[14] Gulliver, P. H. (1979). *Disputes and negotiations: a cross-cultural perspective* (pp. 122-168). Toronto: Academic Press.
These headings for the phases of mediation essentially coincide with the chapter titles of Moore's book that discusses these stages. I have listed Gulliver's "establishment of the mediation arena" as a separate heading. For reasons of practicality and to avoid revisiting already thoroughly mapped terrain, I refer the reader to Moore or Gulliver for a detailed description of what is entailed in the various stages and the mediator's steering role behind them.

[15] Riskin, L. L. (1996, Spring). Understanding mediators' orientations, strategies and techniques: a grid for the perplexed. *Harvard Negotiation Law Review, 1*(7), 23-24.

[16] (Gulliver, 1979, 122-126)

[17] Przeworski, A. (1998). Deliberation and ideological domination. In J. Elster (Ed.), *Deliberative democracy* (p. 140). Cambridge: Cambridge University Press.

[18] Kolb, D. M. (1983). *The mediators* (p. 46). Cambridge: MIT Press.

[19] (Moore, 2003, 152-153)

[20] (Moore, 2003, 154-156)

[21] Bowling, D. & Hoffman, D. (2000, January). Bringing peace into the room: the personal qualities of the mediator and their impact on mediation. *Negotiation Journal, 5*, 12.
The term omnipartial takes into account the mediator's necessarily "being cognizant of: (a) the evolution of relationships between and among the participants in the mediation, including the mediator; and (b) the impact of the mediation process on the mediator himself or herself."

[22] Boulie, B. (1996). *Mediation: principle, process, practice*. London: Butterworth.

[23] Cooks, L. M. & Hale, C. L. (1994, Fall). The construction of ethics in mediation. *Mediation Quarterly, 12*(1), 60-64.

[24] Solberg Lentz, S. (1986). The labor model for mediation and its application to the resolution of environmental disputes. *The Journal of Applied Behavioral Science, 22*(2), 132-139.

[25] (Riskin, 1996, 7-51)

[26] Menkel-Meadow, C. (1995). The many ways of mediation: the transformation of traditions, ideologies, paradigms, and practices. *Negotiation Journal, 11*, 229.

[27] (Menkel-Meadow, 1995, 230)

[28] (Menkel-Meadow, 1995, 230)

[29] (Menkel-Meadow, 1995, 229)

[30] (Solberg Lentz, 1986, 132-139)

[31] (Menkel-Meadow, 1995, 230)

[32] (Moore, 2003, 105-107)

[33] (Moore, 2003, 107)

[34] Habermas, J. (1975). *Legitimation crisis*. Boston: Beacon Press.

[35] Rawls, J. (1997). The idea of public reason: postscript. In J. Bohman & W. Rehg (Eds.), *Deliberative democracy: essays on reason and politics* (pp. 94-141). Cambridge: MIT Press.

[36] Arendt, H. (1958). *The human condition*. Chicago: University of Chicago Press.

[37] Dewey, J. (1988). Search for the great community. In J. A. Boydston (Ed.), *John Dewey, the later works, 1925-1953, volume 2: 1925-1927* (pp. 325-350). Carbondale, IL: University of Southern Illinois Press.

[38] These distortions are of grand scale and broad circumstance. Think of them in terms of the zoomed-out view of power relations.

[39] The impact of these policies is that they either shape or distort life's spaces and practices.

[40] Allegation of conflict is not a part of normal-context mediation. If normal-context mediation is taking place, it is a foregone conclusion that one is indeed dealing with a conflict.

[41] Curran, J. (1991) Rethinking the media as a public sphere. In P. Dahlgren & C. Sparks (Eds.), *Communication and citizenship* (p. 31). New York: Routledge.

[42] Leblanc, D. (2001, August 31). Ottawa unveils giant PR agency. *The Globe And Mail*, p. A4.

[43] Department of Justice Canada. (2004, May 10). *Consultations and outreach*. Retrieved May22, 2004, from http://canada.justice.gc.ca/en/cons/index.html

[44] Freeze, C. (2001, March 23). Would you allow patents for life forms? *The Globe And Mail*, p. A2.

[45] Beatty, P. (2001, March 23). [Letter to the editor]. *The Globe And Mail*, p. A14. Mr. Beatty adds: "If anyone has cause for protest, it's the Canadian taxpayer."

[46] Spector, N. (2003, September 12). Justice minister has a lot to answer for on same-sex marriages. *The Vancouver Sun*, p. A15.

[47] Cox, K. (2001, May 17). Pie for PM nets month in jail. *The Globe And Mail*, p. A6.

CHAPTER 3

Collective Actors in Hyper-Context Mediation

The main participants in hyper-context mediation are collective actors. A collective actor is a group of individuals that conveys a sense of character and identity to its individual constituents and to those outside of it by virtue of its organization and pursuit of goals. A collective actor's efficacy of action exceeds that of its individual constituents were they to pursue similar goals on their own. Current high population levels and the thorough penetration of politically astute and purposeful collective actors throughout the lifeworld marks a point of no turning back to the individual as the fundamental political actor. Andrew Vincent suggests that this prevalence of group life "more effectively guarantee(s) the liberty and conscience of the individual."[1] The ethical pluralists see the abundance of collective actors as guarantee for an ever-changing landscape of impassioned norm-based conflicts.

The predominant collective actor participants in hyper-context mediation are public-interest and private-interest collective actors. The former pursue what is good for the entire community; the latter pursue goals at the expense of others in the community. Intensity of the deliberation that takes place in hyper-context mediation is ensured by their unprecedented power base — global scope and innumerable membership; proficiency with sophisticated new mobilization and communication technologies that are embedded in the 'stage'; savvy of propaganda and acquiescence technologies that are deployed against them; and polarization with respect to each other's goals.

Public

Discussion of public-interest collective actors requires prior grounding in what is meant by public, as well as an explanation why some collective actors commit to the concept public.

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Public as a Cluster Concept

Public is a cluster concept.[2] When one thinks of public, unavoidably one thinks of it in association with other concepts. The associated cluster is not arbitrary but results from our lay social scientific sense-making. The cluster represents considered and spontaneous attempts to figure out all appropriate appurtenances of public — what makes public possible, what is conducive to it, what public makes possible, to what it is conducive, what is entailed by it, to what it has relevance, and to whom it matters.

To think about what is public is to think in somewhat idealized terms about the following concepts.[3] First, public brings to mind not merely a body of citizens, but *an entire body of citizens*. The condition of entirety placed upon recognition of the group is political and moral. It disavows partial, discriminatory, and arbitrary treatment of the group's individual members. Second, public evokes *public goods*. These are services and resources that relate equally in some way or other to all citizens. Public goods relate to all persons by being any of equally accessible, equally usable, equally shared, equally owned as property, equally experienced, and equally recognized as heritage.[4] Third, public evokes the communicative space in which the body of citizens deliberates matters that are of mutual relevance. This communicative space is generally referred to as *the public sphere* and forms a part of the 'stage' in hyper-context mediation. Fourth, various conversations, deliberations, discussions, and other forms of engagement are readily envisaged as taking place in that communicative space. These engagements afford equal respect to all persons who choose to partake in them. They are the means by which an allegation of distortion in hyper-context mediation is either refuted or confirmed. *Public conversation, public deliberation, and public discussion* stand in sharp contrast to the deceptive and disrespectful practices of advertising and public relations that are antithetical to the spirit of the public sphere. Fifth, just as a course of action is recognized as being in an individual's best interests, we presume that there are things in *the public interest*. What distinguishes

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public interest from self-interest is a concern for the good of the entire community.[5] Sixth, public evokes a *public morality and moral capacities* for those engaged in the public sphere. Commitment to the public interest and public goods is not possible without capacities for *good faith, trust, empathy,* and, in general, a recourse to *communication* rather than strategy. Seventh, evocation of public sphere engagements implies outcomes of those engagements as being fair and acceptable to the entire body of citizens. *Public outcomes* include consensus, compromise, optimized performance, improved quality, sustainable practice, and acceptably shared burdens. Eighth, also among those concepts clustered around public are *public opinion, public beliefs,* and *public values.* Opinions, beliefs, and values influence the substance of decision making processes and the vividness of the overall impression of public.

Public as Image

Recalling that the Canadian state possesses attributes both imagined and real, so too does public. The image of public is such that the full palette of concepts associated with public (i.e., clustered around it) is expected unrealistically to be within tangible reach of each and every community-relevant phenomenon. This full palette constitutes the ideal of public. This ideal of public fuses with the image of public for several reasons. First, a part of contemplating a social concept such as public is to think of the concept's logical, practical, and moral boundaries. That which constitutes the public ideal is a part of this boundary-testing of public. Second, the public ideal remains foreground in our thoughts not so much due to its moral perfection, but rather the importance and immediacy of its subject matter — the essence of community, the societal relations from which no one has reprieve and upon which we are all dependent. Third, one can choose to perceive the ideal more as real than reference point. Conflating ideality and actuality facilitates a positive perception of humanity, including oneself: that our morality and capabilities can make possible a glowing

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roster of community-mindful accomplishments. Fourth, our faith that the public ideal connects with all community-relevant phenomena is reinforced by ample popular fictions in which not just community but all of humankind successfully unites in thought and action against the mutual menace of alien invaders or an asteroid hurtling toward Earth. Fifth, the consistent behaviour of public-interest collective actors bolsters our faith in the public ideal. Many of these actors consciously harmonize their thoughts and actions to those of the public ideal. By doing so, they are its exemplars, albeit in microcosm. Sixth, the tangible presence of some concepts that are associated with public feeds an optimism that the simultaneous realization of *all* facets of the public ideal is possible. Ratification of the Kyoto Protocol points to a public outcome; the contempt shown toward those who would accept current levels of risk in human cloning points to unified public opinion; universal health care points to the public of citizens as its beneficiaries and health care as a public good — these are among the teases that point piecemeal towards the entire public ideal.

Public image is coterminous with the public ideal notably by means of faith and optimism. Despite the public as a body of citizens rarely displaying unity of thought and efficacy of action beyond short-lived fits and starts, our faith and optimism in the idea of the public unshakably pronounce it as an actual, long-lived, continuous, united-in-thought, and community-privileging collective. This is not unlike faith in a deity being sustained by virtue of spotty evidence: the miracle of birth, good weather, bountiful harvest, wedding ceremonies, turn-around from hardship, recoveries from illness, and all manner of religious experience and signs. God is continually reconstituted afresh despite a general lack of irrefutable evidence, tornadoes tearing through trailer parks and, in general, bad things happening to good people. As with God for believers, public in some capacity is always with us. If not all aspects of the public ideal are realized, then a default optimism maintains that all aspects of the public ideal still can and will be realized. This faith in the ideal promotes the image that the public is extant, and that all manner of publicness hovers as options in the wings, awaiting realization.

Public as Actual

The actual of public differs from the ideal-inflected image of public. One says that "the public benefits" even though not everyone really does. One speaks of *the public sphere* even though it is not accessible to all, nor is it used by all who have access to it. *Public opinion* is never the consensus that it implies, and is only as valid as the wording of the questions used to elicit that opinion.

Different subsets of the concepts clustered around public are actually attendant to different community-relevant phenomena. Consider the phenomenon of the Canadian Gun Registry. The federal government was impelled to produce a firearms policy following from a vision of firearms control as being in the public interest, the plan so common-sense that it did not require any anti-firearm lobby to promote it, a sense that some degree of firearms control would be in keeping with the popular mood of Canadians, and abundant examples of the trigger-happy social psychoses of other societies. The project was instigated despite the lack of a firearms problem plaguing Canada. The federal government composed the policy enticed by the possibility of making tangible a significant subset of the cluster of public concepts. The policy applies to all Canadians, establishes a public good by affording all Canadians equally a negative liberty, and represents the public interest irrespective of Canadian identities as gun-owner or gun-abstainer. The full range of citizens affected by the policy did not participate in its deliberation — the totality of public was not consulted. The public sphere did not figure as the site of the policy's composition.[6] Nor was there solidarity in public opinion or mood — individual identities as gun-owner and gun-abstainer could not be repressed to emphasize their common identity as consensus-seeking citizens. Nonetheless, one can still refer confidently to the Gun Registry as public because a sufficient number and satisfactory combination of concepts from the cluster are actually present.

The actual of public is responsive to the image of public. The apparent solidity and veracity of an extant public is sufficient cause for the Canadian state to act in that public's

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interest. The convincing image of an extant public is necessary if the tangible policy

outcome of hyper-context mediation is even to attempt to accentuate a good for all of the

Canadian state's citizens. The Canadian state's policy pursuit of an aspect of the public

ideal is less of a bitter pill if the ideal is framed as the interest of a real, long-lived,

continuous, and united-in-thought group to which everyone belongs. This pre-empts

dissatisfaction concerning the Canadian state's conflict amelioration strategies and policy

directions. It is to the Canadian state's advantage that every citizen is allegedly a member of

the public — all citizens become now and then the beneficiaries of the Canadian state's

policy attention. However, the greatest push for both respect and realization of the public

ideal by means of policy production comes not from government but from public-interest

collective actors outside of elected government.

Public-Interest Collective Actors

Public-interest collective actors are organized social bodies that result from the

conscious decision of individuals to engage in socially constructive pursuits. These pursuits

reflect a communitarian bias. Individuals cohere as a public-interest collective actor around

the moralist framework for apprehending conflict; equality of all members of community

under the authority of the state; the belief that there can be such a thing as a common good;

and visions of what constitutes the common good — universality of health care, availability

of education, quality of environment, safety of workplace, respect for labour, insurance

against contingencies, cultural vitality, the repertoire of laws and taboos.

The moral import of public is what attracts and mobilizes many into public-interest

collective action. This moral import can be illuminated through a thought experiment of

John Rawls. The experiment educes what Rawls refers to as "the original position." Via

self-imposition of a "veil of ignorance,"[7] one brackets out ones individual interests,

imagining oneself as if for the first time entering into social relations, a position in advance

of experiencing the complexities that have branded ones life as distinct from that of others. The veil makes it such that one cannot distinguish oneself from all others, and knowledge of the idiosyncrasies and subjective preferences of all others remains beyond one's grasp. This leaves one with an amnesia and inability to forecast with respect to "present and future wealth, natural abilities and character, conception of the good, (and) social position and historical period in which (one) live(s)."[8] One is then open to being sympathetic to the community, with increased potential for community-centered thought and action.

Public-interest collective actors matter in that they are surrogates for the public ideal: their respective subject matters are essentially subsets of the overall public interest, they keep those subject matters alive in the public sphere, they contribute to the actualization of subsets of the overall public interest. An indirect but strong link is forged between these actors and the Canadian state, given that the Canadian state must demonstrate some form of commitment to the public ideal so as to maintain legitimacy. The federal government is obliged to afford these actors respect as if they were no less than the embodiment of the Canadian public ideal. As a part of hyper-context mediation, the Canadian state accepts and from time to time solicits input from these actors when their areas of expertise are pertinent to the public policy or conflict situation at hand. Otherwise, the Canadian state is conscious of the voiced and unvoiced public expectations regarding its handling of conflicts. These actors recognize that the elected governmental core of the state plays a significant role in the orchestration of everyday Canadian social relations and, for that reason, generally play along with the rules provided by the Canadian state.

Public-interest collective actors can be considered as multiple publics in relation to the overall public. However, not all groups that lay claim to being public and expecting engagement with the state actually qualify as public. The qualification of a group as public entails not only having its membership a subset of the overall public, but also the membership and group detracting in no way from the life chances of the overall public. For example, the collective actor Focus on Family (FOF) is given over to the discourse of family

values. FOF is clear in their opposition in 2003 to an official state collective actor: the Canadian Standing Committee on Human Rights. The latter has drawn the ire of FOF by proposing federal legislation that would recognize gay-bashing as a category of hate crime. FOF explains their opposition as born out of concern that the legislation could set precedent by which religious freedom of expression would experience yet further chill through political correctness. Some directories of associations categorize FOF as being one among many "Public-Interest Groups." That categorization is inappropriate. FOF selectively detracts from the good of the overall community by fracturing the entireness of community. Regardless of its intentions in this respect, by its detraction from the common good FOF forfeits any claim to the status of public-interest collective actor.[9]

Private

Discussion of private-interest collective actors, their relationship with public-interest collective actors, and their involvement in hyper-context mediation requires first an understanding of private interest and its link to liberalism.

Private Interest

The private is the public's converse. When satisfied, private interests detract from that which is available to the remaining others who are also under the authority of the state. Private interests matter because their resultant inequalities of what is shared, allocated, or claimed affects disproportionately the quality of citizens' lives. Most public interests find a private alter by their reworking under the stipulations of non-universality, minimal state regulation, and freedom from idealist constraints: the availability of health care and education in proportion to personal income and market forces, the right to pollute and the opportunity to profit from not polluting, utilization of renewable resources not necessarily in

a sustainable manner, subordination of a corporation's labour conditions to the

corporation's profit bottom line, the rejection of welfare and any other aspects of the social

safety net that read as subsidy for the lazy and compensation for the risk-averse, and

stoking the cultural landscape according to the commercial viability of cultural products.

I have focused on the indifference of private interest because *public interest does not*

have a comparably frigid side. I acknowledge that private interest has its praiseworthy

aspects, these stressed by Bruce Ackerman:

> First, it (the private interest) allows for the centrality that the work ethic has
> acquired in the modern world by recognizing the intrinsic value of labour
> and by seeing political action as the result of the roles we perform in private
> life. Second, it acknowledges one of the important lessons of the post-
> classical world, that there is spirituality outside politics and the pursuit of the
> common good. Finally, it emphasizes the importance of the modern
> conception of freedom that sees in the plurality and diversity of life choices a
> positive good.[10]

Private Interest and Liberalism

Private interest is strongly articulated with liberalism. Liberalism prioritizes the

individual's freedom to pursue interests and objectives, detracting to various extents from

the common good. Different shades of liberalism differently affect the gusto with which

individuals pursue their private interests and the extent to which the public good is

sacrificed. The liberalism professed by John Stuart Mill encourages individuals to pursue

their private interests, but under self-restraint and respectful of the society that makes

pursuit of private interests possible. A far remove from Mill, free market or bourgeois

liberalism advocates an unbridled enthusiasm and no restraint in private-interest venture.

Gerald Doppelt describes this particular shade of liberalism as:

> affirm(ing) the freedom of individuals to accumulate vast capitals and
> powers over the labour force, the structure of work, the location of
> investment and production, the goals or products of labour, etc. It idealizes
> the post or position of capital as the kind of individual achievement which
> signifies unusually scarce and valuable human powers, skills, abilities,
> character traits, etc. This ideal, along with the particular rights of private
> property which it entails, sanctions conditions of economic life in which

many persons are unable to realize the more modest and minimal bourgeois ideals of individual achievement and human worth: the capacity to support oneself and one's family through gainful employment, the achievement of a decent or respectable standard of living by one's own labour, and the ability to do work requiring some respectable level of personal creativity. In this way, one part of the bourgeois ideal sanctions conditions of life in which the more modest aspirations engendered by other parts of the ideal are thwarted for many persons.[11]

Private-Interest Collective Actors

Free market liberalism takes on a burning intensity when private-interest collective actors are brought into the picture. Collective actors in general are built by us to make things possible or easier that are otherwise impossible or difficult through individual thought and action. Since collective action and free market liberalism both entail the optimization of human activity, the marriage of the two is not surprising. By design, many collective actors exist to make possible and easier the accumulation of capitals and power that would otherwise elude individual market liberals. It is worrisome that there results a high proportion of private-interest collective actors that fanatically conform to free market liberal logic. It is ironic that in amplifying and extending the human by means of the organizational form of a collective actor, one can end up with something far from humane. Cast from the free market liberal mould but built for optimal function, private-interest collective actors seek to maximize accumulation and, accordingly, deprivation. Facility of private-interest collective actors in the socio-political landscape amounts to their highly magnified gains, while exaggerating and then amplifying the *inability* of others to support themselves, maintain a decent standard of living, and have opportunity to creatively and respectably apply their brains in the workplace. Private-interest collective actors subscribe to the managerial framework for apprehending conflict and correspondingly do not understand these outcomes as conflict creation.

Duality of Collective Actors as Public and Private

The constituent individuals of collective actors are of mixed allegiances and multiple identities. Even the individual constituents of private-interest collective actors default into being members of the public. Once their unique interests have been bracketed out, their receptiveness to at least *some* public concerns is revealed, along with their possession of a modicum of respect for their fellow humans. Bruce Ackerman in *We the People* points to an individual's changes of constitution back and forth between the *private* citizen and the private *citizen*.[12] Ackerman suggests that as the weight of social circumstances occasionally merits it, the otherwise privately disposed populace gives over its attention and serious consideration to the significant comprehensive public issues at hand.[13]

This detail of collective actors is typically inconsequential to the apprehension, assessment and policy redress of contested societal norms by hyper-context mediation. Individuals who belong to more than one collective actor nonetheless play their part appropriately and consistently in each. The collective actor's outward identity and character remains unfazed even when some members defect and new persons join up. The only occasion when these undercurrents have significant impact is under circumstances of macro-level change in population disposition — defection and joining are not in equilibrium. Such change is analogous to a societal mood swing. At such time, some species of collective actor retire or debilitate to the point of ineffective or differently oriented pursuits.

Barry Bozeman points to a higher order of complexity in attempts to apprehend the public and private character of conflicting collective actors. Equating a collective actor's subjugation under economic authority with privateness and its discipline under political authority with publicness,[14] Bozeman stresses that a collective actor rarely *exclusively* identifies with one or the other of public or private. The collective actor can be seen as a simultaneous mix of accountability to both economic and political authorities.[15] The net

publicness or privateness of this mix is likelier to vary than to remain unchanged over the collective actor's life span. Considering specific aspects of a collective actor's acting in the world, "a given (collective actor) may be more influenced by political authority in some of its processes and behaviours than in others and can thus be said to be more public in some of its processes and behaviours and less so in others."[16] Despite this inconsistency and non-uniformity of collective actor publicness or privateness, it is still meaningful to discuss conflicts that are submitted to hyper-context mediation in terms of their public and private consequence, the publicness or privateness of actors' positions, and actors' public or private contributions to the deliberation. Reference to a collective actor as either public-interest or private-interest claims nothing about the actor's overall disposition. It refers only to the actor's community- or self-orientation concerning a specific subject matter.

False duality and accidental duality of a collective actor as public and private have bearing on the balance of public and private in hyper-context mediation. Contributions to hyper-context mediation's deliberation are distinguishable as public or private based upon analysis of what has been asserted. A part of that analysis involves knowledge of who has made a particular claim. Discovery of a disjuncture between what a collective actor stands for and the positions openly expressed by that collective actor forces the re-evaluation of that actor's utterances. For example, some private-interest collective actors strategically misrepresent themselves and their ideas as being in the public interest. The National Citizens' Coalition is community-oriented in name only, privileging the privatization and contracting-out of government services.[17] As well, some public-interest collective actors take positions that are misguided and inadvertently detrimental to the public good. Their contributions to deliberation ironically are private. If the Canadian state attempts to balance public and private in hyper-context mediation (i.e., levelling the playing field), then failure to note the preceding disjuncture leads to selective under-representation of public or private (i.e., bias and slanting the playing field).

Summary and Application to Kyoto

Chapter 3 distinguishes between public- and private-interest collective actors to identify their conflicting roles in determining the outcome of hyper-context mediation. The distinction between public and private follows from an actor's expressed position regarding the norms questioned during hyper-context mediation, but does not necessarily reflect that actor's disposition regarding all other subject matters. In this respect, a collective actor is typically public- or private-interest during hyper-context mediation. In some circumstances, however, it can be both. For example, certain corporate actors notorious for GHG production nonetheless insist on Canada taking action against climate change (chapter 9).

The difference between public- and private-interest collective actors suggests what is at stake when one wields more influence than the other. Public-interest collective actors pursue goals that are good for the entire community. Accordingly, they adopt the logic of the moral framework (chapter 1) and push for the resolution of deep conflict. Where these actors dominate the society-wide discussion around global warming and climate change, they support humanity by seeking to slow down or reverse the environmental perturbations in question. Collectives such as Friends of the Earth Canada, David Suzuki Foundation, and Pembina Institute frame the mitigation of global warming and climate change in such terms. Private-interest collective actors pursue goals at the expense of other members of the community. Accordingly, they adopt the logic of the managerial framework (chapter 1) and push for the management of deep conflict. Where these actors dominate the same society-wide discussion, they jeopardize the well-being of present and future generations by postponing or delaying resolution of global warming and climate change. Collectives such as Canadian Association of Petroleum Producers, Canadian Council of Chief Executives, and National Post put a positive spin on both adaptation and inaction, emphasizing freedom from European hegemony, an unfettered economy, and staying the status quo course, in light of scientific uncertainties.

Recognition of the collective actors as public- and private-interest facilitates an understanding of their motives and positions within the society-wide discussion around global warming and climate change, shedding light on which claims are in earnest and which amount to self-serving strategy. Such recognition facilitates analysis of the problems facing both the normal-context mediator and the SAM (chapters 5 and 6) and critique of the debates that informed Kyoto Protocol ratification (chapter 9).

Both public- or private-interest collective actors are creatures of our own making. An understanding of their construction shows, first, what the SAM is still up against if it tries to remedy its process of deep conflict intervention and, second, what room exists for the public- and private-interest collective actors to change themselves so as to abet earnest society-wide discussion, resolution of deep conflict (chapter 10), and fulfillment of the demands of Kyoto implementation.

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[1] Vincent, A. (1987). *Theories of the state* (p. 195). New York: Basil Blackwell.

[2] Connolly, W. E. (1983). *The terms of political discourse* (pp. 12-13). Princeton: Princeton University Press. I am indebted to William E. Connolly for his formulation of 'cluster concept' and his use of the term to advance our understanding of 'politics.' I am applying 'cluster concept' in a similar vein to advance our understanding of 'public.'

[3] This list is far from exhaustive. I have cited concepts that are more likely to have universal currency.

[4] (van Erp, 2000, 32)

[5] Rawls, J. (1997). The idea of public reason. In J. Bohman and W. Rehg (Eds.), *Deliberative democracy* (p. 93). Cambridge: The MIT Press.

[6] The public sphere figured in a critique of the policy after its imposition.

[7] Rawls, J. (1971). *Theory of justice* (p. 12). Cambridge: Harvard University Press.

[8] (van Erp, 2000, 141)

[9] The Vatican's reach, the politician's duty [Editorial]. (2003, August 1). *The Globe and Mail*, p. A14. The same can be said about an even larger organization: the Roman Catholic Church. The Vatican issued a global edict July 31, 2003, stating that discrimination in the case of proposed same-sex marriage legislation would not be "contrary to justice ... On the contrary, justice requires it."

[10] Castiglione, D. (2000). Public reason, private citizenship. In M. Passerin d'Entrèves & U. Vogel (Eds.), *Public and private* (p. 37). New York: Routledge. The author summarizes an argument made by Bruce Ackerman.

[11] Doppelt, G. (1990). Beyond liberalism and communitarianism. In D. Rasmussen (Ed.), *Universalism vs. communitarianism,* (p. 57). Cambridge: MIT Press.

[12] Ackerman, B. (1991). *We the people.* Cambridge: Belknap Press.

[13] (Castiglione, 2000, 28-50)

[14] Bozeman, B. (1987). *All organizations are public: bridging public and private organizational theories* (p. 5). San Francisco: Jossey-Bass Publishers.

[15] (Bozeman, 1987, 85)

[16] (Bozeman, 1987, 86)

[17] Clarke, T. (1997). *Silent coup* (p. 252). Toronto: Lorimer.

CHAPTER 4

In an Environment of Expectations:
Policy, Peace, and the Good Society

In chapter 2 we saw how the Canadian state makes possible, steers, and contributes to hyper-context mediation by (a) control over our relevant institutions, (b) attribution of authority to it, (c) assignment of it to act on our behalf, (d) the coercive potential of its monopoly of force, and (e) its provision of assessments regarding alleged distortion. Conversely, this chapter examines how collective actors shape and steer the Canadian state with respect to hyper-context mediation. Shaping and steering follow from the government's obligation in a representative democracy to be responsive to the expectations of its citizens.

Both public- and private-interest collective actors hold expectations of the Canadian state that are relevant to the Canadian SAM. These expectations are specified as

- the expectation for the Canadian state to allow opportunities for citizens to participate in governance;
- the expectation for the Canadian state to have a certain demeanour concerning conflict;
- the expectation for the Canadian state to have accessible processes to correct deep conflict and produce policy; and
- the expectation for the Canadian state to privilege the interests of public- and private-interest collective actors in the substance of state thought and action.

Understanding this ensemble of expectations allows us to see that the Canadian state has little leeway in responding to deep conflicts. Hyper-context mediation could be scarcely other than it is: the Canadian state forms a partnership with public- and private-interest collective actors, the crux of which is a shared involvement in the production of policy, peace, and the good society.

Expectations Concerning Participation in the Canadian State

Canadian actors expect to be able to participate in their own organization and governance. The most active and effective participants in this respect are public- and private-interest collective actors. These actors expect to wield an unprecedented degree of input and control in all manner of elected government's decision-making.

Public collective actors abide by the logic of participatory democracy, maintaining that "what makes for good leaders also makes for good citizens — active participation in ruling and being ruled (i.e., in the exercise of power) and also in public will and opinion formation."[1] Their good citizenry is directed towards building the good society. They consider themselves to be especially qualified in this respect because they claim special status as surrogates of the public ideal. This special condition guarantees them the ear of their government, but leads them to expect to be taken more seriously than their private-interest counterpart. It is of no matter to the public collective actors that they expect an idealized degree of self-determination and participation in national governance whose practicalities still remain to be worked out by the theorists of participatory democracy.[2]

Private-interest collective actors are impelled by free market liberalism. They expect minimal intrusiveness from the state and therefore a greater role for market participants in shaping the space of economic relations. These actors expect significant involvement in economic decision making so as to help build the good economy, and in so doing make possible for each ambitious private actor the good life. They expect to participate in the canalization of Canada's policies and norms in a direction that further empowers private interests over public. The Organization for Economic Cooperation and Development (the OECD), as a major representative of private-interest collective actors,[3] encapsulates these expectations in its advocacy of increased opportunities for actors to interface with national rather than local government.[4]

Expectations Concerning the Canadian State's Demeanour With Respect to Conflict

Public- and private-interest collective actors turn to the Canadian state either to avert conflict or correct it. Societal expectation of a conflict-averse Canadian state is the response of the populace to the unpleasant and intolerable experiences that accompany primary and secondary distortions. Public-interest collective actors see conflict as an indicator of injustice. Private-interest collective actors see conflict as an impediment to efficiency and personal gain. Both see Canada as being conflict-averse — an image component of the state — and expect it to continue on that path. This image is supported tangibly by the Canadian state creating a supportive and respectful environment for the courts and actively promoting normal-context mediation both within and outside of the federal government bureaucracy (chapter 2). Availability of these two ADR processes is a guarantee of adequate means for dealing with the majority of primary- and secondary-distortion conflicts.

