

A Model of Engagement:
Reflections on the 25th Anniversary of the Berger
Report
(The Report of the Mackenzie Valley Pipeline Inquiry, 1977)

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There are two distinct views of the North: one as frontier, the other as homeland. (Berger, 1977)

We think of ourselves as a northern people. We may at last have begun to realize that we have something to learn from the people who for centuries have lived in the North....This Inquiry has given all Canadians an opportunity to listen to the voices on the frontier. (Berger, 1977)

What happens in the North...will be of great importance to the future of our country; it will tell us what kind of a country Canada is; it will tell us what kind of a people we are. (Berger, 1977)

I fell in love with Northern Canada in the summer of 1965, when I spent the summer working for the federal Department of Mines on the east coast of Baffin Island, a spectacular land of fjords and mountains. I returned to the North in the summer of 1967 when, as a student working for the Department of Indian Affairs, I was assigned, along with another wet-behind-the-years town planning student, the impossible task of drawing up settlement site plans for every community in the Mackenzie Valley.

It is a measure of the colonial presumption of that time (only 35 years ago) that Ottawa would send someone as ignorant and immature as I, without warning (for no one knew we were coming or why), to lay out the physical future of communities we didn't belong to. By the end of that summer, I had learned a great deal more than had the Department.

It so happened that the notion that Canadians should be involved in the decisions that would affect their lives (odd idea!) - called "citizen participation" at the time - was enjoying a moment in the sun in the late '60s, and I wrote my Masters thesis on what that might mean for planning in the Mackenzie District. It was an alienated piece of writing, but its heart was in the right place.

That era of citizen participation also gave birth to the Company of Young Canadians, a federally-funded organization intended to help communities organize around their own issues. The CYC was a bold experiment by a government willing, perhaps naively by today's standards, to spend money on deepening democratic participation, in many cases funding what turned out to be strong opposition to its own initiatives.

The same idea resulted in funding for community and public interest intervenors in the hearings of the Mackenzie Valley Pipeline Inquiry (the Berger Inquiry) several years later. The logic for such support is clear. At one level, like the logic of legal aid, it is understood that the adjudicative process cannot be just if equality of access to knowledge and resources is denied. At another level, it is about democratically balancing influences in a diverse society. As Wilf Bean, another Berger veteran, puts it,

Transnational corporations in concert with governments have vast resources with which to articulate and enforce their perspectives, thus shaping the destiny of us all, and.....without countervailing institutions and practices, many voices will be silenced and alternatives lost. (Bean, forthcoming, 2002)

In today's terms, social cohesion depends in part on the existence of institutions and processes that guarantee citizen involvement. Jane Jenson and Martin Papillon (2001) argue that in a diverse society differing cultural perspectives naturally engender value conflicts. What is critical to maintaining commitment to the whole by all groups is a political space within which the search for balance between competing perspectives can take place in a context of equality and respect.

Regrettably, the commitment by the state to democracy and to legitimizing decisions evident in the '60s and early '70s had begun to dissipate by the end of the '70s. It is almost absent today. (One notable, and hopeful, exception is the recent effort by the Commission on the Future of Health Care in Canada - the Romanow Commission - to engage Canadians in health care reform. See Maxwell, J., Jackson, K., Legowski, B.,

Rosell, S., Yankelovich, D. 2002) Some would say the retreat from engagement reflected a more apathetic attitude to political involvement than had existed in the previous decade and a half. Others point to the growth of civil society organizations as proof that political activism had moved on, determined not to be dependent on state initiative. And, of course, the public sector fiscal squeeze of the late '80s and '90s created a climate within which spending on democratic participation came to be regarded as a luxury rather than a necessity. Whatever the reasons, it is regrettable that the argument for public funding of public interest intervenors in major inquiries must be made once again from scratch.

I owe to the CYC my first opportunity to live and work permanently in the NWT. Steve Iveson, Louis Rabesca, James Washee and other CYC volunteers had begun the work of documenting the Dene version of Treaties 8 and 11, a version we all know now said nothing of giving up title to traditional lands. As CYC Director, I came into contact with a number of young Dene interested in not only furthering that work, but also making sense of their lives and the lives of their communities. While the rationale for the CYC was service to a community, it became clear that an equally important result was the growth we experienced as participants through our discussions, reading and work together.

In fact, it was Justice William Morrow who was the first Justice to travel to Dene communities to collect testimony from the elders. When he ruled in the Paulette case in 1973 that Treaties 8 and 11, as written, in effect amounted to a fraud, he placed a tremendous political lever in the hands of the Dene.

From the federal government's point of view it became imperative to determine the extent of the Dene "property rights" recognized by Justice Morrow, and their implication for southern plans to exploit northern resources, chief among them at the time the new discoveries of natural gas in the Arctic. Of course, the notion that the unextinguished rights of the Dene amounted to limited property rights didn't fit the Dene perspective. What was the point of an Aboriginal right if it didn't include the political power to make it effective?

So, there were two ideas of what remained to be resolved: the federal government's perspective which regarded Dene rights as a property right, to be defined so it could be bought and extinguished, and an indigenous view that saw Dene rights as including inalienable political rights that could not be extinguished, but that required jurisdictional recognition.