In another respect, the Canadian state is conflict-averse but does not obviously appear as such. The relatively unspectacular deep conflicts distinguishing hyper-context mediation are neither recognized nor interpreted by society as conflict. Such distortions do not bear the same dissonant aura as primary- and secondary-distortion conflict. Yet these systemic distortions are the foundations upon which primary and secondary distortions are built. Consequently, the subtle correction of deep conflict by hyper-context mediation fulfills the expectation for the Canadian state to be conflict-averse.

Canadian public-interest collective actors expect their state to be interventionist. They expect government to remedy the undesirable state of affairs confronting them failing the improvement of those states of affairs by other means (i.e., communicative and strategic social relations, market activity, evolving agendas, shifting intensities of publicity, changing preferences, contingency, and variation in the demographic of collective actors). If public-interest collective actors allege that a norm constitutes distortion and succeed in convincing

sufficient others of same, they expect the Canadian state to make the appropriate changes to the 'stage' to correct the norm.[5]

Public- and private-interest collective actors prefer a consent-seeking rather than a coercive demeanour for the Canadian state, even if consent at times amounts to clever hegemonic strategizing. Public actors, however, allow the Canadian state more leeway. They allow for coercion if it is found to successfully foster the common good. The correction of distorted societal norms would benefit from and sometimes require "(compelling) people to play their necessary parts in discharging reasonable collective responsibilities."[6] "Reasonable" is the key here. Public-interest collective actors are not so single-mindedly public to refuse all traces of individual interests. The public is uncomfortable with a strong egalitarian state that proclaims "for the good of all" and a Soviet-style Communist state that lays down "the best interests of the universal proletariat."[7] Extent of allowable coercion is delimited by the articulation of public with democracy. Private actors find coercion to be acceptable in the case of buffering the Canadian state's citizens from the violent and incapacitating consequences of secondary distortions (i.e., war, crime and even legitimate political expression such as civil disobedience). But systemic distortions do not bear the mark of violence and crippling disruption. On the contrary, they bear the mark of "business as usual" and "everyday life" and, accordingly, are less obvious candidates for measured doses of coercion. Correction of distorted societal norms must convey the impression of the involvement of "the people" and not appear to be the unilateral coercive handiwork of those who govern "the people." This is necessarily so even if the people are indirectly represented by a mélange of public- and private-interest collective actors rather than individuals.

Expectations Concerning Process

The expectation that the Canadian state will significantly assist with the correction of deep conflict converges with (a) expectations as to how such correction is to be realized and (b) expectations of unimpeded means for democratic participation in policy production.

Expectations Concerning Process for the Correction of Deep Conflict

The process of hyper-context mediation is shaped by the expectations of public- and private-interest collective actors. The shape, bearing a remarkable yet stretched resemblance to normal-context mediation, results from satisfying the barely overlapping expectations of two different masters. The pull in different directions of public- and private-interest collective actors' expectations excludes some of the possibilities of how the Canadian state might handle deep conflict. This tension canalizes the pursuit of other conflict-mindful ways of thinking and doing that are relevant to the good society. Established species of conflict intervention that we take for granted, regardless of the situations to which we apply them, are arguably less the products of social engineers, theorists and practitioners in the field as they are products of their socio-political environments. Consider the example of adjudication. While a particular society may possess laws, the circumstances of that society and the expectations born from different ranks therein determine the existence of institutions such as courts or, in their stead, some other law-attentive institutions for settling disputes.[8]

Expectations create a restrictive yet nurturing socio-political environment that shapes conflict interventions at both the zoomed-in and zoomed-out levels of power relations — the former pertains to primary and secondary distortions; the latter, to systemic distortion. The zoomed-in latent and manifest conflict intervention (i.e., normal-context mediation) was created and continues to evolve with attention to and constraint by certain features of this environment. The Canadian state's zoomed-out deep conflict intervention (i.e., hyper-

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context mediation) also takes shape subject to similar environmental constraint and canalization. For this reason, expectation-inspired processes that have been composed to address primary and secondary distortions find resemblance to the process by which the Canadian state addresses systemic distortion. This artifactual shaping is reminiscent of what one gets from applying the same mould to different substances.

Not *every* zoomed-in individual-steered ADR instrument finds its zoomed-out government-steered equivalent. Out of the instruments of ADR, normal-context mediation best resembles the Canadian state's intervention regarding deep conflict. The other mechanisms of ADR — adjudication, court-ordered arbitration, private judging, mini-trial, summary jury trial, early neutral evaluation, arbitration, advisory arbitration, mediation-arbitration, negotiation and policy dialogue[9] — do not satisfy the disparate expectations placed upon the state by public- and private-interest collective actors.

It can be shown by process of elimination that, out of the repertoire of ADR, normal-context mediation best conforms to societal expectations concerning how the Canadian state should intervene in deep conflict. First, the Canadian state is expected to be the kinder and gentler state by public actors, the minimal state by private actors, and the participatory state by both public- and private-interest collective actors. These actors would deem it unacceptable for the Canadian state to cultivate affinities between an intervention in deep conflict and established conflict interventions that rely upon the courts (adjudication, court-ordered arbitration, private judging, mini-trial, summary jury trial, early neutral evaluation). These processes bear an aura of absolutism and distance their participants from decisive control over process outcomes. Second, the adversarial approach works well when dealing with grievances and contested allocation. It is irrelevant and inappropriate for addressing the norms that essentially underlie grievances and contested allocation. The Canadian state's intervention in deep conflict for this reason does not bear resemblance to adversarial and quasi-adversarial processes (arbitration, advisory arbitration, mediation-arbitration). The court-based procedures (which are already ruled out by their absolutism)

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would also fall into this category. Third, policy dialogue satisfies the expectation for meaningful participation in governance. It never stands on its own as a conflict settlement mechanism, but is frequently an add-on to negotiation and mediation.[10] The subject matter of its dialogue potentially has bearing on distorted norms. It is a component of the Canadian state's intervention in deep conflict. Fourth, as to normal-context mediation and negotiation as metaphors for what goes on with norm-contestation and norm-correction in the hyper-context, the question is to what extent a neutral third party is actually needed. The private actor grudgingly admits that the absent state is not a realistic option. While the private actor is not in the business of expressing dissatisfaction with norms, it requires a chaperone when such claims are made by public actors. The activist public actor, willing to deprive the depriver, implores a neutral third party to avert vigilante-style norm-correction. The public actor requires a chaperone when the private actor resists valid challenges to norms.

Normal-context mediation, out of all the ADR instruments, finds the greatest affinity to hyper-context mediation. The resemblance of hyper-context mediation to normal-context mediation is incidental of the socio-political environment of expectations placed upon both the Canadian state and the local handlers of manifest and latent conflict.[11] The procedure of hyper-context mediation is not composed under the influence of normal-context mediation's glowing reputation as *the* cost-effective win-win choice among conflict-ameliorative methods. The Canadian state never set out consciously to mimic normal-context mediation. Even though normal-context mediation proves effective for ameliorating primary and secondary distortions, the state is not re-interpreting it in order to address systemic distortions. Nor are there government agencies, bureaucrats, administrators, social engineers and elected officials whose mandate, mission statement or job description is the overseeing of conflicts by means that are *consciously* thought out in terms of 'mediation' for any type of conflict other than primary and secondary distortions (chapter 2).

Expectations Concerning Process for the Production of Policy

The final phase of hyper-context mediation that entails policy production is within the sphere of influence of collective actor expectations (chapter 2). Collective actors expect not just to be listened to by their government, and not just to participate in their own organization and governance at the level of policy production. They expect unimpeded means for doing both. The Canadian state complies by making available three inroads to policy production.

First, access to the policy process is by way of informal yet restricted policy communities and networks.[12] The relative stasis of these exclusive relationships amounts to a form of under-the-table corporatism.[13]

Second, policy uptake of the concerns of collective actors is by way of direct all-inclusive one-shot opportunities. These include (a) occasional questionnaires fielded by state agencies; (b) town meeting-style consultations of Canadians such as Roy Romanow's cross-Canada tour regarding health care; and (c) the recruitment of prominent group or interest representatives into governmental Commissions and Committees that preamble policy — the latter examining matters ranging from concentration of media ownership, assessment of the Canadian Broadcasting Corporation, to categorization of gay-bashing as a hate crime.

Third, involvement in policy production is also available by makeshift process. One such process is the circuit of publicly voicing opinion and then, based upon governmental response to the opinion, voting when elections come around. Another is the relentless hailstorm of lobbying that consists of advertising, public relations, social issues communication, spectacle, public conversation, payola political contributions, accessed voices, primary definers and public sphere features of the stage.

The Substance of Expectations on the Canadian State

Expectations regarding the substance of policy are indicative of a collective actor's vision of what constitutes acceptable norms and which norms constitute unacceptable distortion. Public- and private-interest collective actors differ in what they would allege are distorted norms. Each expects to be thought of by the Canadian state as its number one son. The result is that the state is forced to juggle two biases, pro-public and pro-private, when it comes to the simulation and assessment phases of hyper-context mediation (chapter 2).

Public Expectations

Public-interest collective actors expect the Canadian state to encourage, sustain, repair, update, educate and celebrate with respect to all things public. The Canadian state does this in some respects, and this is reflected in its policies regarding multiculturalism, public communication media, universal health care, and international relations. Intermittent policy explorations also reflect the same intent such as Brian Tobin's analysis of a proposed public internet connection for all of Canada, as ambitious as the satellite foot printing of the entire country by the Canadian Broadcasting Corporation (CBC). These actors expect the outcomes of hyper-context mediation to be such that distorted norms are corrected in favour of the public ideal and the good society.

Canadian public-interest collective actors are resigned to instigating the second phase of hyper-context mediation — the allegation of distortion concerning a societal norm. This process is usually instigated because the status quo predominately privileges private interests and the managerial framework, a privilege which does not readily single out societal norms that private actors would want to change. The publicity, mobilization, and other organizational activities inherent in society-wide debate and which influence the fate of a norm are, for many public actors, their raison d'être. Environmental groups, for example,

devote themselves to the norms that come across as systemic distortions (e.g., unchecked GHG production; recreational hunting, over fishing, and ecologically reckless tourism; cultural dependence upon wood and paper products; and industries having to keep up with planned obsolescence and the manufactured wants of consumerism). Those systemic distortions undergird various primary distortions (e.g., global warming, extinction, deforestation, and pollutant-caused health problems). They do not expect the Canadian state to instigate hyper-context mediation, given their facility and vitality in this respect. However, *public-interest collective actors expect the Canadian state to keep their allegations of distortion alive on 'stage' long enough to run due course in hyper-context mediation.* The Canadian state fulfills this obligation by the provision and upkeep of the 'stage,' as well as by guaranteeing equal access to it.

Private Expectations

Recall that private-interest collective actors strongly identify with free market liberalism which "bases its conception of political right and the minimal state upon the incontestable value of negative liberty, freedom from constraint, absolute self-ownership."[14] The negative liberty condition for these actors is not the obligation of the state to protect us from each other. For the self-prioritizing private collective actor, negative liberty translates into the mundane expectation of its own protection from others. If competition and survival of the fittest are accepted features of free market existence, then the private-interest collective actor typically does not expect to be protected from its own kind. It seeks protection from that which would perturb the framework in which accrual and deprivation transpire. In this respect, the private-interest collective actor seeks protection from three threats to free market aether: public-interest collective actors, contingency, and atypical members of its own kind.

First, public actors challenge the very norms private actors expect the Canadian state to preserve. Many established norms make the private actor's engagement in accrual and

deprivation possible. Those norms are likely candidates for public actors to contest, to allege as being distortions. Public actors actively seek reform to the existing laws, regulations, and agreements that undergird such distortions. Protection is therefore expected by private actors from public actors. Private actors interpret negative liberty as protection from these and other pursuits of the public good. Pursuit of the public good is considered deleterious to the pursuit of private gain — as upside-down as that may sound, sections of the WTO and NAFTA agreements are framed this way. Protection from the public in this sense amounts to the Canadian state being neither proactive nor idealistic regarding public actors' allegations of distorted norms.

Second, the unexpected and the unusual from which private-interest collective actors expect protection are contingencies that jar the economy. Since the circuit of accrual and deprivation takes place within the framework of capitalism, it follows that private expectations on the state reflect an interest in a healthy capitalist framework. Health of the framework as a self-reproducing way of thinking and doing requires its protection from various unknowns. Free market liberal thought would prefer an economy as self-running as possible. Such an economy would warrant state intervention only when confronted by jarring externalities such as disease, depletion of a resource, terrorism and war — all of which have the potential to precipitate economic crisis. Private interests expect the state to serve as the market's safety net and by its own imagination figure out the appropriate means to protect it. Habermas summarizes the appropriate means by which the state is able to do so: (a) strengthening competitiveness within the global context, (b) partaking in unproductive consumption, (c) steering capital into neglected market sectors, (d) upgrading infrastructure, (e) participating in the market, and (f) picking up some of the social and material costs that result from private production.[15] The Canadian state here prevents manifest conflict by satisfying these conditions but leaves norms undisturbed to continue to provide root for latent conflicts. The latter are of no consequence to private-interest

collective actors. Until problematic norms are successfully challenged in hyper-context mediation, they remain ignored or protected by the Canadian state.

Third, the private-interest collective actor can be threatened by atypical cases of its own kind. Faith in the system can be jeopardized through the creative accounting and criminal negligence of a few bad corporate apples. Ability to function in the system can be imperilled because a few collective actors are living the dream too successfully; hence, the anti-trust action against Microsoft and others. Recognizing that now and then particular private-interest collective actors can irritate their connection to the economic system and eventually sicken the entire system, the state is expected to bandage the connection and cure the offending actor so as to ensure the negative liberty of all other private actors. Faith in the system remains undaunted, and the norms that offend public sensibilities remain unchanged.

The population of free market liberal collective actors grudgingly accepts the minimal Canadian state. This state is expected to provide (a) coercive guarantee for the protection of property rights; (b) subtle means of protection of the hierarchy of social power; (c) material back-up in the form of universal health care and day care to guarantee the basic human needs of labour; (d) regulatory mechanisms regarding allocation or use of physical resources to ensure that the economy does not leave itself high and dry due to rapidly deployed unsustainable practices; and (e) guarantee of infrastructure for the capitalist mode of production, such as efficient transportation, communication and commerce networks.[16] Failure of the state in these respects would create a manifest conflict environment rife with disruption of the pursuits of private-interest collective actors. Success of the state in these respects creates a latent conflict environment by which private-interest collective actors make the usual gains matched by the typical public deprivations. Private actors expect these norms to be protected until otherwise displaced by means of successful challenge in hyper-context mediation.

Satisfied Expectations: Hyper-Context Mediation

The Canadian state exhibits the following properties that conform to expectations placed upon it by both public- and private-interest collective actors. First, to say that the Canadian state is conflict-averse refers to manifest conflicts. The Canadian state actually allows many latent conflicts and distortion at the level of norms to persist. Second, the Canadian state intervenes in deep conflicts to the extent that it supports deliberation on the norm in question. Deliberation and intervention are expected to be openly participatory. Third, the Canadian state does not outright restrict any allegation of distorted norms from proceeding to societal deliberation. Fourth, the Canadian state provides certainty and finality regarding such allegations by simulating the wrap-up of deliberation, including the decisive volunteering of an assessment. Fifth, the Canadian state adheres to principles of objectivity in its wrap-up of deliberation and production of an assessment. It has little room to do otherwise. On the one hand, since private, distortion, and conflict are strongly articulated, the public actor considers it a matter of the common good that the Canadian state exhibit pro-public bias in its conflict interventions. From the public point of view, that would be the state actually performing the role that democracy expects of it. On the other hand, the private actor expects a different bias — the slighting of that which threatens individual or private gain. There is no lowest common denominator here. The Canadian state's choice of objectivity is intended, instead, to remove all bias. Sixth, the Canadian state does not read as coercive in its wrap-up of deliberation. It endeavours to follow through on all ideas and arguments put forward in hyper-context mediation both logically and honestly. Nor is coercion applied in other phases of the process. Seventh, the Canadian state is neither proactive nor idealistic. It leaves instigation of hyper-context mediation to public-interest collective actors.

Norms are a part of the 'stage' which the Canadian state is obliged to support and protect. Until a norm is successfully challenged in hyper-context mediation, the state will

not move to change it. It remains assumed that society is presently the good society, until demonstrated otherwise. Nevertheless, extent of support and protection of norms does not render them immune to allegation of distortion and subsequent treatment in hyper-context mediation.

Satisfied Expectations: Policy, Peace, and the Good Society

The Canadian state produces policy as a means of providing tangible support for the outcome of hyper-context mediation — a way of locking in place the aforementioned peace. Public- and private-interest collective actors who participate in hyper-context mediation have their hand in that policy production. The allegation (usually) by public-interest collective actors that a norm is itself a distortion (along with the deliberation by public- and private-interest collective actors concerning that allegation) gives the Canadian state serious food for thought during policy composition. In this sense the Canadian state along with public- and private-interest collective actors are partners in policy production.

The peace thereby attained and maintained corresponds to a societal norm — a way of thinking and doing — that has been either amended (if the allegation of its distortion is confirmed) or reinforced against further contestation (if the allegation is refuted). These attainments of peace conform less to one's image of conflict resolution than they do to the conscious pursuit of the good society. While hyper-context mediation is in the business of addressing a specific type of conflict, for Canadians this essentially amounts to constant building and periodic fine-tuning of the way they feel their collective lives should be led and their country should be. Accordingly, the Canadian state and the participants in hyper-context mediation are partners in creating the good society.

Summary and Application to Kyoto

The Canadian state must be responsive to societal expectations in order to maintain legitimacy. Some of these expectations are universally Canadian, but others differ between public- and private-interest collective actors. Chapter 4 offers an account of both hyper-context mediation and the role the SAM as being shaped and constrained by these expectations. Hyper-context mediation is not a calculated product of social engineering, but, rather, falls into place in the space that these societal, public, and private expectations allow. Resemblance of hyper-context mediation to the mediation associated with ADR is considered a plus by virtue of the latter's cachet as the ideal conflict intervention.

Canadians expect to participate in the policy process, not to the extent of composing policy directly, but indirectly by publicizing positions and ideas to inform the undertakings of representational government. The Canadian state responds by making possible forums for the society-wide discussion around issues of societal concern, reflected in the SAM's *establishment of the 'stage'* (chapters 1 and 2). Collective actors make use of this 'stage' to realize the society-wide discussion of global warming, working out (a) whether there is such a thing as global warming; (b) whether it is caused by humans; (c) if it is something to be concerned about; (d) if it is within our powers to do anything about it; and, if so, (e) whether we should mitigate it or adapt to its effects. Informed representational government is reflected in the concluding two phases of hyper-context mediation: *assessment* and *policy production* (chapter 2).

Canadians expect their state to intervene in conflict in order to nurture a peaceful social environment. Public- and private-interest collective actors are not averse to coercive interventions by the state toward such ends, but lack consensus regarding what circumstances warrant such strong intervention. This lack of consensus leaves the public- and private-interest collective actors with the lowest common denominator between them: the state's *consensual* intervention in conflict. Consensual intervention constrains the SAM's

ability to secure equal cooperation from public- and private interest collective actors

(chapters 5 and 6). Chapter 9 shows that Kyoto is no exception as these discrepancies in

cooperation expand into hostility and disingenuous communication throughout Canada's

society-wide discussion of the norms behind global warming (e.g., the smear campaign

mounted against the Intergovernmental Panel on Climate Change and the public relations

ploy that repeatedly questioned the veracity of the greenhouse effect).

Obligation of the Canadian state to be responsive to these expectations limits the

extent of remedy available to the SAM and hyper-context mediation (chapter 10), and

threatens to enfeeble a ratified Kyoto into more talk than action.

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[1] Cohen, J. L. & Arato, A. (1992). *Civil society and political theory* (p. 7). Cambridge: MIT Press.

[2] Held, D. (1987). *Models of democracy* (p. 254). Stanford: Stanford University Press. Held cites Carol Pateman, C. B. MacPherson, and Nicos Poulantzas as key theorists in this area.

[3] The OECD proclaims itself interested in the public good, but its criteria for evaluating good consist of levels of employment and economic growth. The OECD pursues making everybody better off, but shows no interest in eradicating the grossly unfair power discrepancies within the social order. The OECD, despite its attire, is a private-interest collective actor.

[4] OECD. (2001). *Citizens as partners: information, consultation and public participation in policy-making* (p. 21). OECD.

[5] Public-interest collective actors also expect the Canadian state to correct other undesirable states of affairs that one would be hard-pressed to aver as distorted norms but are still concerns for the good society — too many bottlenecks in public administration, too much bureaucratic waste, the public can be better served, and the quality of life for the public can be made better.

[6] Goodin, R. E. (1989). The state as moral agent. In A. Hamlin and P. Pettit (Eds.), *The good polity: normative analysis of the state* (p. 135). Oxford: Basil Blackwell.

[7] Berry, W. E., Braman, S., Christians, C., Guback, T. G., Helle, S. J., Liebovich, L. W., Nerone, J. C., et al. (1995). *Last rights* (pp. 125-152). Chicago: University of Illinois Press.

[8] Habermas, J. (1987). *The theory of communicative action, volume two, lifeworld and system: a critique of functionalist reason* (p. 175). Boston: Beacon Press.

[9] (Baruch Bush, 1995, 10-11)

[10] (Baruch Bush, 1995, 11)

[11] To say that the resemblance is incidental is not to be dismissive of it. The resemblance and the reasons behind it matter in that lessons to be learned for hyper-context mediation stem from normal-context mediation — especially with respect to shortcomings and failings of the latter.

[12] Birkland, T. A. (2001). *An introduction to the policy process* (pp. 94-99). Armonk, New York: M. E. Sharpe.

[13] Schmitter, P. C. (1983). Democratic theory and neocorporatist practice. *Social Research, 50,* 885-928.

[14] Habermas, J. (1973). *Theory and practice* (p. 59). Boston: Beacon Press.

[15] (Habermas, 1973, 35)

[16] (Habermas, 1973, 53-54)

Part II
DEEP CONFLICT

CHAPTER 5

Equal Treatment

In the name of peace, prosperity, and the good society, Canadians expect distorted norms to be corrected. They turn to the process of hyper-context mediation and the Canadian SAM to accomplish the task. However, in this respect, the process and 'mediator' fail. Part II, Deep Conflict, examines three shortcomings that contribute to this failure of hyper-context mediation: the process's equal treatment of participants despite their different capacities for mutual understanding (chapter 5); the process's deficiency in steering its participants into cooperative behaviour (chapter 6); and the Canadian SAM's partiality (chapter 7). Elucidation of these shortcomings identifies their causal role in the persistence rather than the correction of norm-based conflict and, accordingly, the qualification of norm-based conflict as deep conflict (chapter 8).

Equal Treatment as the Fundamental Flaw of Hyper-Context Mediation

Equal treatment, the shortcoming discussed in this chapter, is framed as the fundamental flaw of hyper-context mediation. Equal treatment merits this status insofar as it launches a particular wrong turn at the outset of the process, doing so consistently, automatically, and without question; thus it sets the tone for subsequent engendering of distortion throughout the process. The fundamental flaw unfolds as (a) the participants in hyper-context mediation are expected to be capable of pursuing mutual understanding, (b) the participants have different capacities for pursuing mutual understanding, (c) these different capacities are disavowed in the process due to equal treatment of participants, and (d) the joint participation of public- and private-interest collective actors in the process contributes to distortion rather than correction of distortion.

Expectations on the Participants of Hyper-Context Mediation

Canadians expect conflict resolution to rely upon mutual understanding, or at least to start out along that path. This expectation follows from fervour around the ideas of *fairness* and *democracy*, the tenacity of communication as a democratic ideal, and the supposition that many conflicts are born out of insufficient communication. A discussion of the capacity of participants for mutual understanding entails elaboration of the following: the concepts *communicative action* and *strategic action,* the relation of communicative action and conflict, the relation of strategic action and conflict, and precedence of one form of action over the other with respect to conflict resolution.

Communicative Action and Strategic Action

Habermas' Theory of Communicative Action sees human activity as predominately focused upon either communicative action, the attainment of mutual understanding by means of language, or strategic action, the successful actualization of the goals behind one's actions. Habermas further distinguishes between the two as follows:

> [I]n communicative action one actor seeks rationally to motivate another by relying on the illocutionary binding/bonding effect (Bindungseffekt) of the offer contained in his speech act.[1]

> [I]n strategic action one actor seeks to influence the behaviour of another by means of the threat of sanctions or the prospect of gratification in order to cause the interaction to continue as the first actor desires.[2]

Communicative action should not be confused with discourse. When validity claims are not agreed upon, it is in applying discourse that said agreement and acceptance of validity claims may be established or salvaged. As Charles Larmore puts it, Habermas' distinction between communicative action and discourse is that "[i]n the former, background knowledge is naively presupposed, whereas in the latter, problematized claims are discussed."[3]

The Relation of Communicative Action and Conflict

Communicative action is oriented toward conflict resolution: the transformation of distorted spaces and practices into shaped spaces and practices. Conflict resolution, being reliant upon the distinction between distortion and shaping, implies an informed mutual understanding regarding what constitutes the fair and appropriate exercise of power. Habermas' description of communicative action reveals its inherent fairness:

> I call interactions *communicative* when the participants coordinate their plans of action consensually, with the agreement reached at any point being evaluated in terms of the intersubjective recognition of validity claims. In cases where claims are reached through explicit linguistic processes, the actors make three distinct claims to validity in their speech acts as they come to an agreement with one another about something. Those claims are claims to truth, claims to rightness, and claims to truthfulness, according to whether the speaker refers to something in the objective world (as the totality of existing states of affairs), to something in the shared social world (as the totality of the legitimately regulated interpersonal relationships of a social group), or to something in his own subjective world (as the totality of experiences to which one has privileged access).[4]

Actions whose objective is mutual understanding do not always succeed to the same degree. Yet even limited success of communicative action can promote conflict amelioration. Limited success amounts to *increased* understanding and to potential agreement through that understanding to reduce the severity of a distortion. The moralist framework for apprehending conflict acknowledges this potential as sufficient grounds for pursuing mutual understanding. By this acknowledgment, attention to fairness, and rigorous analysis of social circumstances, the moralist framework privileges communicative action.

The Relation of Strategic Action and Conflict

Strategic action appeals to the managerial actor, whose primary interest is conflict management. Strategic action, unlike communicative action, is uncritical of what distortions may be reflected by an actor's goals or the means for their actualization. For reason of this neutrality, strategic action accommodates the moral disappointment that management of

conflict often incites: maintenance of distortion at comfortable levels, reduced visibility of distortion from the perspective of those penalized, and persistence of distortion in more manageable form from the perspective of those rewarded. Yet strategic action under the imposition of considered guidance and constraint — call this *steering* — can be manoeuvred to effectively respect moral concerns. By steering, strategic action can be made to not only resemble communicative action, but also produce the quality of outcome that would be expected from communicative action (chapter 6).

Precedence of Communicative Action, Recourse to Strategic Action

Canadians expect a consent-seeking rather than a coercive demeanour of the state (chapter 4). This expectation indicates societal preference regarding how the SAM should handle deep conflict. Precedence is given to communicative action in this respect because such action conforms to a consent-seeking demeanour. This precedence persists despite the experience that communicative action in conflict intervention — dialogue, deliberation, and normal-context mediation — is often ineffectual or in need of assistance. Communicative action too often has a tendency to spin its wheels endlessly without making headway toward conflict resolution. In such circumstances, strategic action constitutes a necessary second best path for the correction of distortion. Canadians' expectations do not preclude a state demeanour that eventually makes use of coercion. Such coercion is acceptable to Canadians as long as it does not exceed amounts required to steer actors' *self-centered* strategic action into, at least, *cooperative* strategic action. Recourse to coercion here remains acceptable as long as it (a) is applied judiciously, (b) assures strategic action's conformity to communicative action's moral considerations, (c) shows potential to steer the process toward conflict resolution, and (d) remains as back-up only and not the primary course of action.

In order for communicative action to be given precedence over strategic action, actors must be capable of communicative action *on demand*. Those participants in hyper-

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context mediation who satisfy this requirement expect that the other participants do so as well. To be capable of communicative action on demand means that an actor's capacity for communicative action is neither discretionary nor of the moment — the capacity can not be turned on and off like a faucet. Rather, the capacity is so strongly a part of the actor's identity that loss of that capacity would cause the actor to be other than what it is and to such an extent that we could say the actor ceases to exist. In this sense, the capacity for communicative action is *essential* to that actor.

An actor's *non-essential* capacity for communicative action — the capacity being discretionary and extricable from the actor's identity — may subject the actor to bouts of incapacity as to communicative action. An actor's *incapacity* for communicative action precludes precedence of, or any reliance upon, communicative action, and thus disappoints the requirement for the capacity's availability on demand.

Communicative Action Requisites of the Participants in Hyper-Context Mediation

While all participants are expected to be capable of pursing communicative action, they are not all capable of doing so to the same degree. A collective actor's essential capacity, non-essential capacity, or incapacity for communicative action can be investigated in terms of possession by the actor of traits that make communicative action possible. These traits are referred to hereinafter as the *communicative action requisites*.

The communicative action requisites comprise

- rationality,
- communicative consistency,
- a cooperative nature,
- trust,
- liability to values,
- continuity of character, and
- reliable memory.

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The full set of traits must be present to qualify an actor for legitimate participation in hyper-context mediation. Anything less than an actor's essential possession of the full set of those traits means the actor is not capable of communicative action on demand, disqualifying it from *productive* participation in hyper-context mediation. The following explicates the importance of each to communicative action; the apportionment of each among public- and private-interest collective actors; actors' resultant capacities for communicative action; and their respective satisfaction or disappointment of the requirement to give precedence to communicative action in hyper-context mediation.

Rationality

The pursuit of mutual understanding in normal- and hyper-context mediation requires the capacity for *rationality*. The capacity for rationality entails making claims that are supportable by good reasons, attending to the claims put forward by others, possessing criteria from which to evaluate the reasons put forward by others regarding their claims, and respecting the validity of claims by others if those claims are supported by good reasons.

Rationality is essential to public- and private-interest collective actors because the mutual understanding that it engenders makes possible their survival — the socio-political environment for both actors being harsh by virtue of the marriage between private-interest collective actors and free market liberalism. As a thought experiment, a collective actor can be constructed as having an unwavering irrational internal decision structure. Such a collective actor would be short-lived because of its inability to hold itself together and vulnerability to other ego-centric actors adept at manipulating their environment to their own ends.

As discussed in chapter 3, public-interest collective actors are organized consciously around the pursuit of socially constructive ends, with emphasis on equality and common goods. They emphasize rationality's communicative potential for *getting along* rather than just *getting ahead.*

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The plethora of "social science by economistic means"[5] as represented by Rational Choice Theory, Social Choice Theory, and Game Theory[6] attribute to private-interest collective actors an unwavering preoccupation with their own harm avoidance and maximization of gains. From the perspective of that science, rationality is the efficient means to such ends. Kriesberg's Rational Actor Model postulates corporations — exemplary private-interest collective actors — as "unitary rational decision makers."[7]

The importance of rationality to collective actors of both types does not mean that those actors are devoid of the irrational. Iain Mangham points out that there are aspects of the "compulsive, erratic, unpredictable and unplanned"[8] in corporate outcomes. These irrationalities are not always evident because the image-conscious corporation construes irrationality as weakness and tries to hide it. The corporation chooses to "dramatize [publicly] its planning processes, its adherence to reason."[9]

Sometimes the outward appearance of irrationality does not reflect accurately what lies beneath. Despite an abundance of rational decision-making processes, an appearance of irrationality may be due to both control problems within a collective actor, and limits of the implementation of plans. Mark Bovens cites notorious screw-ups, from Three Mile Island to the Savings and Loan scandal, in which public- and private-interest collective actors are variously implicated and fall victim to a *semblance of irrationality* effect.[10]

Collective actors are rational to the extent that they set goals, formulate plans to actualize those goals, and act accordingly. Since collective actors are not alone in the world, the success of actualizing their goals requires that the attainment of mutual understanding be a goal in and of itself.

Communicative Consistency

An actor can be rational but inconsistent in applying rationality within the parameters of communicative action: (a) an actor's interest can wane concerning the subject matter of claims put forward by others, even if those claims are supported by good reasons;

(b) an actor's commitment to attending the claims put forward by others can be withdrawn, especially if tempting alternatives in the area of strategic action are available; and (c) an actor's application of rationality can be derailed in the event that criteria for evaluating the reasons put forward by others regarding their claims undergo change. Rationality alone does not ensure that mutual understanding will be achieved by communicative action. Consistency in the application of rationality better ensures the success of communicative action. The convergence of consistency and rational comportment point to four rules Robert Alexy posits as underlying the claim-centered pursuit of mutual understanding.

First, *one may not contradict oneself.*[11] The claims that one asserts in argumentation must remain consistent. Only following acquaintance with another actor's better reasons should one's own claims evolve accordingly. Therefore, communicative action requires that an actor is not predisposed to self-contradiction.

Both public- and private-interest collective actors are capable of self-contradiction. Public-interest collective actors do not self-contradict deliberately. Their commitment to publicness precludes methods that are shy of honest representation of public positions, interests, and self. Public-interest collective actors are under close scrutiny in this respect by those who would wish to discredit them — one actor's self-contradiction can be played up by another as incompetence — and deflate the threat they pose to the status quo. Private-interest collective actors, however, are given to deliberate self-contradiction. Andrew Rowell cites General Motors' boasting 20 years of environmental progress, while downplaying their distinction as the largest producer of vehicles on the planet during that time and, therefore, their part in increasing the atmosphere's load of GHGs.[12]

Both public- and private-interest collective actors are given to self-contradiction by accident. Unintentional self-contradiction occurs due to flaws in the actor's design. By way of a design flaw, one may end up with a creature with too many heads; the heads privy to different stimuli, yet not in consultation with each other. Those engaged in communicative

action are tolerant of self-contradiction when the contradiction is identified as accidental and corrected expeditiously.

Second, *one must be consistent in one's own use of language.* If the meanings of a collective actor's own words were unsettled such that from one moment to the next the same word could for its speaker flip back and forth in having one or the other of two incompatible meanings — sometimes "no" means no, while at other times, unpredictably, "no" means yes — then how could others recognize with any confidence whether or not a collective actor is contradicting herself? This argument of consistency also recognizes that meanings are not irrevocably set. Meanings undergo evolution to keep up with a dynamic culture and the successful refutation of claims by counter-claims.[13]

It is usually to the advantage of the collective actor to be consistent in use of language for reason of efficiency. However, there are circumstances in which inconsistent use of language pays off. For example, a particular make of automobile, having improved mileage and reduced emissions, nonetheless still pollutes but is referred to by its manufacturer as "good" for the environment. Playing loose here with the word "good" is but one facet of constructing interference and delay in potential debate, development of awareness, mobilization, and manifest conflict with respect to air pollution and GHG abatement. Inconsistent use of language within normal- and hyper-context mediation would not be tolerated if identified as a tactic rather than a shortcoming.

Third, the claim-centered pursuit of mutual understanding requires that one must be consistent in applying concepts, ideas, and any other linguistic constructs. Alexy states that *"[e]very speaker who applies a predicate F to an object 'a' must be prepared to apply F to every other object which is like 'a' in all relevant aspects."*[14] Consistency in the application of a claim to other like instances serves as a counter to our all too readily realizable capacities for discrimination, favouritism and caprice. The environment-attentive public-interest collective actor must be able to reconcile habitual use of polluting forms of transportation by its membership. Comparably, the corporation must satisfactorily consolidate

claims of caring about the environment, despite a wandering eye for new locales with less stringent standards regarding GHG emissions. Public- and private-interest collective actors can be inconsistent in this respect, but neither is fatally disposed to being this way.

Fourth, the claim-centered pursuit of mutual understanding requires that *"[e]very speaker may only assert what he or she actually believes."*[15] Actors must be both consistent and sincere in their self-representation. To be otherwise is conducive to strategic action. Lying, telling half-truths, withholding information, and "bullshitting one's way through"[16] can only lead to mutual understanding by total fluke. The stronger the bonds to community, the greater the propensity for an actor to tell the truth. Strong bonds to the community are an essential aspect of the public-interest collective actor's identity. Consequently, the public-interest collective actor is inclined to truthfulness. Private-interest collective actors do not have comparable moral bonds with community. Their community-indifference is sufficiently pronounced so as to give rise to the global socio-economic dilemma referred to as the race to the bottom. Consequently, the private-interest collective actor experiences no aversion to untruthfulness. Saying other than what is believed is often beneficial in the strategic action toward which the private-interest collective actor leans.

A Cooperative Nature

Participants in communicative action cooperate toward the common purpose of mutual understanding. Inter-actor expectations that drive cooperation are illuminated in Paul Grice's "Cooperative Principle."[17] Grice observes that an interlocutor is expected by others to make her contribution to conversation or, as he calls it, a *talk exchange* "such as is required at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which she is engaged."[18] Mutual understanding is the accepted purpose of talk exchanges between public- and private-interest collective actors in hyper-context mediation. However, accepted purpose is only actual purpose for the public-interest collective actor. The actual purpose of talk exchange for the private-interest collective actor is the accrual of

power. Private-interest collective actors recognize that their survival and growth depend upon their violation of the maxim that conversational contributions to a talk exchange are made "as is required ... by the accepted purpose ... of the talk exchange." While there are many different ways of violating this maxim, the private-interest collective actor frequently does so by providing too little or too much information in talk exchanges. Providing too little information represents the private-interest collective actor's strategies of withholding information, secrecy, and *in camera* decision-making. Providing too much information represents the private-interest collective actor's strategy of overwhelming. For the public-interest collective actor, similar conduct would be antithetical to the community-centric aspect of this actor's identity.

Trust

Communicative action requires trust that others tell the truth unless those others prove unworthy of trust. Davidson explains this requirement by means of his Principle of Charity.[19] The Principle observes that when an actor recognizes that her beliefs differ from those of another, she assumes that (a) her own beliefs are well grounded; (b) the beliefs of the other actor are sincere (i.e., the other actor believes that she is telling the truth); but (c) the beliefs of the other actor are imperfectly grounded. Following these assumptions, the actor entertains the possible validity of contesting beliefs by being willing to put that possibility to the test — a willingness to try to figure out the other actor's reasoning. Believing that someone else is telling the truth is indicative of one's own necessary risk-taking. The humble possibility is entertained that the other actor's beliefs may actually be the well grounded ones and, instead, one's own beliefs do not survive closer scrutiny. Participation in communicative action presupposes doing so in good faith: commitment to telling the truth, having faith that others are doing the same until that faith is disqualified, and being open to the possibility of changing one's beliefs and views.

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The public-interest collective actor, for reason of being beholden to more exacting moral standards by its publicness and its *raison d'être* not benefiting from dishonesty, is more likely to be trustworthy than the private-interest collective actor. It follows that the public-interest collective actor is more likely to subscribe to the Principle of Charity, extending trust to others. The prisoner's dilemma illuminates the private-interest collective actor's repulsion of trust. Private-interest collective actors weigh against each other the payoffs of trusting versus not trusting, followed by their taking various risks with respect to cooperation. It is fair to say that the capacity to trust others is affected by recognition of one's ability to elicit trust. The private-interest collective actor disposed to dishonesties could not reasonably expect others to be trustworthy, but could at least hope for as much. This colours the interactions of the private-interest collective actor with others of its kind and public-interest collective actors. Contemporary public- and private-interest collective actors demonstrate considerable savvy in recognizing which actors deserve trust, recalling stranger times when environmental groups, in federally mediated dialogue with representatives from coal and electric utility industries, could get sweet-talked into endorsing band-aid policies of taller smokestacks rather than emission controls.[20]

Liability to Values

Values are principles and qualities that an actor holds in high esteem. To acknowledge a value "is to take it into account in decision-making, ... (and) to be inclined to advance it as a consideration in influencing choice and guiding oneself and others."[21] Values are inherent of both public- and private-interest collective actors in that "[c]ollective action ... is more likely when individuals identify values ... that they feel they have in common with each other."[22] The key to values is their commonality. While their wide currency and acceptance do not demand repeated justification, justification must be available upon demand. This is not the case for interests. Interests are the subjective version of

values: "related to the needs and rights of an individual."[23] The merit of interests is not universally compelling, their currency limited, thus calling for frequent justification.

The liability of both public- and private-interest collective actors to their respective values enhances the prospects for communicative action and cooperation. Enhancing communicative action and cooperation through liability to values goes against our intuition: the vast differences between public and private values — an ideal based upon mutual respect, and an appetite for personal gain — and the conflicts that their differences seed[24] suggest more hindrance than help. But without liability to values, actors would relativize and adapt their values in order to produce compromise rather than just relativizing and adapting their interests.[25] Relativization of values, aside from being morally incapacitating, is problematic for two reasons. First, relativized values would disintegrate the core around which the individual constituents of a collective actor coalesce. The disintegration of both collective action and community would follow. Second, relativized values would radically undermine the stability of the peace from any such compromise. Value relativism dissolves any guarantees of continuity of character for the actors involved.

Both public- and private-interest collective actors avoid the problems associated with the relativization of values. As discussed in chapter 3, both are steadfast in their respective values.

Continuity of Character

Continuity of character is criterial to communicative action because rationality, trust, and a cooperative nature require it of the participating actors. Inconsistency of character for only one of the participants would allow for, at best, a vague or precarious mutual understanding. Mutual understanding worked out in the process of hyper-context mediation depends upon the sharing of knowledge. Imparting knowledge rationally requires continuity of character insofar as the claims that one asserts are often backed by beliefs and values. Capricious change in beliefs and values would throw into doubt or change the meaning and

acceptability of previously made claims. Trust requires being able to anticipate others' behaviours. Mutual trust[26] is undermined because inconsistent character means increased risk — the reduced certainty that knowledge is being shared. If hyper-context mediation successfully resolves deep conflict by means of communicative action, then ongoing cooperation and commitment is expected of all parties in order to maintain the peace. Absence of satisfactory continuity of character gives little reason to expect such cooperation and commitment.

When evaluating a collective actor, our lay processes of sense-making reference that actor's character. Attribution of character to the collective actor follows from significant features that persist in that collective over the course of time (chapter 1). The public-interest collective actor is less likely to fail continuity of character than its private-interest counterpart. Public-interest collective actors reliably possess coherent purpose. Even as their respective palettes of interests expand and drift, the public-interest collective actor is consistent in its overarching concerns. Think of Greenpeace's repertoire of issues having moved beyond nuclear testing to include deforestation, genetically modified organisms, global warming, and climate change. These issues remain fixed under an overarching concern for things clearly pertaining to the natural environment.

The cliché sci-fi B-movie scenario of mind transfer imagines a situation outside the threshold of this consistency, one body housing one mind, then suddenly, same body, different mind. The private-interest collective actor verges on such broken continuity of mind-body correlation. It is not uncommon for a series of different subjects to constitute one corporate biography, each subject passing its memories on but having noticeably different behaviours from its successor. We associate a corporation with a particular product or service, but this does not accurately reflect the unfixed nature of corporate identity. While SMOs and NGOs typically have mission statements which summarize their intentions and define their purposes, rarely can a single coherent purpose be attributed to a complex organization such as a transnational corporation.[27] In his film *Roger and me*,[28]

Michael Moore makes the point that even a corporation such as General Motors, which many instantly associate with cars, is neither forever nor currently committed to the production of cars but pursues whatever it takes at any given time to accrue further power — weapons-making and agribusiness today, banking or chocolate bars tomorrow. To a great extent, the element of surprise, which can plumb to the level of being unfixed in corporate identity and behaviour, is a crucial element in securing the competitive edge.

There are no guarantees of consistency regarding the corporation's actions. But is there any ongoing thread in the corporate actor that suggests continuity of person? Peter French offers the Corporate Internal Decision Structure (CID), comprised in part of "an organizational or responsibility flow chart that delineates stations and levels within the corporate power structure and ... corporate decision recognition rule[s]."[29] William Laufer offers Corporate Character Theory which invokes a corporate ethos (CE)[30] produced from the same hierarchical intra-corporate relationships and decision-making processes. Simeon Kriesberg offers the Organizational Process Model[31] of decision-making in which decision-making sub-units are concerted internally and with other sub-units by means of explicit and customary Standard Operating Procedures (SOP). A corporation's policy, whether the consequence of corporate internal decision structure, corporate ethos, or standard operating procedures, provides consistent and unique beliefs which allow us to identify the corporation and anticipate its behaviour. This role of policy in anchoring continuity is acknowledged by CEOs who boast that their corporations are "open to any kind of change ... so long as the core values remain in place."[32]

While French appears to be positing general policy as corporate soul and an anchor for consistency of character, he wrongly assumes a high degree of fixedness as to the corporation's general policy. First, such policy is seldom explicitly stated. Contrast this to the public-interest collective actor's publicly available mission statement. Second, if a corporation's policy has been articulated for all to see, that policy readily avails itself to head-spinning change come next year's shareholders' meeting. By that time, the

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corporation may be changed beyond recognition. J. G. Ballard, in the following anecdote, marvels at an extreme malleability that is similar to what one finds in the responsiveness of corporate character to the wants of its shareholders:

> [A] few years ago, the wife of a famous plastic surgeon revealed that throughout their marriage her husband had continually re-styled her face and body, pointing a breast here, tucking a nostril there. She seemed supremely confident of her attractions. But as she said: 'He will never leave me, because he can always change me.'[33]

Rather than forsake a corporation that does not live up to its shareholders' general expectations, the specifics of the corporation can be altered by way of shareholder influence. The shareholders' free market liberal expectations are expansion, increased share value, market dominance, and accrual of power. These expectations motivate the shareholders to show neither restraint nor sentimentality when it comes time to decide by how much and in what directions to make-over the corporation. Unlike electoral politics, the market offers *staying put* as an attractive alternative to *voting with one's feet*. The assuaging claims of the CEOs as to the persistence of corporate core values are only so many words. The only regulators here are shareholders' wants, tempered by social norms.

The public-interest collective actor, however, is locked into consistency of character for three reasons. First, whereas there is something inherently arbitrary in the many consumer-related and power-fixated choices for private-interest collective actor *raison d'être* — pharmaceuticals, third world loans, weapons, theme parks — there is a relatively finite palette of public-interest issues as the public-interest collective actor's *raison d'être*. Second, unlike the private-interest collective actor's mutability by means of shareholder caprice, the public-interest collective actor maintains relative stability of character by virtue of its membership's contentment with the solidarity-minded purpose of public interest. Third, the public-interest collective actor must maintain public trust in order to be consistent with acting on the public's behalf. Thus, recourse to unbound strategic action is ruled out. The only inconsistency allowed for the public-interest collective actor is inconsistency by

mistake. And that category of inconsistency must be in measured doses because excess of inconsistencies undermines credibility with respect to competence.

Reliable Memory

The ability of the collective actor to access aspects of the past on demand is its equivalent of a reliable memory. Possession of a reliable memory is necessary for any of the communicative action requisites to be meaningful. First, a collective actor's rationality requires mental access to the past in order to justify claims and to recognize which claims by others have been justified. Second, memory is implicit in communicative consistency — the dependable meanings of linguistic expressions by which communication is possible — and the actor's awareness of whether or not its statements are being put forward with truthful intent. Third, the cooperative nature of a collective actor relies upon time-based activities and, therefore, memory. History of one's previous informative contributions to others is time-cumulative, determining the redundancy or inadequacy of one's present contributions of information to others. Fourth, trust requires memory in order to discern when continued trust is deserved or forfeited. Fifth, continuity of character for the collective actor relies upon memory of that actor's past existence. The continuity is by way of identification with those past experiences. Sixth, liability to values requires reliable memory. Reliable memory prevents default to value relativism and provides reference to past experience by which the actor confirms the reasons for something being valued.

Memory for the individual is a phenomenon of the brain. For the collective actor, memory is a phenomenon reliant upon the memory of the collective's individual human constituents; information storage and retrieval systems; and culture at large. Both public- and private-interest collective actors possess reliable memory, as evinced by their survival in the harsh socio-political environment.

Equal Treatment of the Participants
in Hyper-Context Mediation

The preceding analysis of public- and private-interest collective actors reveals their

inherent differences with respect to the communicative action requisites. The following

discusses (a) what is meant by equal treatment and how it is the product of participants'

expectations in hyper-context mediation, (b) adjustments that must take place as to the

conditions of actors to justify their equal treatment in hyper-context mediation, and (c) how

realization of equal treatment disavows differences between actors.

Expectation for Equal Treatment

Equality, as defined by Lukes, is

> the root idea that each person's essential interests be given equal weight or
> consideration, that there be no discrimination between individuals or groups
> in respect of those interests.[34]

Equality of treatment denotes uniformity of thought and action in the evaluation and

treatment of actors. Through *equal treatment*, any one actor becomes interchangeable with

another. Participants' expectation of such treatment within hyper-context mediation stems

from their strong valuation of equality. The strong valuation of equality, however, guarantees

for it no single interpretation. Interpretations for Canadians differ according to which of a

person's interests warrant being given equal weight or consideration — should there be

equality of income, risk, burden, respect, or some other facets of social or personal

circumstances?[35] The Canadian state interprets equality for Canadians as equality of

opportunity. The state, by subscription to a *doctrine of sufficiency,* assures Canadian actors

a degree of opportunity that it deems sufficient to them, opportunity that actors then are free

to satisfy or disappoint through their own choices and actions. By means of this doctrine

the Canadian state raises questions of "Who has enough?" and "Who has not

enough?"[36] These questions point beyond fairness to survival — as Frankfurt notes, "falling below the threshold of enough food or enough medicine means death."[37] While the sufficing of basic human needs is presumed taken care of by the social safety net, Canadian state policy frames an actor's ability to represent herself publicly as yet another basic human need. To have the need for self-representation adequately met allows the actor to pursue her interests, and means an opportunity for her to participate in the deliberation that is a part of hyper-context mediation. To have the need for self-representation inadequately met not only eliminates the actor from participation in hyper-context mediation, but jeopardizes the actor's survival. Insufficient self-representation puts her at risk of slipping through the social safety net. The Machiavellian dictum that "the basis of liberty is conflict and disagreement"[38] resonates strongly here: insufficiency as to self-representation puts the actor at risk of having her wellbeing *policied away* by others. The Canadian SAM ensures that all Canadian actors suffice in opportunity for self-representation and, in this sufficing, are presumed equal.

Equal Treatment and Levelling the Playing Field

The presumed equality of all actors requires the Canadian SAM to adjust the level of some actors' opportunities: the least powerful receive a boost to minimally satisfy their need for self-representation; the most powerful endure constraint to rein in their excesses of self-representation.

First, the Canadian SAM fosters opportunities by which the underdogs — public-interest collective actors and small actors[39] — can participate in society-wide deliberation. Opportunities are guaranteed for them by the Canadian state's provision and support of the media that comprise the 'stage,' as discussed in chapter 2. Means that ensure their entry into society-wide deliberation include participation in opinion polls, provision of census data, voting as an assessment of electoral platform and governmental performance, signing a

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petition, writing a letter to the editor of a newspaper, and being a number in the ratings of a politically relevant television program.

Second, the Canadian SAM constrains opportunities by which the strong dominate society-wide deliberation. For example, Canada's *Elections Act* limits a group to spending $3,051 on lobbying activity per riding, or $152,550 nationally on campaigning during a federal election.[40] Regrettably, such constraint is often inadequate. The same group restricted in its spending on direct lobbying of government can nonetheless spend in excess of $152,550 nationally on indirect lobbying — advertising campaigns and public relations aimed at swaying public opinion in the policy direction of its choosing — or pass money through legal loopholes in Canada's *Elections Act*.[41]

Equal Treatment and the Disavowal of Difference

The public-interest collective actor is unavoidably rational, communicatively consistent, cooperative, capable of trust (although cautious of private-interest collective actors, an understandable response to a history of betrayal by them), continuous of character, liable to a set of values, and reliable of memory. In essentially possessing the full set of communicative action requisites, *the public-interest collective actor is essentially capable of communicative action.*

The private-interest collective actor, by its marriage to free market liberalism and its resultant predilection toward strategic action, is ineluctably disposed to being rational, untrusting (because it is essentially untrustworthy), discontinuous of character (despite convincing long periods of seemingly constant character), liable to a set of values, and reliable of memory. Whereas trust and continuity of character are communicative action requisites, private-interest collective actors essentially possess their *opposites*.[42] As well, for the private-interest collective actor, the communicative action requisites of communicative consistency and cooperativeness are elective rather than essential. In lacking the full set of

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communicative action requisites, *the private-interest collective actor is incapable of communicative action on demand.*

These differences between public- and private-interest collective actors are eclipsed by the Canadian SAM's wilful emphasis upon actors' opportunity with respect to self-representation. The Canadian SAM presumes that the differences between actors in this dimension are negligible. This presumption means that other differences (to be discussed in chapter 6) are disavowed, regardless of their contribution to the uneven playing field. Significant among the disavowed differences are the actors' different capacities for communicative action.

Equal Treatment and its Consequences for Hyper-Context Mediation

Equal treatment is not without consequences in that it (a) determines actors' opportunities to participate in hyper-context mediation, (b) affects the degree to which the playing field is not level, and (c) influences the quality and content of the process's outcome.

First, hyper-context mediation does not relax the requirement for participants to be able to engage in communicative action on demand; but it is remiss in checking if actors qualify in this regard. Both public- and private-interest collective actors are given the benefit of the doubt with respect to capacity for communicative action, despite the private-interest collective actor's incapacity. Accordingly, all public- and private-interest collective actors, regardless of their capacities for communicative action, are given the opportunity to participate in hyper-context mediation.

Second, treating participants equally may be well-intentioned, but is of little value if it causes the disavowal of more relevant differences between participants. Harry Frankfurt observes "[equal treatment] distracts people from measuring the requirements to which their individual natures and their personal circumstances give rise."[43] Four species of

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injustice originate from equal treatment's disavowal of difference. Although the following examples refer to interpersonal relationships, the four resultant injustices and their means of production apply just as well to collective actors:

1. An actor may be penalized inadvertently due to the lack of an acknowledged non-universal yet significant characteristic. Equal treatment of women and men in the workplace can lead to the perception of both as their lowest common denominator — workers. Significant gender-specific concepts, such as maternity leave, are dithered from being a right into being special treatment — if not evaporated away entirely.

2. An actor may be penalized inadvertently due to the disavowal of a non-universal yet noxious characteristic of another. Consider the quiet sleeper and the chronic snorer who must sort out their sleeping arrangements. Equal treatment afforded to them might restrict debate as to who occupies the upper tier of a bunk bed, rather than whether separate rooms or ear plugs would be in order.

3. An actor may be rewarded inadvertently when non-universal characteristics of some other actor are disregarded. Uncritical altruism, naiveté, or being overly forgiving can dispose one actor's conduct to benefit another. The free rider is indebted parasitically to the altruist. We can recognize these traits and try to take back from the excess that they bestow upon others by way of applying a handicap to the advantaged. Equal treatment overlooks such difference. It does not admit to seeing the largesse, so it does not propose a handicap.

4. An actor may be rewarded inadvertently due to disavowal of characteristics that constitute an unfair advantage. Not all possess the same resources — mental capacity, talents, health, money, economies of scope and scale. Yet equal treatment and its concomitant blindness to difference proceeds as if that one party's surfeit of the above, whether possessed out of merit or good fortune, does not exist or does not matter.

Penalties for some and rewards for others ensue from two presumptions: (a) all participants are capable of attempting communicative action on demand, and (b) deliberation, a part of

the process, proceeds in conformity to the rules of communicative action (chapter 6). Rather, the private-interest collective actor's unacknowledged incapacity for communicative action deforms the deliberative environment such that public-interest collective actors abide by particular rules and private-interest collective actors do not. Public-interest collective actors, during deliberation, do not have similarly at their disposal the lies, half-truths, porous information, and bullshit such as may be flung their way by private-interest collective actors. With the exception of libel and false advertising, the distorted communication that is flung about receives from the state the excusing nod of freedom of speech.

Third, the deliberation that is a part of hyper-context mediation becomes distorted itself due to the uneven playing field. The public-interest collective actor's conformity to fair play and acting in good faith inadvertently allows the non-conforming private-interest collective actor greater say regarding the fate of distorted norms. Greater say gives private-interest collective actors' greater inclination to preserve the status quo and the distortions from which they benefit.

As the initial shortcoming, equal treatment is the fundamental flaw of hyper-context mediation. Equal treatment assures early on that the process elicits distortion. Parallel and subsequent shortcomings of the process further it: first, hyper-context mediation's failure to steer participants into cooperative behaviour (chapter 6) and, second, the Canadian SAM's partiality to private-interest collective actors (chapter 7).

Summary and Application to Kyoto

Chapters 5, 6, and 7 provide explanations of why hyper-context mediation privileges private interests over public interests. The explanations in chapters 5 and 6 are centred in the process of hyper-context mediation. The explanation in chapter 7 is centred in the Canadian state-as-mediator of hyper-context mediation. In chapter 5, the process-centred explanation focuses on the SAM's acknowledgement of, and attempt to make congruous, three societal

values. First, society holds *participatory democracy* in high regard; the SAM responds by assuring the right of all to participate in hyper-context mediation. The global warming debates demonstrate such all-inclusiveness in the diversity of participants: environmental SMOs and corporate polluters, scientific authorities and sensational news media, the convinced and the sceptical. Second, society privileges *the use of talk to settle problems*; the SAM responds by privileging communicative action throughout hyper-context mediation. *Communicative action* is the pursuit of mutual understanding, in contrast to *strategic action* which is the pursuit of goals by any means. Engagement in the global warming debates is generally perceived as engagement in communicative action — a pursuit of mutual understanding regarding global warming's causes, the urgency of the situation, and possible courses of action. Third, society values *equality*; the SAM responds through equal treatment of all the participants in hyper-context mediation. In the global warming debates, whether participants seek to foster or impede the attainment of mutual understanding, there is no censure of what those actors choose to say (chapter 9).

In an attempt to find congruity between these three societal values, the SAM presumes that *communicative action is a capacity shared equally by all participants in hyper-context mediation*. The presumption is incorrect. Public-interest collective actors are fully capable of, and most likely to engage in, communicative action. However, private-interest collective actors are severely limited in capacity for communicative action. The limitation of private-interest collective actors results from their incapacity for both *trust* (e.g., some corporations' suspicion that Kyoto is a conspiracy crafted in Europe to gain unfair trade advantages over Canada) and *continuity of character* (e.g., the inconsistencies of Petro-Canada over time regarding GHG-reduction policy), as well as their lack of *a cooperative nature* and *communicative consistency* as essential traits. Consequently, private-interest collective actors are more likely to engage in strategic action.

The SAM's incorrect presumption means that all participants in hyper-context mediation receive equal treatment from the SAM. The disavowal of difference between

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public- and private-interest collective actors renders those who cooperate indistinguishable from those who hinder society-wide discussion. The failure to distinguish between public- and private-interest collective actors in hyper-context mediation imparts a private-interest momentum to the society-wide discussion. As evidenced by Kyoto Protocol ratification, Canada's discussions around global warming achieved public-interest ends regardless of this momentum (chapter 9), making Kyoto stand out as a template for the reform of hyper-context mediation (chapter 10).

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[1] Habermas, J. (1991). *Moral consciousness and communicative action* (C. Lenhardt & S. Weber Nicholsen, Trans.) p. 58. Cambridge: The MIT Press.
[2] (Habermas, 1991, 58)
[3] Larmore, C. E. (1987). *Patterns of moral complexity* (p. 57). Cambridge: Cambridge University Press.
[4] (Habermas, 1991, 58)
[5] Pettit, P. (1996). Institutional design and rational choice. In R. E. Goodin (Ed.), *The theory of institutional design* (p. 61). Cambridge: Cambridge University Press.
[6] (Pettit, 1996, 61-63)
[7] Fisse, B. & Braithwaite, J. (1993). *Corporations, crime and accountability* (p. 102). Cambridge: Cambridge University Press.
[8] Mangham, I. (1987). *Organization analysis and development* (pp. 2-4). Toronto: Wiley & Sons.
[9] (Mangham, 1987, 2)
[10] Bovens, M. (1998). *The quest for responsibility* (p. 59). Cambridge: Cambridge University Press.
[11] Alexy, R. (1989). *A theory of legal argumentation* (p. 188). Oxford: Clarendon University Press.
[12] Rowell, A. (1996). *Green backlash* (pp. 100-125). United Kingdom: Routledge.
[13] Successful refutation of claims by means of counter-claims is an outcome of hyper-context mediation that manages to displace a distorted norm.
[14] (Alexy, 1989, 188)
[15] (Alexy, 1989, 188)
[16] Frankfurt, H. (1988). *The importance of what we care about* (p. 117-133). New York: Cambridge University Press.
[17] Grice, P. (1989). *Studies in the way of words* (pp. 26-34). Cambridge: Harvard University Press.
[18] (Grice, 1989, 26)
[19] Davidson, D. (1984). *Inquiries into truth and interpretation*. Oxford: Clarendon Press.
[20] Amy, D. (1987). *The politics of environmental mediation*. New York: Columbia University Press. Amy makes reference to the United States' National Coal Policy talks of 1976 in which 60 representatives from environmental groups inadvertently bargained away various "hard fought legislative and judicial gains."
[21] Blackburn, S. (1994). Value. In *The Oxford dictionary of philosophy* (p. 390). Oxford: Oxford University Press.
[22] Scott, J. (2001). *Power* (p. 120). Cambridge: Polity Press.
[23] (van Erp, 2000, 62)
[24] Recognize that "interest" tends to be misused when referring to collective actors. Public interest is coterminous with public value.
[25] (van Erp, 2000, 135)
[26] (Habermas, 1991, 136)
[27] (Chisholm, 1976, 136).
[28] Glynn, K. & Moore, M. (Producers), & Moore, M. (Writer/Director). (1989). *Roger & me* [Motion picture]. United States: Dog Eat Dog Films.
[29] French, P. A. (1979, July). The corporation as a moral agent. *American Philosophical Quarterly, 16*(3),

212.

[30] Laufer, W. S. (1996). Corporate culpability. *Business Ethics Quarterly, 6*(3), 315.

[31] Kriesberg, S. (1976). Decisionmaking models and the control of corporate crime. *Yale Law Journal, 85,* 1091-1129.

[32] Paulson, H. of Goldman Sachs. (2000). In J. E. Garten (Ed.), *The mind of the CEO* (p. 120). New York: Basic Books.

[33] Ballard, J. G. (2001). Princess Margaret's face lift. In Ballard (Ed.), *The atrocity exhibition* (p. 180). London: Flamingo.

[34] (Lukes, 1991, 63)

[35] Broadbent, E. (2001). Introduction. In E. Broadbent (Ed.), *Democratic equality: what went wrong?* Toronto: University of Toronto Press.

[36] (Frankfurt, 1988, 147)

[37] (Frankfurt, 1988, 145)

[38] Held, D. (1987). Models of democracy (p. 45). Stanford: Stanford University Press.

[39] Not all private-interest collective actors attain the proportions of MicroSoft or General Motors.

[40] Limits to some election spending 'unconstitutional.' (2002, December 17). *Leader Post (Regina).* p. C9.

[41] McIntosh, A. (2003, May 20). Liberals to close 'in & out' loophole. *National Post,* p. A4.

[42] It can therefore be said that the private-interest collective actor also is distinguished by essential difference.

[43] (Frankfurt, 1988, 135-136)

CHAPTER 6

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Deficiency in Steering

The purpose of this chapter is (a) to argue that collective actors expect the Canadian SAM to steer them in hyper-context mediation, (b) to indicate the means available to the state for steering participants in hyper-context mediation, (c) to establish that the SAM fails to satisfy this expectation, and (d) to demonstrate the consequences of this failure for hyper-context mediation.

The Expectation to Steer Hyper-Context Mediation

There is an expectation among collective actors engaged in deep conflict for the SAM to steer the process of hyper-context mediation. This expectation is the result of two different perceptions of what comprises hyper-context mediation.

Some collective actors correctly perceive that hyper-context mediation comprises strategic action (chapter 5). They recognize that strategic action forsakes cooperation and, accordingly, leads to injustice. Forsaking cooperation facilitates the survival of the fittest and victory for the actor who is the strongest and most cunning. Obviously, this is an outcome far removed from the ideal of mutual understanding, and definitely not what one would look for in a voluntary conflict resolution process. These actors, therefore, expect the SAM to address the shortage in cooperation by steering actors into cooperative behaviour, ensuring fairer outcomes of a process that begins and ends with strategic action.

Other actors incorrectly perceive that hyper-context mediation comprises communicative action. They do not see that involvement of public- with private-interest collective actors negates communicative action and leaves those collective actors, instead, engaged in strategic action — the negation resulting from the private-interest collective actor's deficit of the communicative action requisites (chapter 5). Regardless of the transparency of this ne-

gation, even those actors working under the misperception that they are engaged in communicative action expect the SAM to steer the process of hyper-context mediation. Cooperation is a tenuous and fragile endeavour: fatigue and frustration induced by protracted and difficult attempts at mutual understanding precipitate participants' disengagement. Actors, blind to their present engagement in strategic action and convinced of their present engagement in communicative action, turn to the SAM to prevent breakdowns in cooperative behaviour, slippage into strategic action, and furtherance of injustice.

The Means for Steering Cooperation
in Hyper-Context Mediation

The Canadian SAM must find the means to steer participants towards cooperative behaviour during the deliberative and policy phases of hyper-context mediation (chapter 2). The deliberative phase requires cooperation because the society-wide discussion and the change of preferences entailed in deliberation read as illegitimate if achieved by other than collaborative means. The policy phase requires cooperation to ensure that the peace obtained through hyper-context mediation will have a chance to endure. To steer participants, the SAM takes advantage of features of collective actors that make possible their being induced to cooperate.

Chapter 5 focused on traits that collective actors must possess in order for them to engage in communicative action. One of those traits, *a cooperative nature*, refers to the ability of an actor to conform to mutual expectations attendant to the act of cooperation, those expectations laid out in Grice's Cooperative Principle.[1] For some actors, conformity to those expectations is inextricable from the actor's identity. We can ascribe to such actors *a cooperative nature*. For other actors, conformity to those expectations is not spontaneous. Those actors lacking *a cooperative nature* are limited to strategic action. While their communicative action is ruled out, their cooperation is not. Cooperation for actors lacking *a cooperative nature* can still be induced by either consent or coercion.[2] Consent denotes

bringing about a particular state of affairs by means of voluntary agreement. Coercion denotes bringing about a particular state of affairs by either force or threat. The features of collective actors that allow the SAM to win their consent to cooperate are called *fundamentals for consensual cooperation*. The features of collective actors that allow the SAM to coerce them to cooperate are called *fundamentals for coerced cooperation*. The Canadian state's recognition of, and playing, these fundamentals in a considered manner amounts to using them as handles and leverage points to steer the participants of hyper-context mediation into cooperative behaviour: to resume communicative action after it breaks down, to attenuate the egocentrism of actors' goals, and to temper the means for goal actualization.

Identification of the fundamentals is intuited from a thought experiment concerning the individuals engaged in face-to-face normal-context mediation: *Which features of individuals increase the likelihood of their cooperation?* Observations regarding the individual allow us to extrapolate the fundamentals for public- and private-interest collective actors in hyper-context mediation. For the present discussion, the social movement organization (SMO) is taken as the exemplary public-interest collective actor; the corporation is taken as the exemplary private-interest collective actor. In their examination, those fundamentals apportioned to consensual cooperation will be considered separately from those apportioned to coerced cooperation. Each fundamental is studied to reveal how it is a factor in achieving cooperation and how it is differently apportioned between the two actors.

Fundamentals for Consensual Cooperation

Consensual cooperation is given priority over coerced cooperation so as to conform to societal expectation that the Canadian state is participatory. If consensual cooperation is a viable option, it renders recourse to coerced cooperation unnecessary. Consensual cooperation relies upon behavioural constraint brought about through societal values and morals. The following are four fundamentals for consensual cooperation:

- self-limitation,
- second-order desires,
- strong evaluation of desires, and
- empathy.

Self-Limitation

Self-limitation is an actor's refusal to pursue the full range of opportunities available to her. The actor's behaviour is marked by caprice and self-interest if the actor is not bound to a moral interpretation of the greater good such as embeddedness in culture, respect for norms, recognition of laws, a sense of community, and attachment to a nation-state.

The public-interest collective actor's self-limitation follows from conformity to standards of the actor's own culture (see chapter 3). For example, such actors refuse to use for themselves the effective but community disrespectful strategic action repertoire of their private counterpart (e.g., public relations, spin-doctoring, and lies). Self-limitation also stems from the binding force of all-encompassing community, ruling out some forms of civil disobedience that potentially harm individual members of the community (e.g., the spiking of trees and the arson of GMO forestry projects). The glues that do not hold for the public-interest collective actor and, accordingly, do not encourage self-limitation comprise social norms, laws, and attachment to nation. Social norms are often the subject matter of the public actor's allegation of distortion in hyper-context mediation. The disciplinary chill of law fails to encourage self-limitation in the form of self-policing, as evinced by public-interest collective actor notoriety in churning out those who go on to perpetrate acts of civil disobedience.[3] The borders of the nation-state, likewise, draw little allegiance for many SMOs who tend toward *global* interests, membership, and activities.

The private-interest collective actor's outright lack of self-limitation stems from the sizable and unprecedented opportunities available to it. The greater the surfeit of resources and capital for an actor by which *power to* and *power over* can be realized, the less likely it is that self-limitation and cooperation will be exercised. It is deemed as unfortunate, from

the perspective that privileges self-limitation, that more corporations displace nation-states from the ranks of the world's top economies each year.[4] The relationship between corporations that can afford to be arrogant and the Canadian state is especially important because the latter functions as the 'mediator' of the former. *What fairness can be realized when the participants in the process can bully the overseer of the process?* For example, Microsoft showed no self-limitation in its unfair competition practices, and no remorse upon conviction for the same.[5] The American state's failure to deter Microsoft from such behaviour, and punish it, was due to economic and ideological bullying: reliance of a sanguine U.S. economy upon a comparably sanguine Microsoft, and reliance of the myth of *The American Success Story* upon the rags-to-riches of Microsoft. Enron and WorldCom constitute the worst case scenarios of the incapacity for self-limitation, as evinced by unprecedented fictions in accounting and exaggerations of stock valuation. The caprice and self-interest of corporate self-limitation also follow from affiliation with a non-moralist interpretation of the greater good, and the flimsiness of other bonds. Corporate culture offers alternative standards for the corporation, the embodiment of survival-of-the-fittest and immoral strategic action. Norms bind the corporation to the extent that they are the confluence of a corporate actor's limits of imagination and the convenience of established ways of thinking and doing. The law fails to impress adequate moral force upon the corporation, as evinced by the prevalence and cleverness of corporate crime.[6] Sense of community for the corporation constitutes public relations ploys such as Royal Bank sponsorship of minor league baseball games and barbecues, Starbucks staff picking litter from neighbouring storefronts on Earth Day, and corporations both funding the Canadian Conservative party and running floats in Canadian Gay Pride parades. Lack of attachment to a particular nation-state is evinced by the race to the bottom and an eagerness to sue national governments within the framework of WTO dispute settlement mechanisms.[7]

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Second-Order Desires

Desires can be distinguished as first- and second-order. A *first-order desire* is a desire to do such-and-such, that desire proving effective in moving an agent[8] all the way to action.[9] Inherent to the first-order desire is that in being moved, the actor does so in accordance to her will. A *second-order desire* is a desire concerning any first-order desire not presently held,[10] invoking a counterfactual reality. In having second-order desires, "(actors) are wanting to be different, in preferences and purposes (and will), from what they are."[11] The relationship between first- and second-order desires is explicated through the example of an actor who faithfully fulfills her desire to read mystery novels. She reads mysteries because it is her desire to do so and she wills it so. Spending time engaged in this activity is her first-order desire. Concurrently, she finds desirable a particular other desire: she wants it to be her desire to read science fiction. This second-order desire could be motivated by any of a number of reasons: a close personal friend is an avid reader of science fiction and her reading some of the same would give the two of them something more in common; she senses that the mystery genre is beginning to feel anemic and worn, whereas science fiction promises limitless possibilities in the form of imaginary worlds; or a science fiction book club is offering some very good deals. Presently she is not such a person: she has yet to discover a science fiction author whose work she likes; she cannot overcome the lowbrow stigma attached to science fiction; and she loves mysteries too much to let them go. The desire to read science fiction, consequently, remains a second-order desire.

This desiring of a desire not presently held indicates an actor's openness to other possibilities. Such second-order desires of the actor imply a recognition, or fantasy, that first-order desires do not irrevocably define her. *Possession of second-order desires reveals an actor's flexibility conducive to the spirit of cooperation by implying a potential openness to change first-order desires.*

Public- and private-interest collective actors possess the equivalent to first-order desires in that those actors represent clearly defined interests and take decisive action with respect to those interests. Such a first-order desire for Environmental Action is to advocate a clean, unpolluted environment;[12] such a first-order desire for General Motors is to accumulate power by the production and sales of automobiles.

Public- and private-interest collective actors also possess the equivalent to second-order desires. In order to optimize their effectiveness in acting on their interests, collective actors envision other possibilities and recognize reasons to hold other orientations not presently held. An SMO can be keen to take on a different demeanour with respect to the advocacy of its interests. Whereas the present demeanour is polite and law-abiding, organizers of the SMO may recognize that civil disobedience and spectacle have proven effective means for other public-interest collective actors in helping to set the agenda and frame agenda items. The contemplated, but unrealized, strategies of civil disobedience and spectacle remain second-order desires until such time as the SMO incorporates those strategies into its action repertoire. Likewise, a corporation can be keen to diversify into other areas of the market, despite present narrow focus of its market activity. The unrealized diversification constitutes the corporation's second-order desire.

Strong Evaluation of Desires

Evaluation of desires denotes the attribution of worth to desires. Our willingness to act on desires is proportional to their worth. The more we value them, the more they impel us to act. Charles Taylor acknowledges that there are different criteria for attributing worth to desires and distinguishes between the weak and strong evaluation of desires.[13] An actor's *weak evaluation of desires* attributes worth to those desires on the basis of the subjective payoff to her by their fulfillment. Weak evaluation of desires requires that an actor recognize which choices will provide such payoffs. By her weak evaluation of desires, the actor (a) disavows the precedence of society-wide values as a shared vision of what is good

and (b) privileges her own interests. An actor's *strong evaluation of desires* attributes worth to those desires on the basis of their ranking in the ethical scheme of things. Strong evaluation of desires requires that an actor (a) acknowledge society-wide values as a shared vision of what is good and (b) recognize that her own interests are but subjective values (as discussed in chapter 5). By her strong evaluation of desires, the actor either (a) defers to society-wide values, should those be at odds with her own subjective values, or (b) harmonizes her own subjective values to society-wide values. Strong evaluation of first- and second-order desires is tantamount to social conscience in an actor's thought and actions.

The distinction between weak and strong evaluation of first-order desires is explicated through the example of an actor who regularly fulfills her first-order desire to drink coffee. Her weak evaluation of drinking coffee accounts for her preference to drink dark roast. However, coffee consumption holds moral consequences. Such is the case with every consumer transaction. Her strong evaluation of drinking coffee would find her preferring and drinking *fair trade* dark roast.[14]

Similar distinction is made regarding weak and strong evaluation of second-order desires. On the one hand, a reserved actor may express the sentiment "It's too bad I'm such a good sport," imagining a vindictive alternative to her present self. She genuinely desires such an alternative self because she repeatedly passes up the opportunity to exact deserved revenge on a rival. Her second-order desire for vengeance, a form of retribution that she recognizes as being shameful, indicates her weak evaluation of that desire. On the other hand, another actor — the previous actor's nemesis — often reflects "I wish I wasn't such a jerk," imagining a kind-hearted version of her present self and genuinely desiring such an alternative. Her second-order desire for kind-heartedness, a trait that she recognizes as being societally valued, indicates her strong evaluation of that desire.

Public-interest collective actors are consistently strong evaluators of first- and second-order desires insofar as the public interest — that which is good for the entirety of

society — is societally valued, although not societally privileged. Public-interest collective actors are therefore more amenable to cooperation than weak evaluators of desires.

Private-interest collective actors are consistently weak evaluators of first- and second-order desires. It is essential to their identity to dwell upon the instrumental payoff of their decisions and actions (chapter 3). For example, weak evaluation ensures corporate survival in the free market liberal environment. Strong evaluation and its resultant attention to the greater good would render a corporation vulnerable to others not operating under such restraint. A corporation claiming strong evaluation is either a PR put-on or unaware of the moral slipperiness that arises from its own discontinuity of character. At best, the private-interest collective actor's weak evaluation of first-order desires does not rule out its cooperation, but suggests predilection toward strategic action whenever cooperation is sought.

Empathy

Empathy is "[t]he state of being emotionally and cognitively in tune with another person, particularly by understanding what their situation is like from the inside, or what it is like for them."[15] The substance and force of empathy as a character trait is captured in Ian McEwan's observation immediate to the events of September 11th:

> [G]oing about our business during the day, we fantasize ourselves into the events. What if it was me? ... This is the nature of empathy, to think oneself into the minds of others. ... If the hijackers had been able to imagine themselves into the thoughts and feelings of the passengers, they would have been unable to proceed. It is hard to be cruel once you permit yourself to enter the mind of your victim. Imagining what it is like to be someone other than yourself is at the core of our humanity. It is the essence of compassion, and it is the beginning of morality. The hijackers used fanatical certainty, misplaced religious faith, and dehumanising hatred to purge themselves of the human instinct for empathy. Among their crimes was a failure of the imagination.[16]

Such imagination is particularly evident in the response of public-interest collective actors to the grievous situations of others: material coordination of disaster relief, public outcry, statements of encouragement, demonstrations of solidarity. This imagination plumbs down

as well to circumstances quotidian and less intense. The empathy of the public actor is sometimes stretched to the point of identification with non-human creatures and inanimate objects in the context of the natural environment. For the private-interest collective actor, such imaginative exercises must be suppressed. The cultivation of empathy would lead to that actor's demise. Empathy would promote restraint and hesitation in an environment where survival requires swift, decisive, and dispassionate action. This prisoner's dilemma guarantees that private-interest collective actors do not cultivate empathy.

Fundamentals for Coerced Cooperation

Coercion relies upon an actor having exploitable vulnerabilities. Coerced cooperation of an actor is sought when consent, as a means to secure the cooperation of the actor, is impossible. The following are four fundamentals for coerced cooperation:

- detection of harm,
- recognition of agency,
- rational response, and
- causal visibility.

Detection of Harm

Harm is a condition that the actor prefers to avoid, whether for reason of discomfort or inclination for self-preservation. The detection of harm is necessary for an actor to be susceptible to coercion. Coercion entails the procurement of cooperation in exchange for safety from, or amelioration of, harm.

Detection of harm is a simple matter for the individual human as biological entity. For example, pain and departures from optimal, preferred, and tolerable physical conditions (e.g., surrounding temperature, pressure against the skin, flavour of food, brightness of light, and loudness of sound) are detected by means of sensory receptors. Does the collective actor possess the capacity to detect harm? If so, by what means? How does this differ

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between the public-interest collective actor and the corporation?

Shaiko's overview of public-interest representation in the environmental movement[17] inadvertently points to several sites where the public-interest collective actor detects harm. First, potential members of the public-interest collective actor are intimidated by most forms of legal punishment. Second, existing members experience, by way of trickle-down, the financial burden of a fine imposed on the public-interest collective actor. Their pocket books are hit by the aggressive solicitation of funding that ensues to settle the fine. Third, the public-interest collective actor feels the shock of a fine by the negative impact upon the collective's *power to*. That actor experiences lessened ability to afford legal services, professional consultation, and commercial media (including advertising and web-site operation). Fourth, there are those individuals in the front ranks such as the activist and the protester who are fined, arrested, and burnt out from over-use. Fifth, and adding to Shaiko's list of sites for the detection of harm, the public-interest collective actor can detect harm vicariously. To illustrate, the natural environment itself serves as the equivalent of a large expanse of exposed nerve-endings for some environmental collective actors. Blatant harm to the environment such as an oil spill or smog registers for them as harm preferably averted.

The corporation has four sites of vulnerability where harm is detected. The first of these sites pertains to the corporation's shareholders. The corporation is simultaneously two entities: *Homo Economicus* deluxe, a fictional entity devoted to rationally guided material gain on a grand scale;[18] and *Homo Economicus* by proxy, an entity whose raison d'être is satisfaction of its shareholder expectations of material gain. The shareholder expectations include expansion of corporate scope and scale, increased share value, accrual of various forms of capital, and disempowering of other collective actors. Harm of the corporation reads as its failure to satisfy shareholder expectations. Decline in performance of shareholders' bank accounts, RSPs, and stock portfolios is the equivalent of pain for the shareholders and the corporation.

The second site by which the corporation detects harm is identified in Allison's organizational process model [19] and Mintzberg's machine bureaucracy.[20] The managerial authors of standard operating procedures are causally responsible for corporate outcomes and corporate demeanour. They constitute deserving targets for either accolades and reward, or blame and punishment regarding those outcomes and demeanour. They detect harm by measure of their personal freedom as affected by legal prosecution, position within the corporation (i.e., promotion, retention, transfer, demotion or loss of job), size of personal bank accounts (i.e., monetary fines and frozen assets), and psychological comfort (i.e., distress and shame).

A third site for corporate detection of harm is identified in French's corporate internal decision structure, Weber's bureaucracy,[21] and Mangham's dramaturgical model.[22] All three emphasize individual actors within collectives as executing various roles throughout the corporation, but expressing personal nuance and free will in so doing. The possibilities for individuals to comply, rebel, and improvise within their respective roles add up to colour the overall corporate demeanour. This makes those individuals targets for the strategic application of harm. Externally imposed harms that are detected and suffered by these individuals include legal prosecution and tarnished reputation.

A fourth site where the corporation detects harm is in sales of its products or use of its services. Pain in the form of a boycott or slump in the marketplace is routinely monitored so as to make profit projections and influence value on the stock market.

Recognition of Agency

Recognition of agency refers to an actor's knowledge of others who are in a position to threaten harm and to offer terms for harm's avoidance. Knowledge of such others makes possible that actor's coercion in compliance to another's will.

It was established in chapter 3 that public-interest collective actors are adept at recognizing the cause of harms that have nothing to do with securing cooperation: for

example, the deprivation caused by the private-interest collective actor's accrual of power. The public-interest collective actor's analytical acuity not only suggests skill at tracing agency behind harm directed towards others, but toward itself as well.

Retaining the example of the corporation, there are five traceable agents behind harm to corporations. First, corporations can harm each other through competition within free market liberalism and its promotion of survival of the fittest. Successful business practice requires routine corporate tracking of each other's behaviour to interpret and predict the consequences of each other's actions. Second, public-interest collective actors can stop the flow of corporate profit and expansion by means of protest, civil disobedience, and damaging publicity. The relevant agents are clearly evident via news reportage, police reportage, first-hand experience of the offending action, and communication with the offender. Third, consumers and clients can take their business elsewhere, causing decline in the corporation's profit-taking, presence within culture, and significance to the economy. The agents behind such action are tracked by means such as air-miles consumer profiling. Fourth, shareholders can always sell their shares. Shareholder drift is deduced from changes in the share registry. Fifth, the Canadian SAM can harm the corporation. The SAM can sour the relations between a corporation and its consumers by selective interpretation of what constitutes market failure (e.g., refusal to bail out an ailing Air Canada leads to the airline's reduced performance and loss of consumer confidence and loyalty); sanction a corporation by enforcement of anti-trust legislation (e.g., ITT in the United States was broken up in this way); and indirectly harm the corporation by manipulating the consumer (e.g., the application of a hefty vice tax to tobacco products negatively affects tobacco sales). There is no ambiguity as to the source of these state actions.

Rational Response

Rational response refers to an actor's understanding of which behaviour invites harm, promoting a considered response to the harm's source. An actor's response is

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cooperative if she recognizes she is outmanoeuvred with respect to *power to* and *power over,* and if the terms of cooperation are assessed as viable. As discussed in chapter 5, both public- and private-interest collective actors possess this capacity.

Causal Visibility

Causal visibility refers to an actor's unmistakable effect upon another actor's ability to realize particular goals. If that actor's effect upon realization of those goals goes undetected, then her cooperation is not sought, and coercion is not exercised with respect to her vulnerabilities.

The consequences of causal visibility and invisibility extend into the quality of deliberation and the potential to resolve conflict. In a filmic retelling of Ralph Ellison's *The invisible man,* the main character, settling into his newfound invisibility and becoming resigned of its temptations, goes on to do a series of very bad things. The protagonist offers the chilling self-diagnosis: "It's amazing the things you can do when you don't have to look at yourself in the mirror."[23] In the context of collective actors and their actions, what remains not reflected in the social sphere is the connection between distortions and their beneficiaries. If a beneficiary cannot be identified, then an ulterior motive is not read into that actor's deliberative contributions to hyper-context mediation. If a beneficiary is recognized, that actor's contributions to deliberation are weighed accordingly. *Causal invisibility* is conducive to disingenuous conduct within a context that presumes cooperation among actors. *Causal visibility* is conducive to actors being able to grasp the motivation behind each other's deliberative contributions.

Public-interest collective actors are causally visible inasmuch as their existence hinges upon attracting attention. Their placement of public issues on the political agenda requires high causal visibility (a) to ensure headway against an opposing status quo current of agenda items and a cultural landscape already saturated with spectacle and information,

(b) to bolster faith in the public itself as not only something real but socio-politically efficacious, and (c) to avoid the impression of cabalistic intervention.

Corporations are often endowed with labyrinthine causal connection to distortions. Those connections include horizontal, forward vertical, and backward vertical integration;[24] minority control and interlocked directorship;[25] and cross-ownership. The complexity of those causal connections either obscures why a situation is as it is, or even that an objectionable situation exists at all. For example, transnational corporations, as perpetrators of distortion, are spatially delocalized and causally invisible by taking advantage of international trade agreements and globalization of the workplace. As another example, the amount of control from a single locus is not readily apparent until the by-line of Izzy Asper turns up on editorials across Canada. The causal labyrinths behind corporate-induced distortion are decipherable, but constitute intensive work for public-interest collective actors.

Steering Participants in Hyper-Context Mediation

There are two phases in the process of hyper-context mediation in which the Canadian SAM manipulates the participants: first, the deliberative phase and, subsequently, the policy phase. What distinguishes each phase is which of the fundamentals for cooperation the SAM uses, and to what extent.

Steering During the Deliberative Phase

During the deliberative phase of hyper-context mediation, participants expect the SAM to keep to consensual, rather than coercive, means for steering them into cooperative behaviour. This is so for two reasons. First, while the deliberation that marks this phase is intended "to change the preferences on the bases of which people decide how to act,"[26] preferences themselves are not changeable by coercion (chapter 2). Second, belief among

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some participants that conflict is the result of insufficient communication supposes that sufficient communication is not something to be attained by force. This supposition frames consensual cooperation as a common sense aspect of deliberation and coerced cooperation as inappropriate to deliberation (chapter 5).

In addition to insisting that the Canadian SAM keep to consensual means for steering them into cooperative behaviour, participants put the SAM in the position of having to apply equal treatment to them. This is so because the participants, who make sense of their circumstances according to the ideology of free market liberalism and the image of a people's democracy, claim equality of opportunity as a common ideal and expect the Canadian SAM to privilege that ideal. To honour that expectation for all participants, the non-discrimination[27] afforded by equal treatment of all participants is the least controversial solution available to the Canadian state (chapter 5).

The commitment to both consensual means for steering the participants and equal treatment during the deliberative phase challenges the SAM's ability to steer. Equal treatment entails the state's disavowal of the participants' difference in capacities for consensual cooperation. While public-interest collective actors lack none of the four fundamentals for consensual cooperation, private-interest collective actors lack three of them: self-limitation, strong evaluation, and empathy. Disavowing this difference, the state fails to see not only that (a) the actors require different fundamentals to be manipulated to win their consensual cooperation, but also that (b) private-interest collective actors are the more difficult of the two to steer by virtue of their having available less of the fundamentals for consensual cooperation.

The SAM's disavowal of difference during the deliberative phase is its *deficiency in steering:* public-interest collective actors are steered to cooperate more than private-interest collective actors. For example, the government-supported CBC provides an optimistic backdrop for public- and private-interest collective actors' deliberation. Consensual cooperation during such deliberation is encouraged by every Canadian-produced CBC radio

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and television program. Empathy is fostered for public-interest collective actors insofar as CBC programs (a) encourage situating oneself in both community and a common history in telling *our* stories; (b) reveal similarities between Canadians in far flung locations across the country; and (c) expose the human interest, the emotional investment, and the other side of the story in the news of the day. Such attempts at consensual cooperation do not move the private-interest collective actor who has compelling reasons for maintaining indifference.

Steering During the Policy Phase

During the policy phase of hyper-context mediation, participants no longer confine the SAM to consensual means for steering them into cooperative behaviour. Reasonable coercion is now a second option. This is so because the participants recognize their potential unwillingness to honour whatever agreement might be reached by them through deliberation. Participants recognize the need for the SAM to compel actors at the end of the process to play their parts in moving towards the good society (chapter 4).

In addition to broadening the state's options to include coercive means for steering them into cooperative behaviour, participants no longer demand equal treatment. Actor's *parts* in the social order are themselves varied, and actors themselves will vary with respect to *a cooperative nature*. Accordingly, the SAM applies differential treatment to the participants.

The combination of consensual and coercive means for steering along with differential treatment unfetters the SAM's ability to steer. Differential treatment entails state acknowledgment of the participants' difference in capacities for both consensual and coerced cooperation. While public-interest collective actors lack none of the four fundamentals for coerced cooperation, private-interest collective actors lack one: causal visibility. Acknowledging this difference, the SAM recognizes not only that (a) private-interest collective actors require more effort to steer than public-interest collective actors, but

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also (b) there is a better chance for successfully steering private-interest collective actors by manipulating the fundamentals for coerced cooperation than those for consensual cooperation.

The Canadian SAM's acknowledgment of difference during the policy phase accounts for moments of *finesse in steering:* both public- and private-interest collective actors are effectively encouraged to cooperate. For example, the Canadian state's considered provision of tax incentives steers corporations into coerced cooperation with respect to policy for ameliorating the effects of poverty. Tax incentives (a) prod the corporation to donate to charities, set up education funds, and make comparable overtures in the public direction that come naturally for the public-interest collective actor; (b) soften the blow of any hyper-context mediation outcomes that take a strongly public turn at the expense of private sensibilities, (c) compensate for the corporation's deliberately stunted empathy, and (d) effectively bypass the corporation's weak evaluation of second-order desires. Regardless, any finesse in steering demonstrated during the policy phase is counteracted by the deficiency in steering during the deliberative phase antecedent to it.

Deficiency of Steering and its Consequences for Hyper-Context Mediation

The Canadian state's application of equal treatment and confinement of means for steering during the deliberative phase of hyper-context mediation results in a deficiency in steering that induces further distortions through the remainder of the process. Those distortions build upon one another to create a snowball effect:

1. the public- and private-interest collective actor are subjected to the same behavioural incentives and deterrents during deliberation;
2. the public-interest collective actor accrues penalties and the private-interest collective actor, rewards, due to their different sensitivities to the incentives and deterrents;
3. the content and quality of deliberation is excessively shaped, reflecting the advantage awarded the private-interest collective actor;
4. the deliberative phase of the process exhausts itself, culminating in the actors' mutual

frustration; and

5. that dead end of the deliberative phase cues the conceptual handing over of deliberation, flaws and all, to the Canadian SAM as starting point for *simulated* continuation of deliberation and, ultimately, *actual* policy production.

Through this deficiency in steering, hyper-context mediation induces a snowball effect that entrenches distorted norms rather than correcting them.

Summary and Application to Kyoto

In chapter 6, the explanation of why hyper-context mediation privileges private interests over public interests focuses on (a) the capacities required of public- and private-interest collective actors to obtain their cooperation during hyper-context mediation and (b) how the SAM is hindered from taking full advantage of such capacities that those actors possess to obtain their cooperation.

An actor's cooperation can be won by *consensual means* if the actor possesses capacities for self-limitation, strong evaluation of desires, and empathy. *Self-limitation* refers to an actor's refusal to pursue available opportunities; *strong evaluation of desires* refers to an actor's attribution of worth to desires on the basis of, and in harmony with, social perceptions of what is good; and *empathy* refers to an actor's emotional and cognitive consonance with others. Public-interest collective actors possess these capacities; consequently, their cooperation can be won by consensual means. Private-interest collective actors lack all three capacities; consequently, their cooperation must be secured by other means.

An actor's cooperation can also be secured by *coercive means* if the actor possesses capacities for detection of harm, recognition of agency, rational response, and causal visibility. *Detection of harm* refers to an actor's acknowledgement of injury, impairment, and other undesirable conditions that immediately affect the actor; *recognition of agency* refers to an actor's knowledge of others who are in a position to cause harm and offer terms

for harm's avoidance; *rational response* refers to an actor's understanding of which behaviour invites harm, and acting accordingly; and *causal visibility* refers to an actor's unmistakable impact on another actor's ability to realize particular goals. While there are some private-interest exceptions, both public- and private-interest collective actors possess these capacities and, consequently, their cooperation can be secured by coercive means.

Consensually-realized cooperation is compatible with, and conducive to, the freedoms of society-wide reflection and discussion that distinguish the deliberative phase of hyper-context mediation. Accordingly, the SAM confines itself at such time to consensual means in trying to secure cooperation between public- and private-interest collective actors. Both the allegation that global warming requires our attention and the subsequent society-wide discussion take place in a disciplinary vacuum. The SAM's steering actors into cooperative behaviour, here, translates into the state's availability as mainly an evaluative resource. In this respect, the state (a) indicates to society which energy, transportation, and environmental policy directions either have precedent or are viable and (b) makes available to society the scientific climate information accrued through the state's climate-change research instruments and involvements. Such steering relies upon actors' attraction and motivation to use these available state resources, and presumes that being privy to the same climate and policy information promotes consensus and, therefore, cooperation regarding GHG policy decisions. However, the SAM's consensual steering works only on public-interest collective actors, leaving the private-interest collective actors free to pursue strategic action without constraint during deliberation (chapter 5). This imbalanced steering skews the process to privilege private interests over public interests. While public-interest collective actors cooperate to advance the society-wide discussion concerning global warming and climate change, private-interest collective actors engage in strategic action that includes feigned scepticism, excessive optimism, smear campaigns, distraction, blackmail, and exaggeration of risk. Such private-interest strategic action dominates the society-wide preamble to Kyoto (chapter 9).

Coercively-realized cooperation during the policy phase of hyper-context mediation is an accepted facet of the SAM's production, clarification, and enforcement of policy which no longer directly involve society-wide reflection and discussion. The SAM coercively brings public- and private-interest collective actors to comply with the conditions of policies which typically reflect the deliberation's private-interest skew. The policy entailed in Kyoto Protocol ratification defies such a skew, reflecting significant critique and analysis by the SAM prior to policy production (chapters 9 and 10).

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[1] Grice, P. (1989). *Studies in the way of words*. Cambridge: Harvard University Press.

[2] Held, D. (1987). *Models of democracy* (p. 182). Stanford: Stanford University Press.

[3] Young, R. (1996). Monkeywrenching and the processes of democracy. In F. Mathews (Ed.), *Ecology and democracy* (pp. 199-214). US: Frank Cass.

[4] Clarke, T. (1997). *Silent coup* (p. 259). Ottawa: CCPA.

[5] Brethour, P. (2001, November 2). Microsoft nears antitrust deal. *The Globe and Mail,* p. B9.

[6] Fisse, B. & French, P. (Eds.). (1985). *Corrigible corporations & unruly law*. San Antonio: Trinity University Press;
Fisse, B. & Braithwaite, J. (1993). *Corporations, crime and accountability*. Cambridge: Cambridge University Press.

[7] Hirst, P. & Thompson, G. (1996). *Globalization in question*. Cambridge: Polity Press; and
Tonelson, A. (2000). *The race to the bottom: why a worldwide worker surplus and uncontrolled free trade are sinking American living standards*. Boulder, CO: Westview Press.

[8] Until action takes place, the person who will act is designated as an *agent,* and not as an actor. Much of the discussion throughout the paper is focused upon ongoing action during the process of hyper-context mediation, warranting discussion of actors, rather than agents.

[9] (Frankfurt, 1988, 14)

[10] (Frankfurt, 1988)

[11] (Frankfurt, 1988, 12)

[12] Shaiko, R. G. (1999). *Voices and echoes for the environment: public-interest representation in the 1990's and beyond*. New York: Columbia University Press.

[13] Taylor, C. (1985). What is human agency. In Taylor (Ed.), *Human agency and language: philosophical papers 1* (pp. 15-44). Cambridge: Cambridge University Press.

[14] Strong evaluation, in this case, pertains to but one dimension of an otherwise multi-dimensional dilemma: is the labour in the store that sells the coffee treated by management well and fairly, does caffeine intake ultimately create personal health problems that will later burden the health care system, and to what extent is the actor actually able to confirm that the "fair trade" label is not simply false advertising? Strong evaluation of desires is effected to the best of the actor's knowledge *at the time* of evaluation, and implies reasonable effort applied in gaining knowledge.

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[20] Mintzberg, H. (1979). *The structuring of organizations* (pp. 314-347). Englewood Cliffs: Prentice Hall.

[21] Weber, M. (1994). Bureaucratic authority (M. Black & L. W. Garmer, Trans.). In P. Demetz et. al. (Series Ed.) & W. Heydebrand (Vol. Ed.). *The German library: vol. 60. sociological writings* (pp. 59-107). New York: Continuum.

[22] (Fisse & Braithwaite, 1993, 109-110)

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CHAPTER 7

Partiality

With abundant resources at its disposal, the Canadian SAM can be seen as normal-context mediation's wish list writ large. Those abundant resources include a battalion of expertise, the means for promoting and sustaining society-wide deliberation, accommodation of stakeholders' communicative needs, means for subtle coercion, and a monumental time frame. Despite this arsenal, the Canadian SAM exhibits a particular weakness: partiality to private interests. This chapter examines (a) reasons for the partiality and (b) the consequences of this partiality for hyper-context mediation.

Fairness and Partiality of the Canadian State-As-Mediator in Hyper-Context Mediation

Fairness of the Canadian SAM denotes thought and action by the Canadian state *for Canadian society*. Partiality of the Canadian SAM denotes thought and action by the Canadian state on behalf of foreign interests, subsets of Canadian society, and other beneficiaries, detracting from what otherwise would be available to all Canadians (e.g., services, resources, and due consideration). A fair state would foster an arrangement of *power to* and *power over* among actors that coincides with Rawls' justice[1] and Arendt's minimal but necessary shaping of life's spaces and practices[2] (chapter 1). Fairness, however, remains elusive. Four attributes of the Canadian state contribute, instead, to the Canadian SAM's partiality. First, *bias* of the Canadian state indicates privilege of subsets of society rather than obligation to the entirety of society. Second, *neutrality* renders the Canadian state unmotivated and unable to correct bias. Third, *compromised autonomy* of the Canadian state taints the balanced representation of Canadian public and private interests. Fourth, *limited imagination* prohibits the Canadian state from compensating for the preceding attributes.

Bias

Bias denotes the unreasoned disposition of elected officials to favour one set of interests over another. Insofar as bias occurs in normal-context mediation, bias does not necessarily pose a problem to the fairness of that process's outcomes. Touval demonstrates that when the mediator is biased in normal-context mediation, fairness of outcome can be salvaged on account of the participants' awareness and mediator's open acknowledgment of that bias.[3] However, in hyper-context mediation, the participants do not seize upon the magnitude of the SAM's bias and the Canadian SAM does not acknowledge all the sources of its bias. Accordingly, fairness is forfeited. The three sources of the bias are (a) political party platform, (b) actor affiliation, and (c) ideology.

First, the state, in its capacity as policy producer, reflects the governing political party's platform in the policy that it produces. The party platform as a source of bias is openly acknowledged to the extent that the platform is what the party campaigns on in order to become elected. Its overt nature means certain governmental policies should come as no surprise to the electorate: the economic liberals' privatization of Crown Corporations and unfettering of business or the social liberals' refurbishing of the social safety net. Among Canada's major federal political parties, the Progressive Conservatives, the Canadian Alliance, the Liberals, and the Bloc Quebecois display overt bias for private interest in their party platforms. Their reputations as pro-business are corroborated by their receiving campaign funding from major corporate donors. Of Canada's two remaining significant parties, the Greens and the New Democrats display overt bias against private interest. These two parties, while displaying leadership regarding certain issues, have yet to hold effective control of the House of Commons.

Second, a bias in normal-context mediation that is based upon class affiliation suggests a similar type of bias in hyper-context mediation. In the normal-context mediation of labour disputes, the mediator tends to be culled from the same privileged economic class

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as the professional negotiators representing management.[4] Mediator and management, for this reason, experience class identification. Kolb notes that the mediator perceives managerial class negotiators, who are mostly lawyers, as "well controlled, prepared, strategic, and businesslike in their thinking.... As a result, the mediators frequently take management's position on the basis for predicting ... settlement."[5] In hyper-context mediation, members of parliament tend to belong to the same economic and cultural classes as the corporate leaders who represent private interest. This commonality encourages parliamentarians' and corporate leaders' identification with, and receptiveness to, each other. Roughly half of the parliamentarians in 2003, prior to holding office, are barristers and solicitors by profession, implying earnings not far-removed from those of corporate leaders. Both parliamentarians and corporate leaders find further commonality in holding each other's power in check. The corporate executive is treated as the parliamentarian's peer, traveling with the prime minister on Canadian trade missions abroad and sharing with heads of state the red carpet and the podium at the annual World Economic Forum in Davos, Switzerland.[6] To the extent that the commonalities between government and corporations subtly make them mutually influential, their unpremeditated closeness stands to be misconstrued as premeditated favouritism and insiderism. These actors do not publicly acknowledge this aspect of their proximity to each other; the proximity becoming apparent only when scandal occurs. Some public-interest spokespersons experience affiliation with parliamentarians to the extent that both carry comparable cachet. Yet, despite David Suzuki getting parliamentarians' attention and Marg Delahunty[7] storming the House of Commons, the public-interest representatives who click with government are outnumbered by similarly connected private-interest representatives.

Third, ideology comprises the least visible of sources for bias in hyper-context mediation. Ideology's invisibility stems from its ability to efface its own failings. The term *ideology* here refers to those aspects of social life that actors take for granted and conflate with a natural reality. By conformity to an ideology, actors dismiss and displace alternative

ways of thinking and doing, including criticism of the ideology itself. Consequently,

distortions of life's spaces and practices are sustained.[8] Kolb notes that in normal-context

mediation

> [the] mediators are not passive actors within the system, and the more they
> share its ideology, the more likely it is that they will, sometimes unwittingly,
> mobilize or accentuate the biases that already exist in the system. In their
> efforts to facilitate settlement, ... mediators appear to mobilize bias in ways
> that make management's interests more prominent, ... accentuate the
> institutional and professional interests of union leaders over rank-and-file
> members. The implications of these behaviors seem to be that economic
> issues, which already dominate collective-bargaining agendas, receive even
> more attention in mediation than those issues that touch on worker control
> over hours and conditions of employment.[9]

Ideology similarly impels bias in hyper-context mediation. An ideology of free market

liberalism (see chapter 3) prevails in Canada by virtue of an endless procession of

prisoner's dilemmas and the seductiveness of material gain. Free market liberalism amounts

to a school of thought with effective enticements, sedimenting itself into institutions of

learning, practices of business, and ways of governing. Attesting to the effectiveness of free

market liberal ideology in colonizing the lifeworld, it is not so much that a Calgary school

district application in 1998 to open an elementary school of commerce was declined, as it

was that the application was made at all[10] — and can be imagined as one day succeeding.

Primacy of the public interest in Canadian society is usually a short-lived burst, falling back

to the familiar free market liberal standards once the costs of a moralist course of action

become apparent.[11] The Canadian SAM in hyper-context mediation conveys the primacy of

economic matters, and takes no note of so doing, such a course of thought and action

seeming as natural and automatic as breathing air, and the proper means of serving

Canada's citizens.

Neutrality

The hoped-for cure for the prevalence of bias is neutrality. An actor's neutrality

denotes the bracketing out of values and ideology so as to advance apprehension of the

surrounding reality. This bracketing out of values serves as moral anaesthesia. It assures expression of neither alarm nor disdain in observing reality, regardless of how outrageous or painful any distortions of life's spaces and practices. Neutrality, however, is not without its problems. The alleged removal of bias can remove criticality. Even when the neutral actor resists taking sides, benefits accrue to those who already benefit from the topography of distortion. "If Nature abhors a vacuum," Lichtenberg notes, "then even a precise balancing between two opposing views will give the advantage to the more prestigious view that is associated with established power."[12] The impotence of neutrality with respect to fairness is what urges affirmative action as an occasional aggressive foray into the correction of bias. Still, the Canadian state maintains a stance of neutrality in its facilitative and decisive capacities as mediator of hyper-context mediation. This neutrality is the frame of mind that supports the problematic strategy of equal treatment (chapters 5 and 6) in hyper-context mediation.

Compromised Autonomy

Autonomy of the Canadian state denotes its capacity "to articulate and achieve policy goals independently."[13] While special interests at home and powers abroad may tell Canada what to do or intrude in Canadian policy production, an autonomous Canada proceeds in accordance with its own established decision-making and policy procedures, agenda, and mandate. It is within the powers of an autonomous Canada to just say no, even if that means suffering the consequences of doing so.

Canadians expect their government to be autonomous; otherwise, why go through the trouble of electing it? Participation of the people in their own governance does not contravene this expectation. Canadians generally accept that some policy domains are inappropriate for popular and participatory decision-making, referring those policy subject matters instead to the *official* decision-making channels of elected government. Those off-

limits channels for decision-making, however, are not impervious to encroachment. The following considers six categories of such encroachment: structural, ideological, inter-governmental, international, and transnational. The differentiation of six categories is in no way exhaustive, but offers a sense of the redundancy by which compromised autonomy is ensured.

Structural Encroachment

Structural encroachment upon the autonomy of the Canadian state refers to aspects of the organization of Canadian society that exert *structural power* over Canadians and their elected government, steering and limiting the choices available within political decision-making (chapter 1). Such encroachment relies upon a relationship between elected government, corporations, and the electorate through their common denominator of the economy. Lindblom[14] argues that severe punishment is automatically dispensed to the elected representatives of government in the event that corporations, as the major players in the national economy, become impeded in their ability to accumulate capital and power. Impediment is attributed to government's unwanted policy action. Impediment to corporations deals a blow to the economy, the brunt of which is borne by the citizens of the state. Lindblom observes how well-intentioned policy action that impedes private interest sows the seeds of citizens' discontent:

> Do we want businesses to carry a larger share of the nation's tax burden? We must fear that such a reform will discourage business investment and curtail employment. Do we want business enterprises to reduce industrial pollution of air and water? Again we must bear the consequences of the costs to them of their doing so and the resultant declines in investment and employment.[15]

Policy inaction can yield comparable results. Governments that retain particular policies risk dissatisfied corporations relocating their operations to greener pastures. Greener pastures are those sites having relaxed standards and regulations relative to the Canadian experience: no unionized labour, no minimum wage, less exacting labour standards, lax environmental regulations, lower corporate taxes, and inattention to human rights. Regardless of

governmental action or inaction, the corporation's threat to relocate is invitation for, and blackmail of, elected government to participate in what is referred to as *the race to the bottom.*[16]

Should elected government's policy action or inaction impede corporate accrual of capital, punishment for the impediment would find its way to elected government in the form of the electorate's revenge on election day. The discontented electorate, at such time, holds incumbent government to task for a flagging economy. The availability of other political parties is important here, usually resourceful enough come election time to stand for recuperative pro-private policy alternatives. The potential for shock to the economy and concomitant punishment of elected government imposes a chill on elected government with respect to its capacity as policy-maker. Lindblom observes that "[w]e can hardly imagine putting [progressive proposals] on the legislative agenda, so disturbing would they be to business morale and incentive"[17] — and so threatening would they be to elected government. Structural encroachment upon the autonomy of the Canadian state succeeds if this chill dictates elected government's policy. To the extent that progressive public-interest policy proposals forebode "change in the *wrong* direction" by virtue of impeding corporate accrual of capital and power, *structural power* discourages the inflection of public interest into the Canadian state's policy production. The strong articulation of private-interest collective actors with the health of the economy finds *structural power* encouraging the inflection of private interest into the Canadian state's policy production.

Ideological Encroachment

Ideological encroachment upon the autonomy of the Canadian state refers to agenda setting and the cultivation of ways of thinking and doing regarding agenda items. Such encroachment relies upon Abelson's "planting seeds in the mind of the electorate"[18] and volunteering of fully fleshed out solutions to problems for elected government. Ideological encroachment is typified by the policy impact of think tanks.[19] A Cabinet Minister usually

holds neither expertise nor the slightest background with respect to her portfolio, which can be changed drastically anyhow with each Cabinet shuffle. The Cabinet Minister relies upon a coterie of solicited and unsolicited advisers and experts in order to cultivate and advocate informed policy relevant to her portfolio's policy domain. Think tanks are among the experts and advisers in this process. Government *solicits* ongoing public- and private-interest think tank involvement in policy discussions for reason of (a) proven expertise of certain think tanks in particular policy domains, (b) habit, (c) convenience, and (d) cultivated personal relationships. Repeated solicitation effectively makes some public- and private-interest think tanks into lobes of the government's brain and part of what is referred to as a policy community.[20] Government also receives *unsolicited* analysis and advice from public- and private-interest think tanks. Public-interest think tanks' unsolicited contributions in no way match the budget and resultant presence of their private-interest counterparts. Private-interest think tanks aggressively provide unsolicited *brain* in this respect, the most prominent of the think tanks espousing the ideology of free market liberalism (e.g., the Fraser Institute, the C. D. Howe Institute and the Economic Council of Canada).[21] When a Cabinet Minister's doorstep is graced *gratis* by industriously prepared policy recommendations, admittedly industry's policy recommendations, there is special inclination to give those recommendations a reading.[22] The volume of such unsolicited recommendations is inundating. The Canadian Council of Chief Executives[23] in 2002 was generous to the federal government with advice and its presence, directly addressing the Standing Senate Committee on Banking, Trade and Commerce; the Standing Senate Committee on Social Affairs, Science and Technology; the Commission on the Future of Health Care; a Special Meeting of Parliamentarians regarding global warming; and, on two separate occasions, the House of Commons Standing Committee on Finance.[24]

Direct influence by think tanks upon Canadian policy making is not the norm. Occasionally, governmental thought and a think tank's socio-economic vision are strongly consonant. Ernst[25] attributes realization of the North American Free Trade Agreement to

strong consonance of the Mulroney Conservatives and the C. D. Howe Institute. Abelson[26] argues that more likely in the Canadian political environment is indirect encroachment by think tanks' assiduous use of the media to set the agenda and frame the issues. Private interest is awarded a slight edge over public interest in the deliberative part of hyper-context mediation for reason of think tank media savvy and the prevalence of private interest among the think tanks.

Inter-Governmental Encroachment

Inter-governmental encroachment upon the autonomy of the Canadian state refers to exertion of influence by the provinces upon the federal government. Such influence encroaches upon federal autonomy rather than pushing for federal accountability because the interests of the provinces and territories are not the interests of Canadians. The Ministry of Inter-Governmental Affairs was created to secure harmonious intergovernmental relationships and, accordingly, forestall such encroachment.[27] Provincial and territorial governments habitually attempt encroachment when opportunities arise in the form of federal vulnerabilities. For example, in August 2002, the provincial premiers launched a united assault against Ottawa demanding "an additional $7-billion a year in federal health-care transfers."[28] Their assault sought to take advantage of the uncertainty of an impending Liberal party leadership review, divisions within the ranks of the ruling federal Liberals, and the imminent report by Saskatchewan Premier Roy Romanow on the future of health care. Future assaults promise stronger coordination by virtue of the provinces and territories forming the Council of the Federation, December 5, 2003.[29] Such encroachment does not guarantee consistent advantage for either public or private interest.

International Encroachment

International encroachment upon the autonomy of the Canadian state refers to the exertion of influence by foreign nation-states upon Canadian policy production. Reflecting

Canadians' pride and privileging of self-determination, the Canadian government does not always knuckle under to hegemonic forces of other nation-states. In November 2002, in anticipation of its invasion of Iraq, the U.S. government wanted Canada to contribute "ships, planes, light-armoured vehicles and JTF2 special forces, among other assets."[30] Canada withdrew its cooperation for lack of UN-approval of the invasion. The G. W. Bush administration's 2003 proposal for a $600-billion (U.S.) cut to personal and corporate taxes over ten years put heat on Ottawa to follow suit.[31] Ottawa resisted.

Successful international encroachment upon the autonomy of the Canadian state is typified by the softwood lumber dispute between Canada and the United States. Settlement of the dispute, despite a WTO ruling that left both sides claiming victory, entails the United States dictating amendment to Canadian forestry policies. Canada has not yet dismissed the dictate that the "[p]rovinces would have to put most of their timber up for auction, end minimum cutting requirements that keep sawmills running, and remove the ban on the export of raw logs to the U.S. market."[32] Invariably, the outcomes of such international hegemonic influence privilege foreign-based private interests.

Transnational Encroachment

Transnational encroachment upon the autonomy of the Canadian state refers to influence upon Canadian policy production by institutions that transcend the bounds of nation-states. Such encroachment entails Canada being signatory to numerous international agreements regulating the environment, protecting human rights, and coordinating trade. Reduced consumption of chlorofluorocarbons (i.e., CFCs known to deplete Earth's ozone layer) is ensured by being a signatory of the Montreal Protocol.[33] Respect for human rights is promised by being a signatory of The International Declaration of the Rights of Man. Compliance to a detailed trade etiquette is offered by being signatory to NAFTA and a member of the WTO. While these agreements are voluntarily entered, they read as encroachments upon autonomy when the unfolding of world events puts the agreements to

the test, revealing unforeseen and disagreeable consequences to what has been signed. Agreements pertaining to trade invariably privilege private interests; agreements as to the environment and human rights are intended to privilege the public interest. In the event of conflict between trade and environmental agreements, the obligations of trade are given precedence over obligations of environment. Accordingly, private-interest transnational encroachment trumps public-interest transnational encroachment.

Failure of the Imagination

In hyper-context mediation, society-wide deliberation is overtaken by frustration and exhaustion: participants no longer make new and significant contributions to the deliberation; participants' preferences, understandings, and opinions evolve as far as participants will permit; and continued deliberation advances tensions rather than solutions. At such point, the SAM interrupts society-wide deliberation and picks up where the participants leave off. What distinguishes the Canadian SAM's continuance of deliberation is best described as simulation (chapter 2).[34] *Simulation* entails imagining (a) the participants as if managing to keep clear of frustration and exhaustion; (b) previously unspoken relevant information and arguments presented as if finally reaching public forum; and (c) extrapolation of deliberation as if played through to conclusion. Simulation concludes with the assessment of a particular norm — a plausible rendition of that which would have resulted had enough time, resources, and patience been available. This assessment is supposed *fair* and, as such, justifies the state using it to inform policy production.

The imagination that the Canadian SAM applies to simulation poses a problem for the fairness of the process. The imagination is coloured by pro-private partiality of multiple origins: (a) abundant effective encroachments upon the autonomy of the Canadian state are pro-private in nature, (b) affinity exists between private interest and governing party values, (c) elected members of government and corporate representatives constitute a class unto

themselves based upon the prestige and powers they have in common, (d) the ideology of free market liberalism provides the criteria for evaluation of all things, and (e) relativist neutrality overlooks the momentum of extant bias and the inertia of sedimented distortions.

Partiality and its Consequences for Hyper-Context Mediation

The Canadian SAM's partiality to private interest has an impact upon hyper-context mediation's (a) society-wide deliberation, (b) simulated continuance of that deliberation, (c) outcome of that simulated deliberation, and (d) policy product informed from that outcome.

First, the partiality deems that the participants' pro-private distortion of society-wide deliberation falls within acceptable bounds of public sphere engagement and political conversation. Accordingly, the Canadian state makes no effort to avert or correct this distortion.

Second, the partiality exacerbates distortion during the simulated continuance of deliberation. The SAM is not cognizant of this effect and therefore does not try to avert or correct it.

Third, the partiality colours the simulated continuance of deliberation all the way to its final outcome — the assessment of a particular norm. A pro-private outcome comes as no surprise, given the pro-private partiality expressed in the deliberation, both participant-centered and simulated, that precedes it.

Fourth, the partiality becomes tangible when the imaginings of simulation are translated into policy. The pro-private lifeworld effects of the policy product affirm Ian McEwan's assertion that a failure of the imagination contributes to offensive circumstances;[35] in this case, the perpetuation of things that should not be.

Summary and Application to Kyoto

Whereas chapters 5 and 6 provide process-centred explanations of why hyper-context mediation privileges private interests, chapter 7 provides an explanation centred in the Canadian state-as-mediator. In chapter 7, four features of the Canadian SAM are shown to make hyper-context mediation privilege private interests: bias, neutrality, vulnerability of autonomy, and failure of the imagination

First, the SAM holds *bias*, which is the unreasoned distortion of judgment. The SAM's bias favours private interests due to (a) the logic of free market liberal ideology — demonstrated as prime minister Jean Chretien insists cost benefit analysis takes precedence in Canada's Kyoto decisions, despite his wanting to leave a legacy as 'the green prime minister'; (b) class affinity between leaders of government and industry — seen as Canadian cabinet ministers, the prime minister, and the CEOs of GHG-producing corporations schmooze each year at the World Economic Forum, Davos, Switzerland; and (c) overlap of private interests with political party objectives — reflected in the inaction on climate change by Brian Mulroney's fiercely pro-business Progressive Conservatives (chapter 9).

Second, the SAM endeavours to achieve *neutrality*, inadvertently defending the consequences of the preceding bias. However, in the case of Kyoto, the SAM departs from this trend by extending public-interest compensations for the private-interest bias: (a) the SAM's mandatory cost benefit analysis regarding the mitigation of global warming takes an optimistic tone, anticipating economic growth through the pursuit of mitigation-related opportunities and more job creation than job loss; (b) class affinity between those who lead government and those who lead industry segues into an attitudinal affinity between the PMO, DOE, and forward-looking corporate leaders who endorse Kyoto as being overdue, in everyone's best interests, and feasible; and (c) Jean Chretien's Liberals' pro-business stance allows them to engage the business community in dialogue, establishing the give and take of Kyoto Protocol implementation (chapter 9).

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Third, *susceptibility of the SAM's autonomy to various encroachments* tends to

produce private interest outcomes. Five prominent forms of private-interest encroachment

are discussed. *Structural encroachment* rules out overly zealous GHG-emissions reduction,

which would dent the economy and haunt government on Election Day. *Ideological*

encroachment, instigated by public relations firms, gets everybody talking about a "made-

in-Canada solution" and "GHG-emissions trading." *Inter-governmental encroachment*

has the energy-rich provinces ganging up on Ottawa to oppose Kyoto ratification.

International encroachment brings Canada to question the economic wisdom of ratifying

Kyoto, in light of the United States' refusal to participate in that accord. *Transnational*

encroachment commits Canada to trade agreements at odds with the demands contained

within the Kyoto Protocol (chapter 9).

Fourth, the *limited imagination* embodied in the Canadian state typically preserves

the private-interest status quo. Ratification of the Kyoto Protocol, however, represents the

Canadian state's thinking audaciously outside of the box. Such thinking in this case

annoys, but does not harm, private-interest collective actors.

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[15] (Lindblom, 1982, 325)

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[17] (Lindblom, 1982, 325)

[18] Abelson, D. E. (2002). *Do think tanks matter: assessing the impact of public policy institutes* (p. 82). Montreal & Kingston: McGill-Queen's University Press.

[19] Ideological encroachment is also the product of educational institutions such as universities and libraries.

[20] (Abelson, 2002, 54)

[21] Clarke, T. (1997). *Silent coup: confronting the big business takeover of Canada* (p. 15). Ottawa: The Canadian Centre for Policy Alternatives, and James Lorimer & Company Ltd.

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[23] The CCCE is formerly the Business Council on National Interests (BCNI).

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[34] This point marks the beginning of the fourth phase of hyper-context mediation, distinguished by the simulation.

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CHAPTER 8

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The Shortcomings of Hyper-Context Mediation and the Qualifiers of Deep Conflict

Distorted norms are ways of thinking and doing that deflect thought and practices away from the moral consideration of others. Our recognition that such norms are distorted and our confidence that such distortion can be corrected urges our turning to hyper-context mediation as means for achieving correction. In part II, we observe that such ends are not achieved — shortcomings of both process and 'mediator' contribute in hyper-context mediation to the persistence of distorted norms, rather than their correction. First, equal treatment, the fundamental flaw of hyper-context mediation, admits participants into the process despite their differences with respect to the communicative action requisites and, therefore, their different capacities for communicative action (chapter 5). Second, a deficiency in steering during the deliberative phase in hyper-context mediation induces some participants to conform to the cooperation-centered discipline of communicative action while allowing others to engage in undisciplined and self-interested strategic action (chapter 6). Third, partiality of the Canadian SAM assures that thought and action in the official decision-making channels and policy procedures of the state privilege private interests over the public good (chapter 7).

These three shortcomings, themselves, do not mean that the persistence of distorted norms in the face of hyper-context mediation is a foregone conclusion. First, equal treatment, in itself, is a respectful response of the Canadian state to societal valuation of equality (chapter 5). Nothing *intrinsic* to equal treatment disposes it to promoting distortion. Whether distortion is promoted or corrected depends upon the particular interpretation of equal treatment to which the Canadian state commits. Second, the steering of actors into cooperative behaviour can be expected to be difficult due to private-interest collective actors' deficit of fundamentals for *consensual* cooperation (chapter 6). Nonetheless, private-interest

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collective actors lack only one of the fundamentals for *coerced* cooperation (chapter 6). Nothing inherent of *difficulty in steering* disposes it to be *deficiency in steering*. Third, partiality, assumed of even the most noble actors, does not have to be at full throttle. It can be held, compensated for, and expressed to varying degrees. The SAM's partiality to private interests is not irrevocably disposed to colour the state's official decision-making and policy production.

It is when these three shortcomings are qualified in a particular way — subjected to, shaped by, and conflated with certain conditions — that they do not just hinder hyper-context mediation's efforts at correcting distorted norms, but guarantee that the distorted norms remain uncorrected. It is under such circumstances that norm-based conflict, being the harm, injustice, and social dissonance that ensue from distorted norms, consistently prevails. Insofar as conflict is deep conflict if it successfully defies the processes that are supposed to correct it, norm-based conflict becomes deep conflict because hyper-context mediation that is supposed to correct it consistently fails to do so. Those conditions that qualify hyper-context mediation's three shortcomings as guarantors for the persistence of distorted norms are, in the end, *qualifiers of deep conflict.*

There are three qualifiers of deep conflict: (a) the ideology of free market liberalism, (b) societal expectations on the Canadian state, and (c) the global connectedness of collective actors. In order for them to consistently connect with hyper-context mediation's shortcomings, the qualifiers themselves must be consistent and prevalent. The following clarifies how the qualifiers of deep conflict satisfy this condition. First, the ideology of free market liberalism leaves in its wake a sedimentation of palpable structures that customize the 'stage' and conduct actors into continued conformity to free market liberalism. Those conducting structures that assure the ongoing prevalence of free market liberal ideology include trade dependencies and protocols, the prestige of certain careers, and investment opportunities (chapter 1). Prevalence also derives from the recognition that loss awaits those who go against the grain by favouring public good over free market liberalism's private

gain. Second, society consistently places expectations on the Canadian state, recognizing that the Canadian state must respond in order to maintain legitimacy. Unlike public opinion, which rates as caprice and manipulation, societal expectations on the Canadian state are steadfast. While public opinion is about specific things, reflecting everyday occurrences and the distraction of newsworthy events, societal expectations are more general in subject matter, reflecting permanent and constant social values. Third, the unprecedented degree of global connectedness ensures for opportunists their proximity to the Canadian state and, therefore, puts Canadian state autonomy under constant siege (chapter 7). If it is not one set of actors seeking ingress to the state's official decision-making and policy production, then it is another.

These three qualifiers of deep conflict subvert hyper-context mediation's three shortcomings in the following ways:

1. *Free market liberal ideology assures deep conflict through equal treatment, deficiency in steering, and partiality.* First, the Canadian SAM, by the logic of free market liberalism, invokes the doctrine of sufficiency to justify interpreting equal treatment as *actors' having at least the minimum opportunity for self-representation* (chapter 5). Emphasis on actors' merely having an opportunity disavows differences as to substance of the opportunity, as well as actors' different competencies in making use of the opportunity. Distortion of participant-centered deliberation results from the disavowal of these differences. Second, the ideology-driven disavowal of difference obscures the crucial detail that public- and private-interest collective actors are not equally steered by the same means (chapter 6). The Canadian SAM's steering under these circumstances distorts deliberation unintentionally. Third, ideology establishes the high degree to which pro-private partiality is held, compensated for, and expressed by the SAM (chapter 7). By the logic of free market liberalism, tolerance of pro-private distortion follows from the presumed equivalence of healthy private-interest collective actors and a healthy economy.

2. *Societal expectations assure deep conflict through equal treatment and deficiency in steering*. First, Canadians hold equality in high esteem. Accordingly, they expect equality to be upheld and nurtured through all aspects of their state's thought and action (chapter 5). The Canadian state satisfies this expectation by committing itself during intervention in deep conflict to the flexible concept of equal treatment. The Canadian state's specific interpretation of equal treatment is fleshed out within the parameters of a distortion-conducive ideology. Second, societal expectations on the state preclude coercion from the deliberation of policy's content (chapter 4). As a result, the hands of the state are tied as to the only effective means for steering private-interest collective actors into cooperative behaviour (chapter 6). Accordingly, deliberation is left to distort due to private-interest collective actors' unimpeded and morally-indifferent strategic action.

3. *The global connectedness of actors assures deep conflict through partiality of the SAM.* It is given that various windows of opportunity open and close regarding influence upon the Canadian state's official channels of decision-making and policy production. It is also given that a surfeit of actors would take advantage of such opportunities (chapter 7). However, inherent of their moral indifference, private-interest collective actors are more likely to seize available opportunities that public-interest collective actors would balk at, and scheme aggressively to create such opportunities. Accordingly, the constant siege upon Canadian state autonomy is predominately private-interest.

The relation of the qualifiers of deep conflict to the shortcomings of hyper-context mediation draws attention to the malleability of hyper-context mediation itself. Recognition that the qualifiers of deep conflict turn hyper-context mediation into a guarantor of deep conflict suggests the possibility that there are ways of countervailing their influence. Effective countervails would not eradicate equal treatment, deficiency in steering, and partiality as shortcomings of hyper-context mediation, but would allow them to persist in ways not fatal to the process. Such countervails recoup hyper-context mediation's potential to resolve deep conflict, correct distorted norms, and facilitate movement toward the good society.

Summary and Application to Kyoto

Three shortcomings of hyper-context mediation are identified in chapters 5, 6, and 7: equal treatment of actors who are unequal in capacities for communicative action (chapter 5); limited means for the SAM to steer actors into cooperative behaviour (chapter 6); and private-interest partiality of the SAM (chapter 7). Chapter 8 presents the argument that there is nothing intrinsic to these shortcomings for them to assure deep conflict persists. Rather, the three shortcomings require satisfaction of three background conditions in order to preserve deep conflict: first, consistent and prevalent presence of free market liberal ideology; second, strong societal expectations for the state to reflect society's belief in equality and democracy; and, third, global connectedness of collective actors. The explication of Kyoto in chapter 9 shows how these background conditions are countervailed and bracketed out, allowing deep conflict to be resolved.

Part III
FIXING DEEP CONFLICT

CHAPTER 9

Canada's Ratification of the Kyoto Protocol

In Canada, the SAM seldom resolves deep conflicts and rarely corrects their underlying distorted norms. The occasional instance of resolution and correction provides insight into the reform of hyper-context mediation and the necessary means to consistently avert deep conflict. Part III, Fixing Deep Conflict, is comprised of two chapters. Chapter 9 examines one instance of successful deep conflict resolution; chapter 10, the concluding chapter, uses Kyoto as a guide to recommend reform of hyper-context mediation. By following those recommendations, deep conflict resolution can be made the rule rather than the exception.

This chapter focuses on a hyper-context mediation in which Canada ratifies the Kyoto Protocol, considering the (a) deep conflict; (b) participants; and (c) developments during each of the six phases of hyper-context mediation. The chapter emphasizes different participants' predictions, arguments, claims, doubts, positions, and interests relevant to working out a response to global warming. The chapter utilizes three print newspapers as information sources: *The Globe and Mail* (G&M), *Financial Post Daily* (FP), and *National Post* (NP).[1] As Canadian national newspapers, they enable society-wide participation in hyper-context mediation and, after the fact, serve as a record of that participation.[2] These newspapers also represent nodes of diffusion of scientific information to the public from the formal international negotiations and meetings of the Intergovernmental Negotiating Committee on Climate Change, Intergovernmental Panel on Climate Change, and their various Working Groups and Subsidiary Bodies. The occurrence of particular terms, *greenhouse effect* or *global warming*, flag relevant news items in the archives of G&M, FP, and NP. Relevant news items document society-wide participation by (a) journalistically identifying collective actors and their representatives, and describing their thoughts and

actions; (b) conjuring imaginary collective actors as participants by reporting on opinion polls which invoke *the public*, and the latest theories and predictions which invoke *experts* and *scientists*; and (c) allowing participants to describe their own thoughts and actions directly by means of opinion pieces, letters to the editor, and paid advertisements. The G&M, FP, and NP implicate themselves as participants through their editorials, columns, and casual deployment of politically loaded concepts that express clearly identifiable views.

The Deep Conflict Around Greenhouse Gases

The possessive individualism of Canadians encourages car ownership over public transit; sustains an appetite for consumer goods and, therefore, keeps energy-intensive industries busy producing those goods. Possessive individualism discourages material restraint and sacrifice until sufficient others go that route first. These and other norms inadvertently precipitate an ensemble of environment-related conflicts, both far-flung and local, distinguished by ecological disruption and human suffering. Deep conflict, and the ensuing disruption and suffering, include gradually rising shorelines, imperilling small Pacific Island nations;[3] greater extremes of weather, globally incurring loss of life and property;[4] drier summers and more arid winters, lessening the productivity of Canadian Prairie agriculture;[5] and transformations of arctic tundra and permafrost, destabilizing northern Canadian subsistence communities.[6] Thus, norms, Canadians' established ways of thinking and doing, contribute significantly to the production of greenhouse gases and, accordingly, global warming. Hyper-context mediation is invoked in response to distorted norms and the conflicts they precipitate.

Participants in the Hyper-Context Mediation

Participants in hyper-context mediation are considered from three perspectives: first,

their relation to private and public interests; second, their complexity as an ensemble of both actual and imagined collective actors; and, third, their identification, by name.

1. Collective actor participants are categorized as private-interest, public-interest, or a combination of both. A participant's categorization is determined by the public or private character of its contribution to society-wide discussion of global warming and underlying norms. A private-interest participant engages in strategic action, attempting to control the discussion for personal advantage. A public-interest participant engages in communicative action, attempting to further the discussion out of respect for present and future generations of the public. Participants could be both private- and public-interest if they engage in self-serving strategic action in some respects, and publicly-mindful communicative action, in others. The membership of World Energy Conference (WEC) is heavily weighted in energy production corporations and associations,[7] a significant number of whom exacerbate global warming and its conflicts on a regular basis. WEC, by continuing such practices, contributes to society-wide discussion by setting a self-before-society example. In this respect, WEC is private-interest. At the same time, WEC announced that "(while) we still don't know for sure what the cumulative effect of releasing growing amounts of CO_2 into the air is, ... we clearly cannot afford ... the luxury of awaiting a final scientific judgment before taking any action at all."[8] WEC's expression of concern, even if nothing more than strategic action, serves the public interest by adding weight to other participants' calls for action concerning global warming. In this respect, WEC is also public-interest.

2. The complexity of the ensemble of participants in hyper-context mediation follows logically from the process being an extended version and abstraction of normal-context mediation: not all participants are physically present in Canada, not all participants are physically present anywhere, and not all of the collective actors achieve the internal unity suggested by their appearance. First, the participants include non-Canadian collective actors insofar as news and other media keep Canadians in touch with global warming

debates outside of Canada. NASA's predictions regarding the inevitability of global warming are intended for American audiences, but those predictions become a part of the Canadian equation when Canadian news media pick up on them.[9] Second, ambiguously accredited statements presented in the news and other media — "the public says *x*," "business believes *y*," and "scientists report *z*" — invoke what appear to be collective actors, but those collectives are, in fact, imaginary. The opinions of those imagined collective actors are nonetheless palpable because they receive serious consideration from the tangible participants of hyper-context mediation. Third, the presumption that an individual is, literally, spokesperson for a collective suggests that the collective is a unified and coherent whole. Unless a university's Public Affairs Office issues a disclaimer to the media, as was the case at University of Western Ontario surrounding J. Philipe Rushton's *Race, Evolution, and Behaviour*,[10] the research results of a faculty member can be construed as representative of the university. Accordingly, premiers, energy ministers, and environment ministers are conscripted as the voice of their provinces; editorials become conflated with the corporate newspapers that print them; and opinion polls become conflated with the publics of Canada and individual provinces.

3. Table 1 presents a roster of the public-interest collective actor participants, identified from the newspapers G&M, FP, and NP, from December 17, 1973, through December 16, 2002. Table 2 presents a roster of the private-interest collective actor participants, identified from the same source. The designation of participants as public-, private-interest, or both, is justified later in this chapter according to the public or private intent and consequences of their contributions to hyper-context mediation. Both Tables group the participants in the following categories: *scientific authorities* (including those who perform climate change research , but also those engaged in other areas of science and, therefore, familiar with scientific methods), *policy authorities* (including think tanks and lobbying groups), *components of the Canadian SAM* (including federal agencies, offices, and departments), *other nation-states* (including groups of nation-states), *nested*

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political structures (including Canadian provinces, territories, and municipalities),

private-interest organizations (including corporations, business associations, and

business councils), and *public-interest organizations* (including SMOs and

environmental organizations). Non-Canadian, imaginary, and dual public- and private-

interest participants are identified as such.

The consonance between some participants' expertise and the subject-matter of

hyper-context mediation makes them more audible than others in society-wide discussion.

These include Alberta's oil and gas industries, generally referred to as the oilpatch; the

province of Alberta, whose economy is rooted in the oilpatch; scientific organizations

qualified to discuss climate change; and genuine environmental organizations, notably the

David Suzuki Foundation, the Pembina Institute, Greenpeace, and Friends of the Earth.

The Process of Hyper-Context Mediation

The process of hyper-context mediation consists of six phases: establishment of the

'stage,' allegation, deliberation, simulation, assessment, and policy production (chapter 2).

Each phase is examined, with attention to the collective actors participating in the process

and how they contribute to it.

Phase 1: Establishment of the 'Stage'

In the first phase, the Canadian state guarantees the communicative space in which

hyper-context mediation is carried out. The guarantee entails a mix of mutually influential

factors: stabilization of Canadian currency, administration of pensions, reinvestment of tax

revenue into infrastructure, universal provision of health care, enforcement of fair

competition between media institutions, encouragement of participation in the market,

freedom of speech, and cultural subsidies (chapter 1). Detailed description of the 'stage' is

beyond the scope of the dissertation. A limited description of the 'stage' entails (a) influential and informative roles of G&M, FP, and NP within Canadian society; (b) reasonable constraint by state and society, allowing private-interest collective actors to pursue their respective goals; and (c) freedom from censure, interference, and persecution, allowing public-interest collective actors to work at various public goods.

Phase 2: Allegation

In the second phase, actors endeavour to secure a lasting and prominent place in social consciousness for the allegation that "*certain norms unintentionally contribute to the warming of the Earth; this warming is harmful to humans and the ecology of the Earth.*" The allegation deserves scrutiny because all subsequent conversations in hyper-context mediation originate from and are catalyzed by it. The following considers how the allegation itself originates from scientific discourse, how it finds resonance in the Canadian consciousness, and what role the Canadian SAM plays in achieving resonance.

The allegation first appears in Swedish scientist Svante Arrhenius' article titled "On the influence of carbonic acid in the air upon the temperature on the ground,"[11] published in *The Philosophical Magazine*, 1896. In that article, Arrhenius observes that (a) carbon dioxide (CO_2) and certain other atmospheric gases impede the rate at which solar energy absorbed by the Earth dissipates back into space[12] and (b) the emissions from industrial production add to the concentration of atmospheric CO_2. Connecting these two observations, Arrhenius alleges that intensive industrial production increases the earth's surface temperature.[13]

Securing a place for the allegation in social consciousness depends upon opportunities for publicity via the 'stage,' the allegation's attractiveness to news media and other cultural producers, the resolve of its advocates, and its endorsement by others.[14] At the time of its publication, the allegation did not achieve currency outside of Swedish scientific

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circles. First, opportunities for its publicity were limited to scholarly journals acquainted

with the language of physics. Second, the allegation was abstract and uneventful because

increasing atmospheric concentrations of CO_2 and overall increases in average annual

temperatures were not readily apparent to the senses. Third, Arrhenius was determined more

to stir his peers than to sound worldwide alarm; the allegation was his contribution to the

Stockholm Physics Society's ongoing debate concerning the causes of the Ice Ages.[15]

Fourth, no influential figures outside of the Stockholm Physics Society pursued the

allegation as a cause célèbre.

Successful placement of the allegation in the consciousness of Canadians follows

from resonance of the allegation with the scientific community. Factors fostering that

resonance include

- a growth phase of climate change science and its concomitant publications, starting in 1951;[16]

- the world-wide ground-based monitoring of the natural environment, under the auspices of The International Geophysical Year, as of 1957;[17]

- a sufficient span of time for the monitoring regime to produce preliminary conclusions concerning the state of the natural environment;

- the expressions of environmental concern by scientists before their peers at the Biosphere Conference, Paris, 1968; the UN Conference on the Human Environment, Stockholm, 1972; and the Conference on the Changing Atmosphere: Implications for Global Security, Toronto, 1988; and

- the establishment of Earthwatch under the auspices of the United Nations Environmental Programme (UNEP), whose purpose is to exceed previous regimes of environmental monitoring and research.[18]

The scientific community espouses the allegation to the public by serving as the

news media's primary definers of environmental phenomena and by engaging in public

education projects:

- the public's introduction by the news media to the greenhouse effect, framed in terms of the Pioneer space probe's observations of the planet Venus[19] — "[t]he greenhouse effect, responsible for the scorching temperatures of Venus, stands as a warning of what could happen if man's pollution introduces too much CO_2 into the Earth's atmosphere";[20]

- the first annual Earth Day, April 22, 1970 — a UN-launched program promoting public awareness and understanding of environmental issues;[21]

- UNEP's establishment of Earthscan to release environment-specific news and information to the media and NGOs;[22] and

- publication of scientists in cross-over magazines such as New Scientist, Scientific American, and Popular Science.

The allegation finds a receptive audience in some SMOs already attuned to the science behind environmental issues. Accordingly, Greenpeace and Friends of the Earth, as of 1989, are frequently cited news sources in matters related to the allegation.[23]

Conspicuous and menacing environmental aberrations inspire Canadian society to take the allegation seriously. Canadians are already wary of the environment by virtue of news media acquainting them with radioactive fallout,[24] oil spills,[25] acid rain,[26] PCB contamination of soil,[27] mercury contamination of water supplies,[28] and DDT disruption of ecosystems.[29] Accordingly, two events encourage Canadians to take heed concerning global warming: 1987's then warmest winter on record[30] and 1988's severe drought on the Prairies.[31]

Occurrence of the terms *greenhouse effect* or *global warming* in news media tracks the progress of Canadian society's uptake of the allegation. Prior to 1974, both terms are absent from news articles in G&M and FP, suggesting absence of the allegation from public discourse (Table 3). During the interval 1974 through 1982, the frequency of occurrence of either term in those newspapers does not exceed twice per annum, indicating a baseline public presence of the allegation (Table 3). The sudden abundance of both terms in G&M and FP during the interval 1988 through 1990 indicates an anchoring of the allegation in societal consciousness (Table 3).

The Canadian state's simultaneous images of environmental diligence and negligence help anchor the allegation.

The image of an environmentally diligent nation, for the interval 1983 through 1989, follows from the Canadian state's maintenance of environmental institutions, voicing of environmental concern, and well-publicized environmentally-considered actions:

- the continued existence of the Meteorological Service of Canada (MSC) since 1871, which "monitors and predicts the state of the climate, ... leads the development of atmospheric science ... (and is) the principal scientific authority for standards, information, and advice on the past, present, and future state of the atmosphere";[32]

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- the continued existence of the federal Department of the Environment (DOE) since 1971;

- the requirement for federal projects to pass scrutiny of the Federal Environmental Assessment and Review Office (FEARO);[33]

- the engagement of the federal Energy Department in research on energy conservation and renewable energy projects;[34]

- the Canadian state's commitment to a growing list of international treaties and agreements concerning nature, pollution, oceans, toxic substances, animals, regional development, birds, and insect pests;[35]

- the Canadian state's participation in the Biosphere Conference, 1968, and the UN Conference on the Human Environment, 1972;

- the Canadian state's instigation of a UN international study of global warming (October 1983);[36]

- the DOE's acknowledgment of global warming (March 1984);[37]

- the Department of Fisheries and Oceans' (DFO) acknowledgment that global warming poses a threat to Canada's fisheries, May 1985;[38]

- the Canadian state's hosting 56 countries to draw up the Montreal Protocol — an agreement to freeze, and later reduce, consumption of the five most common types of chemicals known to deplete the Earth's ozone layer, 1987;[39]

- the DOE's hosting over 300 scientists from around the world[40] in Toronto at The Changing Atmosphere: Implications for Global Security Conference, June 1988;[41]

- a DOE report forecasting global warming's consequences, June 1988;[42]

- the Canadian state's involvement in the Intergovernmental Panel on Climate Change (IPCC) as of November 1988;[43]

- the Canadian state's hosting 80 scientists and legal experts from 25 countries in Ottawa at The Conference on the Protection of the Atmosphere, February 1989;[44]

- the Canadian state's drafting its first plan to reduce CO_2 emissions, April 1989;[45]

- the resolution of the G-7's Paris summit, including Canada, that "urgent action is needed to preserve the global environmental balance," July 1989;[46]

- the DOE's insistence that radical new environmental policies are in the offing, October 1989;[47] and

- Canada's participation, November 1989, in a 72-nation conference in Noorwijk, Netherlands, endorsing the proposal to stabilize CO_2 emissions by the year 2000.[48]

The image of an environmentally negligent Canadian state, for the interval 1983 through 1989, follows from a string of less-than-admirable state distinctions:

- a nine-year lag between global warming's first rumblings in the Canadian press, December 1974,[49] and first mention by the DOE, March 1984;[50]

- global warming given only cursory mention in the G-7 economic summit, June 1988;[51]

- an unprecedented anti-environmental federal budget — allocating 31 times more money for fossil fuel extraction than development of alternative energy sources,[52] and eliminating offices devoted to the latter, March 1989;[53]

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- the Prime Minister's acceptance of an environmental leadership award from an organization that lobbies against action on acid rain, May 1989;[54]

- the DOE's admission that it "lacks a decisive plan of attack"[55] for the reduction of Canada's greenhouse gas emissions, June 1989;

- federal and provincial energy ministers' inability to set targets and a timetable for reducing emissions, August 1989;[56] and

- the DOE's proposal that nuclear power is a solution to the problem of global warming, October 1989.[57]

The Canadian state's diligence inspires actors as to what their own environmental stance should be, encouraging receptiveness to the allegation. The Canadian state's negligence convinces actors that charge of the environment had been left in their hands, likewise encouraging receptiveness.

The third phase of hyper-context mediation is a society-wide deliberation. As such, allegation sets that deliberation in motion. The secure presence of the allegation on the agenda of social issues owes to the influence of scientists, the news, other information media, SMOs, and the Canadian SAM. The abundance of terms other than *greenhouse effect* and *global warming* that come to evoke the allegation confirms its sustained resonance among the participants: *climate change*, *CO_2 emissions*, *emissions reduction*, and *Kyoto*.

Phase 3: Deliberation

In the third phase, participants engage in deliberation, a society-wide discussion building upon the allegation that certain norms are distorted. The deliberative phase is decisive to hyper-context mediation for two reasons. First, it constitutes the last opportunity for participants to provide input into the discussion before the SAM takes it over in simulated form (chapter 2). The deliberation thus forms the basis of the subsequent simulated discussion, a starting point of facts and arguments from which the SAM cannot stray far. Second, the deliberative phase subsequently shapes societal behaviour. If the deliberation refutes the allegation, then it sanctions the persistence of the norms in question.

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If the deliberation confirms the allegation, then it justifies reform of what then are considered to be distorted norms — although without guarantee that reform will take place. If the deliberation fails to achieve closure, then further discussion is implored. The following examines (a) the SAM's dual role as facilitator and evaluator during the deliberative phase and (b) the participants' respective contributions to the deliberation (i.e., their arguments and proposals that follow from the allegation and lead into simulation). These contributions are divided among seven distinct discussions that comprise the deliberation. A disproportionate amount of text and Tables devoted to those contributions reflects the dialogical complexity and dynamic nature of the third phase of hyper-context mediation.

The Role of the Canadian State-As-Mediator

The SAM is facilitative (chapter 2) during deliberation in two ways. First, it assures and oversees recurrent inter-governmental meetings that table Canada's greenhouse gas emissions as an agenda item: (a) Joint Meetings of Energy and Environment Ministers, (b) Annual Meetings of the Canadian Council of Ministers of the Environment (CCME), and (c) Deputy Ministers' Committee Meetings of the CCME.[58] Second, the Prime Minister's Office (PMO) sustains the discussion by imposing artificial deadlines: the pledge to ratify the Kyoto Protocol, initially, no later than June 27, 2002,[59] later extended to year's end, 2002.[60]

The SAM is evaluative (chapter 2) during deliberation in two ways. First, institutions of the Canadian state — Environment Canada, Canadian Climate Centre, Canadian Climate Program Board, and Department of Environment — produce scientific analyses of climate change that are available to the participants. Those institutions espouse the allegation, bolstering its credibility through their own credibility as scientific authorities — the Canadian Climate Centre's climate models are considered state-of-the-art.[61] The vividness and immediacy of the institutions' dire climate change predictions encourage participants to treat the allegation seriously. Second, the PMO shapes debate by projecting economic

consequences of emissions reduction; suggesting how emissions-reduction costs are to be

shared; and bringing under-exposed Kyoto Protocol bargaining positions to the fore (e.g.,

clean energy export credits and Canada's abundance of carbon sinks).

Contributions to the Deliberation: Thirty Years of Global Warming

The deliberation is comprised of several discussions spanning 1974 through 2002.

These discussions expand on seven premises contained in the original allegation:

1. Earth is progressively warming;

2. the warming is anthropogenic;

3. certain phenomena, past and present, are consequences of the warming;

4. certain consequences await, should the warming continue;

5. we are able, by various means, to subdue or turn back the warming;

6. we are willing, by particular means, to subdue or turn back the warming; and

7. some actors already combat the warming through their considered actions.

The first premise, that *Earth is progressively warming*, incites participants' attempts

to affirm, endorse, disparage, and refute it. National Centre for Atmospheric Research

(NCAR), International Decade of Ocean Exploration, and University of Toronto introduce

news audiences to the possibility of global warming, December 10, 1974, in the article

"Does man trigger trouble in the world's climatic cycle?"[62] Other scientific authorities

subsequently affirm global warming as a reality: National Defence University (U.S.),

1978;[63] National Research Council (U.S.), 1983;[64] the Canadian Climate Centre, 1984;[65]

U.S. Goddard Space Flight Centre, 1986;[66] the Intergovernmental Panel on Climate Change

(IPCC), 1990;[67] and the Canadian Climate Program Board, 1991.[68] The IPCC insinuates

itself as the last word on global warming, representing the combined efforts of over 2,000

international scientists whose peer-reviewed research was several years in the making, even

before the IPCC's inception in 1988.[69] The IPCC's report to the UN in 1990 announces,

with confidence, that "global warming has begun, (and) temperatures will rise in the (21st) century faster than in the past 10,000 years."[70]

Different scientific authorities discount and stress available evidence differently, accounting for some disagreement whether global warming occurs. Their evidence derives from analysis of (a) boreholes and pollen traces,[71] (b) worldwide freeze and thaw times of lakes,[72] (c) data from ground-based monitoring, and (d) data from satellite-based monitoring.[73] Until 1998, satellite data provides the only evidence suggesting global cooling, rather than warming. Until that year, contradictory evidence admits global warming scepticism as a reasonable fixture in climate change discourse. Headlines such as "No proof of warming, scientists say,"[74] in 1990, and the Coal Association of Canada's full page newspaper ads, in 1997,[75] reflect such scepticism. However, 1998 marks the discovery of a flaw in the interpretation of the satellite data: the friction drag of the atmosphere and the resultant deterioration of the satellites' orbits had been overlooked. Correction for this factor reinterprets the satellite data, finding it confirms global warming.[76] Subsequent to the reinterpretation of the satellite data, ideology and strategic action account for those clinging to global warming scepticism. First, ideology denotes judgment clouded by hostility: (a) western provinces' hostility towards central Canada, (b) mistrust of projects associated with the ruling federal Liberal government, and (c) personal resentment of Prime Minister Jean Chretien and his apparent attempt at a legacy through the Kyoto Protocol. Second, some participants engage in strategic action when a verdict of global warming threatens gratifying power arrangements. Strategic action clearly impels (a) oilpatch corporation Ipsco, Inc.'s 1998 claim that "Canadians have been duped into accepting climate change as a scientific fact,"[77] and (b) the Canadian Society of Petroleum Geologists' 2002 claim that there is "no significant evidence greenhouse gases are driving climate change."[78] Eric Reguly notes that Competitive Enterprise Institute, Coalition for Vehicle Choice, Global Climate Information Project, and other private-interest collective actors specialize in strategic action, recruiting scientists and economists willing to sign-up as global warming sceptics,

regardless of their areas of research and expertise.[79] Accordingly, the Oregon Petition Project boasts in 2002 "more than 17,000 scientists who dispute the science behind global warming."[80]

The second premise, that *the warming is anthropogenic* incites a similar struggle of confirmation versus refutation. A verdict that humans cause global warming implicates (a) norms as warranting reform, (b) all of humanity as a part of the problem, and (c) some as being more to blame than others (e.g., car drivers and industry). The strongest authority in this respect is the IPCC, whose *IPCC Second Assessment Report, December 1995* (IPCC SAR) claims "the balance of evidence suggests that there is a discernible human influence on global climate."[81] The IPCC supplements the report with "the odds (being) roughly two in three that the global warming observed in the last century is both real and results from human activities."[82] The news article "Human activity indicated as cause of global warming" reports highlights of the IPCC SAR.[83]

Reasonable disagreement whether humans cause global warming stems from two factors. First, Environment Canada, a champion of the fight against global warming, admits in 1989 that "[s]cientists still cannot prove conclusively that the climate warming they have measured so far is being caused by the greenhouse effect because it is still within the range of natural variability."[84] Even in 1997, the year of the Kyoto Conference, other champions of the cause acknowledge that "average temperatures have wavered by roughly three degrees over the past 3,000 years for reasons that have nothing to do with human activity."[85] Second, the precise impact of oceans, clouds, airborne particles, and moonlight on Earth's temperature is still not known.[86] The IPCC acknowledges this uncertainty: "the increased energy in the atmosphere (trapped due to increased concentrations of CO_2) could increase cloudiness, which would mitigate some of the effect of global warming, or increase storm energy rather than lead to higher temperatures."[87]

Oberthür and Ott observe that disagreement born out of such scientific uncertainty is valuable "since knowledge cannot be increased and sustained without criticism, ... such

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criticism has largely driven the scientific progress achieved in climate change."[88] Regardless of natural variability and non-anthropogenic factors behind warming and cooling, the sceptics are suspect. Their scepticism is revealed to be strategic action in two ways. First, the spirit of cooperation inherent in communicative action moves actors to err on the safe side so as to avoid putting humanity's well-being at risk. The sceptics, however, insist on inaction concerning global warming until the wrinkles are removed from the relevant science. Second, communicative action requires consistency in the application of a claim to other like instances (chapter 5). Claims that humans affect their environment have been tested and validated before, prompting successful action against ozone depletion and acid rain. But certain sceptics refuse outright the premise of anthropogenic global warming. Both their insistence on inaction and communicative inconsistency confirm their engagement in strategic action.

Veiled strategic action in the form of feigned scepticism is deployed by Global Climate Coalition, in 1996; the Leipzig Declaration, in 1996; Exxon, in 1997; and APCO Worldwide, Talisman, Imperial Oil, and Canadian lime producers, in 2002.[89] Overt strategic action is deployed by (a) the Wall Street Journal, accusing the IPCC of altering the IPCC SAR "at the last minute to expunge certain qualifications and doubts in the minds of many scientists about global warming," 1996;[90] (b) the Science & Environmental Policy Project, stating as fact the "'well-documented tendency' for scientific committees to overstate the confidence of their guesstimates," 1999;[91] and (c) NP, suggesting that the need for continued funding injects bias into scientists' research results, 2002.[92]

Business constitutes an imaginary, but influential, private-interest collective actor. It, too, engages in discussions concerning the veracity of anthropogenic global warming. *Business* is invoked by columns in G&M, FP, NP, and other publications dedicated in whole or in part to the business audience. Terence Corcoran writes for the business section of G&M for the period March 1993[93] to March 1998[94] and, with reduced frequency, NP for the period December 1998[95] to November 2002.[96] Corcoran writes without apology

about "junk science,"[97] "voodoo enviro-science,"[98] "unhinged biothink,"[99] and the great anthropogenic global warming fiction.[100] The resultant image of *business* is monolithic: one of private-interest collective actors, large and small, in common sense dialogue and agreement. From their perspective, so-called authorities on global warming put corporate well-being at risk. Corcoran's column, by regularly taking up space in the business section of G&M, confirms its profitable readership levels, suggesting *business* as a formidable presence among the participants, satisfied to let certain others speak out on their behalf.

The third premise, that *certain phenomena, past and present, are consequences of the anthropogenic global warming*, prompts the participants to consider if observed phenomena match the phenomena that global warming would have us expect. The ensuing discussion takes inventory of observed phenomena consistent with global warming scenarios. The inventory, presented in Table 4, takes note of (a) ecological and climatic transformations of the Canadian Arctic, (b) reduced capacity for hydroelectricity, (c) new extremes of coastal flooding, (d) severe drought, (e) exceptionally violent weather, and (f) unusually warm weather — particularly timely to the discussion, Environment Canada draws attention to 1998 and 1999 as the hottest years on record.[101]

Participants compiling the inventory do not consider it proof of anthropogenic global warming, but, rather, a source of signifiers for such warming, making tangible for them an otherwise abstract scientific concept. *Business* and NP engage in strategic action by falsely accusing *environmentalists* and *scientists* of conflating the inventory with hard evidence (e.g., news articles titled "1998 weather no proof of global warming"[102] and "It's the worst weather since ... today's weather isn't quite what you think").[103] By such willful action, *business* and NP attempt to discredit the smaller palette of what *environmentalists* and *scientists* actually do consider to be hard evidence.

The fourth premise, that *certain consequences await, should the warming continue*, prompts an inventory of those consequences. Two conflicting visions of the future result: public-interest collective actors predict dire consequences (Table 5); private-interest

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collective actors predict agreeable consequences (Table 6). Some predictions are met with hostility: the Canadian Wheat Board mocks the forecasts of Prairie drought;[104] G&M, NP, and *business* dismiss the "science-fiction images of melting polar ice caps, hurricanes, and rising oceans covering most of the world with water," citing lack of scientific consensus.[105]

Fifth, the premise that *we are able, by various means, to subdue or turn back the warming* provokes the question of whether an attempt is appropriate. Two conflicting positions are expressed. First, public-interest collective actors call for action, justified through arguments that invoke practicality, urgency, optimism, the economy, and morality and ethics (Table 7). Second, private-interest collective actors call for inaction, justified through arguments that invoke the economy, uncertainty, futility, and lack of necessity (Table 8).

The sixth premise, that *we are willing, by particular means, to halt or turn back the global warming* incites community debate regarding the means to do so. The debate uncovers multiple paths toward such ends: the discouragement of fossil fuel consumption; the development of a clean energy infrastructure; modification of individual behaviour; societal coordination of GHG emissions reduction; sequestration of CO_2; enlistment of developing countries' cooperation in the fight against global warming; and specification of a global regime for the reduction of GHGs (Table 9).

The seventh and last premise, that *some, through their considered actions, are already making an impact against the warming* is affirmed as the news media publicize such actions: (a) eleven cities commit to CO_2 emissions-reduction targets, orchestrated by ICLEI in 1991;[106] (b) the City of Toronto spends $200,000 to plant 600,000 tree seedlings in Honduras in 1994, intent on boosting the Earth's supply of carbon sinks;[107] (c) 86 of the 708 companies in the Voluntary Challenge and Registry Program in 1998 "calculate their GHG emissions and commit themselves to at least one action to reduce them";[108] (d) Suncor invests $100-million in windmills and solar power in 2000;[109] (e) Ballard

researches fuel cell technology; and (f) Honda and other automobile manufacturers improve fuel efficiency in 2002.[110]

Phase 4: Simulation

In the fourth phase of the hyper-context mediation, the Canadian SAM imagines an improvement and furtherance of the deliberation which, if left to the participants, could drag on for years unproductively, suppressing a response to global warming.[111] This simulation is necessary because state production of policy must bear the imprint of societal input (chapter 4), even though the commercial aspects of the 'stage' and the demeanour of the participants limit the quality of that input. Government fills the gaps and addresses the shortcomings of the deliberation, informed by past experience of governing and present savvy of policy aides, experts, and think tanks in the Canadian state's employ.

The Canadian SAM supplements and fine-tunes three facets of the deliberation: first, participants' incorrect assumptions; second, the wilful circulation of refuted claims; and, third, the abridged palette of global warming evidence and predictions.

1. The Canadian state's experience in international diplomacy and the negotiation of environmental accords — especially the meetings, panels, committees, ad-hoc groups, subsidiary bodies, and conferences of the parties that culminate in the 1997 Kyoto conference[112] — make possible its authoritative reality check for the provinces' proposals to fight global warming. The competing made-in-Ontario,[113] made-in-Alberta,[114] and made-in-Canada frameworks ultimately must defer to the legal authority of the 1992 United Nations Framework Convention on Climate Change.[115]

2. The SAM encounters the discursive equivalents of junk, noise, and counterfeit currency in apprehending deliberation's multiple discussions. Although a diversity of claims and arguments must be admitted into the deliberation, some are exposed as incorrect (e.g., the corrected interpretation of the satellite data as of 1998). The Canadian state does not

question the intentions of participants who continue to circulate such claims and arguments, but recognizes the claims and arguments serve no rational purpose in the simulation. Simulation brackets those claims and arguments from further consideration; there is no further consideration of the claims that the greenhouse effect does not exist, global warming is not taking place, global warming is not caused by humans, and inaction concerning GHG-production is acceptable.

3. The SAM has access to a fuller palette of global warming evidence and scientifically grounded predictions than the Canadian public. The information from the Canadian state's scientific institutions (e.g., Environment Canada and Canadian Climate Centre) relies on the middleman of the news media before the public gets to see it. Accordingly, even though the Canadian Climate Centre releases a series of reports on March 23, 1988 discussing the ramifications of the world's changing climate, the public only hears about the reports' star news item: the prediction of hazards to the PEI coast.[116] In contrast, the state has unedited access to information prepared by its own institutions.

Phase 5: Assessment

In the fifth phase, the SAM produces an outcome of the deliberation on behalf of the participants. This assessment affirms that various norms contribute to global warming because they contribute to GHG emissions, those norms must be changed to curb global warming, and the change requires participation in an international plan in order to be effective. The outcome is surprising, given that Canada's autonomy is susceptible to multiple encroachments; forces diverting the outcome away from where simulation's reasoned analysis would otherwise lead. Therefore, I now examine the structural, ideological, inter-governmental, and international encroachments that beset the SAM throughout assessment.

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1. Structural encroachment threatens to redirect the outcome because the perceived need to change particular norms stands to trigger a punishment recoil against the Canadian state (chapter 7). Headlines in 2002 caution that Canada's fight against global warming will chase investment away from Canada. The headlines read as a who's who of the Alberta oilpatch, and as economic blackmail of the Canadian state: (a) "Kyoto impact could shutter Ipsco mill";[117] (b) "Kyoto stalls $8.4B oilsands project: Canadian Natural to delay spending";[118] (c) "Oil chief warns of Kyoto suits";[119] (d) "Kyoto debate mires Western oilsands plans: TrueNorth Energy struggles to find partners for $3.5B project";[120] (e) "U.S. oil warns over 'burden' of Kyoto";[121] (f) "Nexen project may hinge on Kyoto costs: $2.5B oilsands plan";[122] and (g) "Kyoto key to $5.2B oilsands development."[123]

2. Ideological encroachment threatens to reshape the outcome due to the actions of various think tanks and lobbying groups. Table 2 lists these collective actors as policy authorities.

3. Inter-governmental encroachment, owing mainly to Alberta, threatens the integrity of the outcome. While the SAM concludes that Canada should commit to future involvement in an international regime for GHG emissions reduction, the Alberta government embarks on a campaign to sway other provinces from cooperating in such a regime;[124] establishes the External Advisory Committee, whose purpose is to postpone Parliament's anticipated ratification of the Kyoto Protocol;[125] produces legislation asserting "provincial control over greenhouse gases";[126] and cites the proposed international regime as grounds for western separation.[127]

4. International encroachment, through the actions of the United States, threatens the integrity of the outcome. A Canada committed to the international GHG emissions-reduction regime holds trade and investment disadvantages relative to the uncommitted United States. As well, the United States is on record as trying to influence Canadian environmental policy behind-the-scenes. A leaked 1990 memo reveals that

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"Washington (was) counting on Canada, along with Great Britain and the Soviet Union, to be instrumental in blocking efforts at a major conference in Norway ... to achieve a new agreement on curbing emissions of CO_2 pollution."[128] Twelve years later, in 2002, the United States again discourages Canadian participation in an international GHG emissions-reduction regime.[129]

Phase 6: Policy Production

In the sixth and final phase of the hyper-context mediation, the SAM commits to binding policy concerning the norms responsible for GHG production. By the date that Canada ratified the Kyoto Protocol, commitment to such social engineering is established without having worked out all the details. By the end of 2002, however, the federal government reassures public- and private-interest collective actors regarding the policy work-in-progress:

1. "Individual (Canadians) will be responsible for about 10 per cent of Canada's emissions-reduction target under the Kyoto Protocol, ... with Ottawa eyeing both incentives and penalties to change consumer behaviour."[130] To realize this objective, the federal government plans a media campaign to encourage Canadians to "[d]rive their vehicles 10-per-cent less each year, ... [d]rive more fuel-efficient vehicles, ... [m]ake their homes more energy efficient, ... (and) [u]se less energy at home."[131] Such encouragement relies in part on Ottawa's "plans to offer provinces and municipalities cash and incentives to boost the use of public transit."[132]

2. "[T]he energy sector, whose production processes account for about 20 per cent of GHG emissions, would have to account for that proportion of Canada's emissions reduction under the Kyoto Protocol."[133] To realize this objective, the federal government plans "legislation or negotiation to persuade manufacturers to improve new-vehicle (fuel) efficiency standards." The federal government makes the plan more

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palatable for private-interest collective actors by offering to cap the amount that business has to pay to clean up emissions should that cost exceed expectations.[134]

Ratification Accomplished

The Canadian government shows rare resolve during the hyper-context mediation that ends with Canada's ratification of the Kyoto Protocol. The simulation, assessment, and policy production resist seemingly overwhelming forces of cooptation: the failing of bias; multiple nodes of external encroachment; and systematically distorted communication, antecedent to simulation. The usual pattern of deep conflict is broken. Chapter 10 accounts for this anomaly, showing what is learned from this examination of hyper-context mediation, and how application of such knowledge assures that hyper-context mediation more reliably respects the public interest and averts deep conflict.

Table 1

Public-Interest Collective Actors According to Engagement in the Hyper-Context Mediation

	Type	Name	Non-Canadian	Imaginary
1	SA	100 Nobel laureates	●	
2		American Association for the Advancement of Science	●	
3		Canadian Climate Centre (CCC)		
4		Climate Program Board (CPB)[135]		
5		Conference on the Protection of the Atmosphere	●	
6		Conference on the Changing Atmosphere: Implications for Global Security	●	
7		Environment Canada (EC)		
8		*experts* *		O
9		Harvard University	●	O
10		Institute of Ocean Sciences		
11		Intergovernmental Panel on Climate Change (IPCC)	●	
12		International Decade of Ocean Exploration	●	
13		International Institute for Applied Systems Analysis	●	
14		McMaster University		O
15		National Centre for Atmospheric Research (NCAR)	●	
16		National Climate Data Centre	●	
17		National Defence University	●	
18		National Research Council, U.S. (NRC)[136]	●	
19		Ontario Climate Centre		
20		*scientists* *		O
21		True Believers		
22		Union of Concerned Scientists[137]	●	

	Type	Name	Non-Canadian	Imaginary
23	SA	United Nations Environment Programme (UNEP)	●	
24		U.S. Environmental Protection Agency (EPA)	●	
25		University of Alberta (UofA)		O
26		University of British Columbia (UBC)		O
27		University of Colorado	●	O
28		University of Toronto		O
29		University of Victoria (UVic)		O
30	PA	Canadian Environmental Law Research Foundation[138]		
31		Canadian Centre for Policy Alternatives		
32		Conference of Canadians		
33		Council of Canadians[139]		
34		Council of Environment Ministers for the European Community	●	
35		Delphi Group		
36		Energy Probe[140]		
37		Institute for Research on Public Policy[141]		
38		InterAction		
39		Tellus Institute[142]	●	
40		Worldwatch Institute[143]	●	
41	PR	Ballard Power Systems, Inc.		
42		British Petroleum PLC[144]	●	
43		Canadian Council of Churches[145]		
44		Canadian Environmental Industry Association		
45		Canadian Nuclear Association (CNA) *		
46		Conference Board of Canada[146]		
47		Evangelical Environmental Network[147]	●	

	Type	Name	Non-Canadian	Imaginary
48	PR	GEMCo		
49		The Globe and Mail (G&M) *		O
50		Honda	●	
51		Inco, Ltd.[148]		
52		Insurance Bureau of Canada		
53		Ontario Hydro		
54		Reinsurance Association of America	●	
55		Shell[149]	●	
56		Suncor		
57		TransAlta		
58		World Energy Conference (WEC) *	●	
59	PU	Albertans for Ratifying Kyoto[150]		
60		Canadian Institute of Child Health (CICH)		
61		Canadian Labour Congress[151]		
62		Canadian Public Health Association		
63		Canadian Urban Institute[152]		
64		Climate Action Network of Canada[153]		
65		Club for Alternatives to the Auto		
66		David Suzuki Foundation[154]		
67		E-mission 55 Canada		
68		*environmentalists*		O
69		Friends of the Earth Canada (FOE Canada)[155]		
70		Great Lakes United		
71		Greenpeace Canada[156]		
72		Healthy City Offices		

Type	Name	Non-Canadian	Imaginary
73 PU	International Council for Local Environmental Initiatives (ICLEI)[157]	●	
74	International Physicians for Prevention of Nuclear War[158]	●	
75	Lung Association		
76	Pembina Institute[159]		
77	Pollution Probe[160]		
78	the *public*		○
79	Resources for the Future[161]	●	
80	Sierra Club[162]		
81	Sustainable Agriculture, Food, and Environment Alliance (SAFE)[163]	●	
82 CS	Canadian International Development Agency (CIDA)[164]		
83	Department of Environment (DOE) *		
84	Department of Fisheries and Oceans (DFO)		
85	Department of Natural Resources (DNR) *		
86	Ministry of Forests		
87 ON	Alliance of Small Island States	●	○
88	Commonwealth, less Great Britain	●	○
89	G-7 *	●	○
90 NS	Alberta *		○
91	British Columbia *		○
92	Manitoba *		○
93	Municipality of Toronto		○
94	Northwest Territories		○
95	Nunavut		○
96	Quebec *		○

Type	Name	Non-Canadian	Imaginary
97 NS	Yukon		O

Note: The abbreviations for the types of actor used in the Table are as follows:

SA: scientific authority

PA: policy authority

PR: private-interest organization

PU: public-interest organization

CS: component of the Canadian SAM

ON: other nation-states (including groups of nation-states)

NS: nested political structure (i.e., provinces, territories, and municipalities)

*: public- and private-interest

●: non-Canadian

O: imaginary

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Table 2

Private-Interest Collective Actors

According to Their Engagement in the Hyper-Context Mediation

Type		Name	Non-Canadian	Imaginary
1	SA	Atmospheric Environment Service (AES)		
2		Canadian Society of Petroleum Geologists[165]		
3		*experts* *		O
4		Goddard Space Flight Center	●	
5		Leipzig Declaration[166]	●	
6		Massachusetts Institute of Technology (MIT)[167]	●	O
7		National Aeronautic and Space Association (NASA)	●	
8		Oregon Petition Project[168]	●	
9		*scientists* *		O
10		University of Pennsylvania	●	O
11	PA	Alliance for Responsible Economic Alternatives		
12		Business Council on National Issues (BCNI) / Canadian Council of Chief Executives (CCCE)		
13		C. D. Howe Institute		
14		Canadian Imperial Bank of Commerce (CIBC)		
15		Coalition for Vehicle Choice		
16		Competitive Enterprise Institute		
17		*economists*		O
18		Fraser Institute		
19		George G. Marshall Institute[169]	●	
20		Global Climate Coalition[170]	●	
21		Global Climate Information Project	●	

	Type	Name	Non-Canadian	Imaginary
22	PA	Infometrica		
23		Institute of International Economics	●	
24		International Chamber of Commerce	●	
25		International Monetary Fund (IMF)	●	
26		Organization for Economic Cooperation and Development (OECD)	●	
27		Science & Environmental Policy Project[171]	●	
28		World Bank (WB)	●	
29		World Economic Forum (WEF)	●	
30	PR	Alberta Cattle Commission		
31		APCO Worldwide		
32		Atomic Energy of Canada, Ltd.		
33		*business*		○
34		Canadian Association of Petroleum Producers		
35		Canadian Electricity Association		
36		Canadian Imperial Bank of Commerce (CIBC)		
37		Canadian lime producers		○
38		Canadian Natural		
39		Canadian Nuclear Association *		
40		Canadian Vehicle Manufacturers Association		
41		Canadian Wheat Board[172]		
42		Canadian Wood Energy Institute		
43		Coal Association of Canada		
44		ConocoPhillips (U.S.)	●	
45		The Economist	●	
46		EnCana		

Type	Name	Non-Canadian	Imaginary
47 PR	Environmental Technologies, Inc.		
48	European Business Council on Sustainable Development	●	
49	Exxon		
50	Financial Post Daily		○
51	Forbes[173]	●	
52	Ford Motor Corporation		
53	General Electric	●	
54	General Motors		
55	The Globe and Mail *		○
56	Imperial Oil		
57	Ipsco		
58	Nabors Industries, Ltd. (U.S.)	●	
59	National Post		○
60	Nexen		
61	the oilpatch		○
62	OPEC	●	
63	Petro-Canada		
64	Talisman		
65	TrueNorth Energy		
66	Toyota	●	
67	Wall Street Journal	●	
68	Westinghouse	●	
69	World Energy Conference (WEC) *	●	
70 CS	Department of Environment (DOE) *		
71	Department of Natural Resources (DNR) *		

Type	Name	Non-Canadian	Imaginary
72 ON	the developing countries	●	O
73	G-7 *	●	O
74	The United States	●	O
75 NS	Alberta *		O
76	British Columbia *		O
77	External Advisory Committee (Alberta)		
78	Manitoba *		O
79	Nova Scotia		
80	Quebec *		O

Note: The abbreviations for the types of actor used in the Table are as follows:

SA: scientific authority

PA: policy authority

PR: private-interest organization

PU: public-interest organization

CS: component of the Canadian SAM

ON: other nation-states (including groups of nation-states)

NS: nested political structure (i.e., provinces, territories, and municipalities)

*: public- and private-interest

●: non-Canadian

O: imaginary

Table 3

Number of News Items per Year in *The Globe and Mail*, 1844-2002; *Financial Post Daily*,

1905-1998; and *National Post*, 1998-2002

That Contain the Terms *greenhouse effect* or *global warming*

Year	Number of News Items			
	G&M	FP	NP	Total
1844-1904	0			0
1905-1973	0	0		0
1974	1	0		1
1975-1977	0	0		0
1978	2	0		2
1979	1	0		1
1980	1	0		1
1981	1	0		1
1982	0	0		0
1983	5	0		5
1984	6	0		6
1985	6	0		6
1986	12	0		12
1987	5	0		5
1988	27	3		30
1989	74	0		74
1990	56	4		60
1991	21	7		28
1992	46	3		49
1993	16	2		18
1994	24	3		27
1995	20	6		26

	G&M	FP	NP	Total
1996	25	3		28
1997	86	27		113
1998	58	6	17	81
1999	40		42	82
2000	69		74	143
2001	93		59	152
2002	198		226	424

Note: News items consist of articles, editorials, opinion pieces, advertisements, and letters to the editor.

G&M news items are retrieved from the *News* and *Report On Business* sections. Source of data for the years 1844-2000 is globeandmail.com, obtained by applying optical character recognition and a Boolean search to PDF files, followed by visual confirmation of the relevance of the retrieved articles. Source of data for the years 2001-2002 is the database CPI.Q, obtained by applying a Boolean search to text files. *Financial Post Daily* news items are retrieved up to and including October 23, 1998. *National Post* (including *Financial Post*) news items are retrieved from October 27, 1998 to December 16, 2002. Source of data for *Financial Post Daily* from January 2, 1992 through October 23, 1998 is LexisNexis Academic database,[174] applying a Boolean search to text files. Source of data for *National Post* (including *Financial Post*) is LexisNexis Academic database,[175] applying a Boolean search to text files. Source of data for *Financial Post Daily* from January 1, 1988 through December 31, 1991 is CPI.Q database,[176] applying a Boolean search to text files. Source of data for *National Post* (including *Financial Post*) is LexisNexis Academic database,[177] applying a Boolean search to text files.

Table 4

Observed Phenomena Consistent With Global Warming Scenarios

Observation	Observer
Transformations of the Arctic:	
1) Accession of tundra by spruce trees[178]	G&M and University of Colorado
2) Increased vegetation in northern latitudes[179]	G&M and *scientists*
3) Disruption of Northern birds' breeding habits[180]	NP and *scientists*
4) Opening of the Northwest Passage[181]	G&M and *scientists*
5) Sinking of Sachs Harbour, Banks Island[182]	NP
6) Reduced ice time for fishing in Nunavut[183]	Nunavut
7) Altered disposition of Nunavut creeks and rivers[184]	Nunavut
Reduced Capacity for Hydroelectricity:	
1) 1988 western Canada and south-western Ontario[185]	Department of Environment and Ontario Hydro
Coastal Flooding:	
1) 1991 China[186]	G&M
2) 1996 Saguenay region of Quebec[187]	FP and Insurance Bureau of Canada
3) 1996 the Okanagan Valley[188]	G&M
4) 1998 eastern Canada[189]	Insurance Bureau of Canada
Extreme Drought:	
1) 1988 Canadian Prairie drought[190]	G&M
2) 1998 as a near record dry year for Canada[191]	Environment Canada and G&M
3) 1999 Maritimes' lowest rainfall in 50 years[192]	Environment Canada and G&M
4) 2001 rain shortage in western Canada[193]	G&M

Observation	Observer
Violent Weather: 1) 1997 exceeding the previous year's weather-related insurance claims by $600 million[194] 2) 1998 hurricane activity being the most severe on record[195] 3) 1998 ice storm in Ontario and Quebec[196] 4) 1999 extreme blizzard in Toronto[197]	G&M and Insurance Bureau of Canada G&M G&M G&M
Unusually Warm Weather: 1) "The chill is gone from Toronto"[198] 2) "Earlier thaw amplifies effect of global warming"[199] 3) "Europe bakes in record heat wave"[200] 4) "1996 among warmest years on record"[201] 5) "1998 saw weathering heights and depths"[202] 6) "Helter swelter"[203] 7) "Warm, warmer, warmest...."[204] 8) "Warm weather astonishes climatologist"[205]	 Ontario Climate Centre National Climate Data Centre (US) G&M Environment Canada and G&M Environment Canada and G&M G&M G&M Environment Canada and G&M

Table 5

Dire Predictions Concerning Global Warming

Dire Prediction	Predictor
1) Dustbowl conditions for the Prairies[206]	Canadian Climate Centre, International Institute for Applied Systems Analysis, and UNEP
2) Lower yields of primary crops due to the loss of ideal growing conditions[207]	*scientists*
3) Loss of Canada's wetlands[208]	DOE
4) Increasing costs of Great Lakes' shipping due to lowered water levels[209]	*experts*
5) Conflicts over water in short supply[210]	*experts*
6) Austere water conservation measures[211]	Great Lakes United
7) Northward displacement of forests[212]	Canadian Climate Program Board
8) Northward migration of insect pests[213]	Greenpeace
9) Depleting phytoplankton, resulting in smaller malnourished salmon unable to endure swimming upstream to spawn[214]	DFO and University of British Columbia
10) Melting polar icecaps[215]	ARK
11) Melting glaciers[216]	*scientists*
12) Flooding of Saint John, N.B.[217]	*scientists*
13) Flooding of the PEI coast[218]	Canadian Climate Centre
14) Giant waves imperilling oceanic shipping[219]	G&M
15) Increasing incidence of forest fires[220]	Atmospheric Environment Service
16) New allergies, higher incidence of respiratory illness, and the spread of diseases into new locales[221]	David Suzuki Foundation, Harvard University, and *scientists*
17) Declining biodiversity[222]	University of Toronto
18) Amplification of natural cycles of global heating and cooling[223]	McMaster University
19) A new ice age triggered by warming[224]	*scientists*

Table 6

Agreeable Predictions Concerning Global Warming

Agreeable Prediction	Predictor
1) Longer growing seasons and increased agricultural yield[225]	G&M
2) Easier access to the Arctic, lower heating costs, and year-round Great Lakes shipping[226]	Atmospheric Environment Service
3) Increased tourism in Canada[227]	NP
4) Health benefits[228]	*experts*
5) The polar ice caps remaining frozen[229]	University of Pennsylvania
6) A steadily improving environment[230]	Fraser Institute

Table 7

Justification of Action Concerning Global Warming

Justification of Action	Justifier
Action as a Matter of Practicality: 1) Action needs to be taken by all in order to bring global warming under control[231]	Canadian Environmental Law Research Foundation, Council of Environment Ministers for the European Community (1986), Environmental Law Association, and G-7 (Paris, 1989)
2) Leadership must be shown in order for sufficient others to join in taking action globally[232]	Friends of the Earth and InterAction
Action as a Matter of Urgency: 1) Global warming requires prompt attention in order to avert irrevocable damage[233]	100 Nobel Laureates, American National Council of Churches, Canadian Council of Churches, Conference on the Changing Atmosphere: Implications for Global Security (1988), Conference on the Protection of the Atmosphere (1989), G&M, National Forum on Climate Change, *scientists*, World Energy Conference, and Worldwatch Institute
Action as Expression of Optimism: 1) To take action against global warming is not futile[234]	David Suzuki Foundation, Friends of the Earth, and InterAction
Action as Concern for the Economy: 1) The fight against global warming constitutes a business opportunity[235]	Canadian Environmental Industry Association, Department of Natural Resources, and G&M
2) The required move to greater energy efficiency generates savings that outweigh the transition costs[236]	Delphi Group, Harvard University, and Union of Concerned Scientists
3) "There are no jobs on a dead planet"[237]	Canadian Labour Congress

Justification of Action	Justifier
4) Job creation is the offshoot of any fight against global warming[238]	Canadian Centre for Policy Alternatives and Tellus Institute
Action as Moral and Ethical Concern: 1) Humans must not repeat their usual pattern of rhetoric versus action when confronted with global warming and other environmental issues[239]	Greenpeace
2) No amount of environmental damage is acceptable[240]	David Suzuki Foundation
3) Humans are long overdue in taking responsibility for their actions that affect the environment[241]	G&M
4) "How much is our children's future worth?"[242]	World Bank
5) Humans are forgetting their responsibility to the "global commons"[243]	Council of Canadians
6) "The wilful destruction of entire countries and cultures, with foreknowledge, would represent an unspeakable crime against humanity. No nation has the right to place its own, misconstrued national interest before the physical and cultural survival of whole countries."[244]	Alliance of Small Island States

Table 8

Justification of Inaction Concerning Global Warming

Justification of Inaction	Justifier
Inaction as Concern for the Economy:	
1) GHG emissions reduction would extinguish Canadian jobs[245]	Alliance for Responsible Economic Alternatives and Canadian Manufacturers and Exporters
2) Emission controls would "spook" industry[246]	Ontario
3) The Canadian and provincial economies would be at an economic disadvantage if Canada took action against global warming[247] — "Faced with expanding your North American operations, would you pick Kyoto-free America or a Canada faced with ever-increasing pressures on energy use (and price), with a government where regulation-writing envirocrats reign supreme?"[248]	*business*, Canadian Association of Petroleum Producers, Canadian Electrical Association, Canadian Manufacturers and Exporters, Canadian Natural, Canadian Vehicle Manufacturers Association, ConocoPhillips, EnCana, General Motors, Imperial Oil, Ipsco, Inc., Nabors Industries, Nexen, NP, the oilpatch, Ontario (in 1990), OPEC, Petro-Canada, The Provinces (1989 and 1998), and TrueNorth Energy
4) Environmental improvement requires a robust economy[249]	*economists* and G&M
5) The impact of unconstrained global warming on the U.S. economy would be negligible over a 50-year period, implying comparable impact on the Canadian economy[250]	Institute of International Economics
6) Canada cannot afford to tackle adequately GHG emissions reduction[251]	IMF
7) GHG emission controls would drive up prices of consumer goods and services[252]	Alberta, *business*, Coal Association of Canada, and Canadian Association of Petroleum Producers

Justification of Inaction	Justifier
8) Damage to Earth's climate is irreversible[253]	American Association for the Advancement of Science, Canadian Imperial Bank of Commerce, *experts*, NASA, NP, and The United States
9) Canada's "high population growth, cold climate, long distances, and significant exporting of all forms of energy" rule out GHG emissions reduction in a timely manner[254]	G&M and Infometrica
10) "[I]t will be easier to begin adapting our environments to new conditions than it will be to abandon the fossil fuels that drive industrial economies."[255]	World Economic Forum
Inaction as Response to Uncertainty: 1) Not wanting to be the first to act	Canada, The Provinces (1989), and The United States[256]
2) Not knowing whether global warming is in Canada's interest[257]	DOE (1983)
3) Not knowing whether global warming is a matter of urgency[258]	Alberta, *business*, and the oilpatch
Inaction Assuming Futility: 1) Global warming has happened before, independent of human activity[259]	*scientists*
2) Factors beyond human control cause global warming, such as insect flatulence and cows' burping[260]	G&M and NP
Inaction Assuming Lack of Urgency: 1) Volcanic emissions cancel out the effects of global warming[261]	NASA and *scientists*
2) "On balance, (destruction of the ozone layer) is having a cooling effect, which ... models say is offsetting 20, 25 per cent of global warming."[262]	NASA and *scientists*

Table 9

Means to Reduce GHG Emissions and the Advocates of Those Means

Means to Reduce GHG Emissions	Advocate of the Means
Discourage Fossil Fuel Consumption: 1) Implement a carbon tax[263]	British Columbia, Business Council on National Issues, Conference Board of Canada, European Business Council on Sustainable Development, General Motors, InterAction, Reinsurance Association of America, and Worldwatch Institute
2) End subsidies to GHG producers[264]	Energy Probe
Develop a Clean Energy Infrastructure: 1) Develop solar, wind, and hydroelectric power[265]	David Suzuki Foundation, G&M, and InterAction
2) Develop natural gas[266]	Environmental Technologies
3) Develop nuclear energy[267]	Atomic Energy of Canada Limited, Canadian Nuclear Association, DOE (1989), G&M (2000), General Electric, OECD, The United States, and Westinghouse
4) Develop alternative energy sources, other than nuclear energy[268]	*environmentalists*, Friends of the Earth, G&M (1989), International Physicians for Prevention of Nuclear War, and the *public*
Modify Individual Behaviour: 1) Promote green consumerism[269]	Evangelical Environmental Network and Pollution Probe
2) Encourage modesty of the Canadian lifestyle[270]	*Sustainable Agriculture, Food, and Environment Alliance (SAFE)* and DOE
3) Promote public transit and cycling[271]	Club for Alternatives to the Auto

Means to Reduce GHG Emissions	Advocate of the Means
4) Guarantee consumer access to fuel-efficiency information, in order to facilitate environmentally-mindful car purchases[272]	Pollution Probe and Sierra Club
5) Use electric cars[273]	Ford and Honda
Coordinate Society's GHG Emissions Reduction:	
1) Improve thermal insulation of homes and office buildings[274]	David Suzuki Foundation
2) Build lake-water aqueducts to traverse urban office buildings, to moderate those buildings' temperatures[275]	Metro Toronto Board of Works
3) Make GHG emissions-reduction measures voluntary under the auspices of the Voluntary Challenge and Registry Program[276]	business and the oilpatch
4) Make GHG emissions-reduction measures mandatory[277]	IPCC and Pembina Institute
5) Devolve control of emissions reduction from the national to the local level[278]	World Bank
Sequester Carbon:	
1) Plant genetically modified trees that absorb more CO_2 than their non-GMO counterparts[279]	Toyota
2) Store CO_2 in oceanic sandstone[280]	*scientists*
3) Preserve the Brazilian rainforests as a carbon sink[281]	G&M
Secure Cooperation of the Developing Countries:	
1) Make environmental responsibility a condition for securing World Bank loans[282]	G-7 (1989) and World Bank
2) Provide financial assistance to poorer nations, to help them establish pollution controls that otherwise would impede their development[283]	The Commonwealth (minus Great Britain), Sierra Club, and UNEP

Means to Reduce GHG Emissions	Advocate of the Means
3) Make debt-for-nature swaps that "encourage Third World countries to plant more trees and protect their environment"[284]	Canadian Forestry Ministry
4) Encourage China to embrace solar energy, wind power, and hydroelectricity[285]	CIDA
Coordinate a Global Regime for GHG Emissions Reduction: 1) Establish trade in emissions credits	American Electric Power Corporation,[286] Conference Board of Canada,[287] G&M, GemCo, Municipality of Toronto,[288] Ontario Hydro, Suncor, and TransAlta[289]
2) Be creative in reducing GHG-emissions: purchase and protect overseas forests to assure their continued existence as carbon sinks;[290] improve the digestion for livestock overseas to make them less likely to burp methane;[291] and pay farmers not to till their fields, because tilling releases CO_2 from the soil[292]	TransAlta
3) Vary emission-reduction targets according to nation (i.e., differentiation)	BCNI and The United States
4) Use a nation's extent of reliance on fossil fuels as the determinant for differentiation[293]	BCNI
5) Use an uniquely Canadian protocol that reflects Canadian concerns, realities, and imagination[294]	Alberta, CCCE, and the *public*

[1] *Financial Post* was an independent newspaper until October 1998, when it became a section of *National Post*.

[2] For the period 2000-2002, Canadian society was privy to the thought and action of Greenpeace in the subject areas of *greenhouse effect* and *global warming* through 30 news articles in G&M and 3 in NP, not through that organization's 36 press releases.

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CHAPTER 10

Conclusion

Chapter 9 demonstrates the strengths of examining the Canadian state's conflict interventions as hyper-context mediation, and reveals (a) the complexity of what qualifies as conflict — latent and manifest conflict, and the changeable threshold between distortion and shaping; (b) the critical distinction between conflict management and conflict resolution; (c) suffering and injustice physically remote from the actors responsible; (d) a broad spectrum of what comprises policy-oriented conversation — real and imagined collective actors as interlocutors, actions functioning as statements, a monumental time frame, and actual and simulated debate; and (e) thought and action of the Canadian state, public-, and private-interest collective actors, dedicated to the pursuit of the good society.

Chapter 9 also confirms a rare instance of the Canadian state resolving deep conflict. Movement towards the good society frequently stalls because the SAM manages deep conflicts rather than resolves them. Conflict management tolerates the norms that produce conflict, choosing to dilute and thus obscure the undesirable consequences of those norms for the single purpose of procuring peace. The Canadian Food Inspection Agency's labelling standards respond to Canadians' distrust of foods produced through genetic engineering, but conceal that those standards themselves are untrustworthy — foods labelled as "not a product of genetic engineering" may contain nearly five per cent genetically modified materials.[1] The Canada Health Act assures that nobody jumps the queue for health care in Canada, but overlooks shortfalls in funding that create long waiting lists and policies that hinder the availability of generic pharmaceuticals. The compromise condoning civil unions instead of gay marriage removes ambiguity concerning inheritance and taxation issues, but sidesteps inequality in the recognition of gay and heterosexual relationships.

Reasons for Deep Conflict Resolution

Guidance for the reform of hyper-context mediation is gleaned from how the Canadian state got it right in the case of Kyoto Protocol ratification. What follows considers (a) reasons for the Canadian state resolving deep conflict with respect to the Kyoto Protocol and (b) how knowledge of those reasons can be applied to reform the Canadian state's intervention in deep conflict.

Before proceeding to the accounts as to why the debate around global warming led to Canada's ratification of the Kyoto Protocol, two explanations can be ruled out: (a) physical urgency and (b) political expediency. First, the urgency of the conflicts of global warming does not predetermine that the state will resolve them. For example, the adoption by the United States of a policy of management concerning the conflicts of global warming prioritized adaptation over prevention.[2] Second, ratification was not a concession offered to retain the status quo dominance. Poulantzas suggests that the state has to bow on occasion to the public good in order to maintain social cohesion and assure long-term economic gain.[3] However, a token public overture does not have to choose such a volatile and contentious subject matter as global warming. If deep conflict resolution was just a case of the Canadian state *throwing the dog a bone*, then the Kyoto Protocol was most certainly *the wrong bone*, evinced by the tumultuous reactions of the oilpatch, Alberta, and Ontario.

More convincing explanations for Kyoto ratification include (a) the availability of countervails to the conditions that sustain deep conflict; (b) a politician's attempt to leave a legacy; (c) collective actor duality as public- and private-interest; and (d) processes of lay scientific sense-making.

Countervails to the Qualifiers of Deep Conflict

Chapter 8 discusses how satisfaction of three conditions (i.e., the qualifiers of deep conflict) assures that distorted norms persist. Those conditions are, first, prevalence of the ideology of free market liberalism; second, societal expectations of equality in all aspects of state thought and action; and, third, the global connectedness of collective actors. Chapter 9 shows that those conditions, though satisfied, are countervailed in the build-up to Kyoto.

1. Free market liberal ideology typically engenders deep conflict because of (a) the low standards that it approves for access to the 'stage,' (b) its failure during deliberation to keep separate communicative and strategic action, and (c) its capacity to influence the SAM.

    1.1. Free market liberal ideology admits a form of moral relativism, finding no wrong when some actors only suffice in opportunity for self-representation on the 'stage.' Sufficing in this respect is typically the fate of public-interest collective actors, while private-interest collective actors experience a surfeit of such opportunities. In the global warming debates, the tables are turned: public-interest collective actors hold the lion's share of media opportunities. A vast media resource independent of the market rises to prominence: the global infrastructure of scientific panels and conferences essential to the well-being and survival of public- and private-interest collective actors alike. These panels and conferences connect with the public interest because their pursuit of knowledge, rather than material gain, comprises sciences' engagement in the good society.

    1.2. The moral relativism of free market liberal ideology condones all voices being heard, even when some voices produce nothing but noise. Inclusion of noise in the mix typically distorts deliberation. The examination in chapter 9 observes the voices of global warming sceptics and the advocates of a made-

in-Canada solution competing with others' earnest attempts at furthering the global warming debate. However, the noise is readily filtered out because it is so conspicuous. Surely the public is of the opinion that something is amiss when *representations of public opinion* vacillate between extremes in short order (e.g., 72 per cent of Albertans support the Kyoto Protocol, June 3, 2002; only 27 per cent support Kyoto four months later).[4] The continued circulation of polemics against climate change science does not receive serious attention because of this science's rigour, well-grounded arguments, and convincing evidence. The polemics are recognized as disingenuous, deliberate attempts at fouling the debate. Recognition encourages the dismissal of *all* challenges to the Kyoto Protocol, writing off all opposition to the fight against global warming.

1.3. The ideology of free market liberalism encroaches upon the autonomy of the SAM, colouring simulation, assessment, and the concluding policy products of hyper-context mediation. Such distraction is not evident in the examination of hyper-context mediation in chapter 9, but is nevertheless present. The concluding commitment to fight global warming does not imply intrinsic value of the environment. Economic health is still the bottom line here: (a) the Canadian state's decision is pending the results of a cost-benefit analysis;[5] (b) GHG reduction is touted as creating new economic opportunities for enterprising minds; and (c) the regime of accumulation does not work very well if global warming jeopardizes the labour and consumer pools. Fortuitously, the outcomes preferred by both public- and visionary private-interest collective actors intersect at a superficial level.

2. Societal expectations of equality in all aspects of state thought and action typically engender deep conflict. The Canadian state, satisfying those expectations, is unable to exploit fundamentals for coerced cooperation to steer private-interest collective

actors into communicative action (chapter 6) and, therefore, allows contamination of communicative action by counter-productive strategic action. Chapter 9 sees production of the usual noise during public debate, and, as explained above, the less-than-usual filtering of that noise. Should any noise elude filtering, other societal expectations countervail the effective influence of that noise. Foremost, Canada's reputation as conflict-averse and conflict-interventionist must be maintained (chapters 1 and 4). Failure to satisfy the expectation undermines the state's legitimacy. It is to the credit of public-interest collective actors that they broaden societal understanding of what qualifies as conflict and what merits the attention of state and society. The conflicts public-interest collective actors identify are unexpected, including warming-induced suffering and injustice in remote regions of the world. The Canadian state is pressured during simulation, assessment, and policy production by some actors' expectations for continued environmental diligence and other actors' expectations for ceased environmental negligence.

3.   The global connectedness of collective actors typically engenders deep conflict by facilitating encroachments on the autonomy of the SAM (chapter 7). The examination in chapter 9 notes that the SAM successfully resists a series of structural, ideological, international, and inter-governmental encroachments. The Canadian state is able to resist because the encroachments are countervailed by other encroachments. The countervails result from the actions of (a) the United Nations; (b) other nations committed to ratifying the Kyoto Protocol; (c) SMOs, and (d) the United States.

    3.1.   Canada has too much already invested in the emissions reduction negotiations coordinated by United Nations as of 1988 (i.e., time, money, research, expertise, and a reputation of leadership) to abandon further commitment to that process.

3.2.   The European Union's agreement, March 2002,[6] to ratify the Kyoto
        Protocol, and Russia's vow to do the same,[7] puts Canada in the awkward
        position of either deal-maker or deal-breaker. The Protocol requires
        ratification by 55 countries that collectively produce 55 per cent of the
        developed world's GHG emissions.[8] Canada's ratification commits its own
        3.3 per cent of the world's GHG emissions to the project, bringing the total
        per cent of the world's emissions beyond the 55 per cent threshold.[9]
        Ratification matters to the Canadian state, not wanting to sour relations
        between it and those countries committed to the Kyoto Protocol.

3.3.   Environmental SMOs are informed through globally distributed resources
        and are efficient at connecting with both the infrastructure of scientific
        conferences and the Canadian news media, exerting public-interest influence
        on global warming debates.

3.4.   The attempted encroachment by the United States on the autonomy of the
        SAM failed, as related in chapter 9. However, the attempt, along with
        Canada's history of being underdog to the United States, provokes the
        Canadian state's intense contrary response. Canadian Prime Minister Jean
        Chretien, in a blatant display of one-upmanship during the Kyoto
        Conference of 1997, announced Canada's intent to "do better" than the
        United States concerning GHG emissions-reduction.[10] With Jean Chretien
        still Prime Minister in 2002, and with the revelation that "Canada lags
        behind the United States in reducing GHG emissions on every count
        measured,"[11] one-upmanship, as a convoluted form of international
        encroachment (chapter 7), influences the simulation, assessment, and policy
        product of hyper-context mediation.

Leaving a Legacy

Ratification serves as a legacy-maker. In 2002, Prime Minister Jean Chretien was positioned to make unpopular and controversial policy decisions by virtue of his impending retirement from Office, and having a position in a law firm already waiting for him. Backlash, damage control, and winning the next election under the shadow of such decisions are problems left to his successors in Office. As already stated, failure to ratify disappoints the nations committed to the Kyoto Protocol. Conversely, Canada's ratification of the Kyoto Protocol impresses the international community, and singles out the Canadian Prime Minister as hero. To contribute to his image as *The Green Prime Minister*, Jean Chretien unveiled 10 new parks and five marine conservation areas three months before ratification, during the high profile Earth Summit on Sustainable Development, Johannesburg, September 2, 2002.[12] With its inclusion of Kyoto, the legacy offsets what critics see as an abysmal pollution-fighting record,[13] and amounts to doing good for the wrong reasons.

Collective Actor Duality as Public- and Private-Interest

The subject matter of global warming and its resultant conflicts draws certain private-interest collective actors into a mode of sustained publicness. Such a change in the actor's demeanour reflects either (a) individual discretion (e.g., Petro-Canada under the leadership of Ron Brenneman is not the Petro-Canada led by Maurice Strong), (b) shareholder preference (e.g., the corporations represented in an ethical fund cater to different shareholder preferences than those represented in an aggressive growth fund), or (c) business acumen (e.g., anticipating eventual requirement for emissions reduction and choosing a head start in adapting to those requirements, seizing the moment to invest in new technologies, and re-examining fuel efficiency to increase savings with extant technologies).

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Some actors' duality as public- and private-interest undermines the solidarity and deliberative advantage typical of private interest. Their investment in the necessary technologies and cuts in their GHG emissions are living arguments difficult for fellow private-interest collective actors to refute.[14] The SAM, in its evaluative capacity, draws attention to businesses that are successful in taking the necessary first steps toward emission reduction.[15] Private-interest collective actors calling for action and taking action against global warming are noted in Table 1.

Lay Scientific Sense-Making

As established in chapter 9, the suggestion that *something is wrong with the global environment and needs fixing* gains credence partly because a wrongness of the local environment is apparent to the senses; the weather, differing remarkably from how one remembers it from previous years. Common sense routinely deceives one's conception of the world and sustains distortions (e.g., despite our knowing better, *the Sun rises and sets around our stationary planet*); nevertheless, in the case of global warming, *what you see is what you get*. An actor does not have to conflate aberrant weather with evidence of global warming in order still to find such weather meaningful to the global warming debate. Record temperatures and unusually violent storms become signifiers of global warming and of the climate expected in Earth's future. Abnormal weather phenomena, difficult to ignore, contribute more to ratification of the Kyoto Protocol than faint weather changes that require sensitive scientific instruments to detect.

Reform, Informed by Kyoto

Kyoto Protocol ratification departs from Canada's usual protection of distorted norms. The explanations for this departure illuminate areas in need of reform in Canada's

response to deep conflict. These areas include (a) the quality of opportunities for participation in discussion (i.e., the 'stage'); (b) the Canadian state's tolerance of noise during public deliberation; (c) the Canadian state's acceptance of the present manifestation of free market liberalism; (d) the Canadian state's passivity concerning societal expectations; (e) commitment, but not compliance, to global regimes in the public interest; (f) the protection of public communication rights; (g) disinterest in other forms of ADR as models for conflict intervention; and (h) resignation concerning the constitution of private-interest collective actors.

Opportunities for Participation in Dialogue

The Canadian state must increase opportunities for lively and considered engagement in the public sphere, beyond what the market currently provides. The global warming debate was made possible by public investment, not the market. The societal discussion of global warming uses as its nexus the state-funded international infrastructure of environmental monitoring and research. Other extant scientific infrastructures are imaginable as supporting societal discussion of other concerns (e.g., the associations, colleges, journals, conferences, and symposia of the medical profession, propped up by public funding, provide an informed reference point for public discussion of smoking-induced lung cancer, immoderation-induced diabetes, and other health-related distortions of life's spaces and practices). An organized community of knowledge acquisition and practice that are conducive to the public good is not waiting in the wings for every concern on the social agenda. Questions concerning human rights (e.g., a woman's right to choose) and thorny ethical issues (e.g., human stem cell research) tend to fall, by default, to an infrastructure of religious institutions that lay claim to moral and ethical authority. It is subject to debate whether those institutions truly connect with the public good. The Canadian state must guarantee a public sphere neither dominated by private interests nor

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colonized by particular ideologies. Such a guarantee facilitates coalescence of the necessary

society-wide discussion of the social concern at hand. Steps toward this guarantee include

(a) increased competition within commercial news and broadcast media, rather than the near

monopolies in those areas; (b) heightened commitment to public broadcast media such as

Radio Canada and the Canadian Broadcasting Corporation; (c) introduction of new public

media institutions other than those reliant on radio, television, and the internet; (d) continued

incentive for commercial news media to offer a balance by allocating space to the public side

of the story; and (e) support of cultural and educational institutions (e.g., colleges,

universities, libraries, philosophers' cafes), contributing to citizens' informed entry into the

public sphere.

The Noise Factor

The Canadian state must foster its citizens' capacities for criticality. The obligation

to admit all points of view into a conversation carries the responsibility of informed critique

concerning those points of view. Individuals develop criticality through their lived

experiences, particularly through their engagement in (a) formal institutions of education

and culture and (b) informal institutions such as media literacy programs and culture

jamming. The Canadian state is in a position to assure, through allocation, taxation, and

legislation, (a) accessibility of the educational institutions; (b) survival of, and diversity

within, the cultural institutions; and (c) stability of alternative sites for critique. During the

debates that progressed into ratification, the DOE, as a representative of the Canadian state,

was indelicate in its dismissal of skeptics' claims in 2002 that "climate changes all the time

and temperature shifts have nothing to do with human activity."[16] While it is preferred that

the public reaches the conclusion through dialogue that such claims are noise, the Canadian

state is encouraged at least to bookmark and reiterate such conclusions as circumstances

and noise levels demand it. I recommend that the state go even further and tackle the noise at

its source: public relations, an institution devoted to the production of the wilful distortion of public communication. The regulation of those institutions' accountability is long overdue and would revitalize the public sphere.

Free Market Liberalism

The Canadian state must encourage free market liberalism to accommodate moral concerns. The ideology of free market liberalism is mutable, linked only presently to particular beliefs and consequences (e.g., influencing the SAM to produce pro-private policies). Transformation of this prevalent liberalism relies on transformation of the education that promotes it. Recognizing the role of economics as an academic discipline and its reputation as *the dismal science*, a critical economics must be encouraged. Presently, the economics departments in educational institutions reproduce themselves and sediment within society the faith that "markets eliminate the need for morality."[17] This faith goes against the official grain. The Canadian state routinely commends and encourages individuals for their contributions to the community of Canadians (e.g., the Governor General Awards, the Order of Canada). Canadians deem their state's encouragement of such behaviour appropriate. It follows that the Canadian state should encourage community-oriented thought in all areas of Canadian life, especially among private-interest individual and collective actors where such thought does not spontaneously arise, particularly in academic disciplines that are formative of those actors. Presently, the semblance of community-oriented thought among private-interest actors results from tax incentives, public relations upkeep of a socially responsible face, and the superficial intersection of public and private interests — the latter is the case with Kyoto ratification. Increased criticality in economics stands to (a) bring it more in line with the moral consideration practiced by the humanities and social sciences and (b) cut back on the encroachments against the Canadian state's policy solutions to deep conflict.

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Societal Expectations and the Canadian State's Demeanour

The Canadian state must show leadership and take more public-interest risks in handling deep conflict. Societal expectations shape the demeanour of the Canadian state and curtail its capacity to produce public-interest policy; nevertheless, the expectations and demeanour are mutable. Canadians expect their state to realize conflict-aversion, conflict-intervention, and conflict-correction through consensual means (chapter 4). This expectation leaves the Canadian state little room to manoeuvre without jeopardizing state legitimacy. Chapter 1 suggests that crises and exceptional times soften the insistency of societal expectations on their state's consensual demeanour. The Canadian state is in a risky position when changing its conflict-intervention style in the absence of extraordinary justification to do so. Legitimacy of the state may briefly wane when such change outpaces the expectations and tolerances of the society the state serves. If the style change, with time, proves itself as serving society's interests and comes to be appreciated as such, legitimacy is recovered.

Global Regimes in the Public Interest

The Canadian state must increase its commitment to global regimes that are in the public interest. The Canadian state readily commits to, and complies with, global regimes that are in the private interest (e.g., FTAA, NAFTA, WTO, and the World Bank). Various global regimes in the public interest receive Canadian commitment, but lack substantial compliance (e.g., the UN's Universal Declaration of Human Rights, 1948, and Covenants on Rights, 1966, are at odds with Canadian security forces turning over to the United States for detention and interrogation prisoners from the 2001-2002 western military intervention in Afghanistan). Reluctance to comply with global regimes that are in the public interest owes to free market liberal ideology (e.g., problems are best solved by the market) and

private-interest collective actors' refusal to surrender influence on Canadian state policy production (e.g., Ipsco's worry that "Kyoto is little more than an attempt by European governments to gain advantageous trade positions over North American business").[18] Either reformulation of that ideology or effective countervails to it would allow Canadian compliance to such regimes, over time, to sediment as an understood and appreciated facet of Canadian life.

Public Communication Rights

The Canadian state must uphold public communication rights. Part II explains that hyper-context mediation, like normal-context mediation, treats public- and private-interest collective actors as if capable of the same type and degree of engagement in communal attempts to resolve conflict. This equal treatment recognizes individual and collective actors as claiming the right to public communication — the right to meaningful participation in society-wide discussions whose outcomes affect all members of society. Chapter 5 demonstrates that private-interest collective actors are deficient in the *communicative action requisites*, incapable of communicative action on demand, and, therefore, limited in ability to work out in good faith solutions to communal problems. Claiming the right to communicate publicly does not stop these actors from abusing this right at the expense of others.

Participants should be awarded equal treatment so long as their contributions to society-wide discussion concerning conflict are in earnest, and not attempts to muddy the waters. Such attempts are infringements upon the right of other individuals and collectives to meaningful participation in public communication processes and the pursuit of public goods (e.g., the resolution of conflict). The Canadian state must restrain or discourage conscious attempts at disruption or distortion of public communication. This restraint and discouragement do not constitute a form of censorship (i.e., the withholding of information from the public); rather, they comprise a negative freedom (i.e., the assurance that others are

not able, through their strategic distortion of communication, to withhold information from the public). Precedent for this protective role of the Canadian state exists in other circumstances for dealing with public nuisance and the violation of others' rights.

Other Models for Conflict Intervention

The Canadian state must look to other models of inter-personal dispute settlement to inform its interventions in deep conflict. The similarities between normal- and hyper-context mediation are not coincidental. The views of Canadian society concerning the proper handling of inter-personal conflicts inspire the Canadian state regarding its response to a broader palette of conflict. Canadian society sees normal-context mediation as a social ideal (i.e., democracy in microcosm) and the preferred option among the available dispute resolution institutions (i.e., a reliable win-win solution). The Canadian state respects and concurs with this vision, (a) deliberately promoting normal-context mediation for the distinct inter-actor conflicts of employees, agencies, clients, and citizens of the state (chapter 2) and (b) mimicking aspects of normal-context mediation for the relatively indistinct deep conflict (e.g., facilitation and evaluation with respect to the participants' discussion of norms and their consequences, establishment of a discursive space that is evocative of the normal-context mediation arena, and allowance for participants to express their interests).

Normal-context mediation is the routine but flawed model for the Canadian state's intervention in deep conflict. The resultant hyper-context mediation carries unwanted baggage: the process admits all stakeholders, but engages mainly those with political influence, many of whom are neither interested in nor capable of communicative action. Critics claim that the other institutions of ADR (chapter 4) also privilege the status quo.[19] However, these should not be ruled out as models from which the state can learn regarding intervention in deep conflict. For example, to learn from *adjudication* is to recognize that society-wide discussion of norms is often highly adversarial, warranting constraint upon the

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participants' wars-of-words. To learn from *policy dialogue* is to respond to distorted norms while their conflict is still latent, averting the escalation of adversarial behaviour.

The Actors Themselves

The Canadian state must not take a relativist stance concerning the constitution of collective actors. The free market allows corporations to pursue their respective private interests, but it should do so not in a framework of *anything goes*. Corporations' pursuits are minimally constrained; they must avoid harming Canadians, competing unfairly, and participating in activities that undermine Canada's position in the international community (e.g., providing nuclear technology and materials to particular countries). Minimal constraint is brought to bear upon corporations by forces external to them (e.g., elected government, regulatory institutions, courts, formalized institutions of enforcement, consumer boycotts, and public protest). Corporations are formed independent of these forces. The constitution of corporate behaviour is set by virtue of corporate internal decision structure (CID), corporate ethos (CE), standard operating procedures (SOP), and shareholders' preferences (chapter 5). However, minimal constraint can be brought to bear upon corporations from within. The stipulation of respect for both the environment and public communication as a part of their constitution — inscribed within their CID, CE, and SOP — stands to clean up much of the pollution in both public communication and the natural environment. This reform would install social responsibility and good corporate citizenry as a part of the corporation's genetic makeup.

Conclusion

The eight reforms proposed in this chapter are inspired by the inevitability of conflict and, despite the urgency to resolve it, the state's tendency only to manage it.

Conflicts are a standard feature of the Canadian landscape. Conflict is inevitable by virtue of constant change in intra-national, global political, and global environmental circumstances. These changes unsettle established power relations and create new ones, throwing into uncertainty the thresholds by which Canadians distinguish distortion from the shaping of everyday life.

These changes, uncertainties, and concomitant conflicts incite Canadians to participate in the construction and fine-tuning of policies relevant to everyday life. The ideal for such construction and fine-tuning is moralist, distinguished as a path towards the good society, where citizens live in harmony with one another and their environment. However, construction and fine-tuning tend to be managerial, co-opted to restore the peace, reinstate the smooth running of things, and put conflict out of sight.

The present tendency to manage conflict sets up a condition of urgency. The issue of global warming impinges beyond the immediate and the local, threatening to affect the mental and physical well-being of present and future generations. The ideas and reforms proposed in this paper aim to clear obstacles to the resolution of social and environmental crises; moving Canada forward towards the good society and humanity towards a sustainable relationship between itself and the natural world.

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