To its credit, the federal government accepted that the Dene would need their own researchers and lawyers to prepare their claim and I was one of those southerners lucky enough to be asked to join this effort as research advisor to the Indian Brotherhood of the NWT (later the Dene Nation).

One of the earliest battles I remember us fighting with the Department of Indian Affairs, was over the right to have the research defined, conducted and controlled by the Dene. To that date, researchers had come and gone in the North, pocketing both the research experience and their findings, leaving very little behind. Some likened this act to theft - hence the idea of the theft of a people's history.

But these were also the days of "action research", the idea that a community researching its own situation could become empowered by that experience, better able to fend for itself politically, with a better sense of where it had come from and where it wanted to go. Our reading of experience elsewhere (the work of Paulo Freire in Latin America, and the anti-colonial movements in Portugese Africa come to mind) and discussion among ourselves, convinced us that the act of researching the history of the Dene on the land had the potential to empower those involved. We were determined that it should be done by community members themselves. The research itself would constitute a political act. It would change relations between Aboriginal and non-Aboriginal and, as such, it would involve a redistribution of political power. Naturally, it was opposed by those who, in turn, had to give up power they had become accustomed to.

So, we hired research fieldworkers from communities across the NWT to collect the stories of their elders and map their traditional land use, drawing on academic experts as needed. This process, we hoped, would strengthen everyone's connection with their own past and provide the evidence base for and strengthen the sense of common interest among Dene communities. This seems such an obvious idea today, but at the time the resistance from bureaucrats, for whom political development in the NWT was clearly *not* an objective, was real and prolonged.

Justice Thomas Berger happened to come along at just about that critical moment. Communities had begun to document their history. Discussion about the political future of the north based on recognition of Aboriginal rights, rights that went beyond mere property rights, had also begun. When Berger, after representations by the Indian Brotherhood, The Committee for Original People's Entitlement (COPE), Inuit Tapirisat of Canada (ITC) and others, agreed to hold hearings in each of the communities affected by the pipeline, he provided the opportunity to tell the country about that Dene history - a history previously denied by political institutions in the north - and the opportunity to talk about a different vision for the future. Just as important, he provided communities with the chance to communicate their shared past to each other. Again, Wilf Bean captures the impact of that process:

In thinking back now, my main impression is of the cumulative effect of the Inquiry from its rather quiet beginnings as slowly people began to speak both to the Judge and to each other: elders talking to youth, young people talking to elders, First Nations talking with non-natives, pro-pipeline activists talking to those articulating a different form of "development", theoreticians and planners with formal knowledge talking to those with the wisdom of experience on the land. From the integrity of the individual voices in each community, from the concepts, numbers and predictions presented in the formal hearings, slowly but inevitably an intense dialogue began to unfold. Reflected each evening on CBC Radio North and shared throughout the region, each day's new evidence contributed to a dialogue

which both articulated an old and gave birth to a new understanding of the project of nation-building in the North.

There was also another experiment taking place within the Indian Brotherhood at the time, one that turned the experience of those years into one of the most important of my life. As we applied the analysis of colonialism from the experiences of colonized peoples elsewhere to the NWT and found that it often fit very well, we couldn't help re-examining our own relationships within that organization. The Brotherhood became a laboratory for exploring ways to achieve equality between Aboriginal and non-Aboriginal people working together, and for examining the ways in which our respective histories affected our relationships. We reorganized ourselves to make it easier to confront each other and discovered the importance of relationships that were the result of negotiation, as opposed to relationships that are imposed by those with the power to do so. We also learned in the process just how deeply the effects of colonialism ran. The impact of that work was intensely personal and, speaking for myself, life-changing.

That internal development also contributed to the formation of a new, politically adroit group of young Dene, many of whom have left their mark on the country's politics and occupy positions of power and influence in today's Government of the NWT.

So, what can we say about the social and political context of that time in the NWT?

Some have likened it to a war-zone, albeit one without bloodshed. Perhaps. The conflict was very real, but what was so positive about the political environment of the north in the '70s was the existence of avenues for conflict resolution. Federal funding for Aboriginal organizations and for the researching and presentation of claims was one important contributor. The Berger Inquiry was another.

It should be said that those who ran the Territorial Government at that time, and significant leaders of the business community, were not happy when a minority federal government, under pressure from David Lewis's NDP, agreed to appoint a Royal

Commission to hold hearings on the terms and conditions that should apply to the granting of a pipeline right of way along the Mackenzie River. They did their best to limit the scope of the Inquiry - I assume, because they could see a mobilized population would complicate life as they had come to know it, not to mention hurt the prospects of northern businesses cashing in on the commercial benefits of the proposed Arctic Gas pipeline.

When Justice Berger, in the first volume of his final report, called for a 10-year moratorium on pipeline construction pending resolution of land claims, they saw things slipping away from them, and naturally they looked for an explanation. They couldn't see that genuine political development lay behind opposition to the pipeline in Aboriginal communities. The truth was that they had, in fact, ignored a consistent political message from the Dene ever since the signing of Treaties 8 and 11, that these represented peace and friendship agreements and did not extinguish Dene Aboriginal rights. Rather than acknowledge the implications of that position - that the Dene had an unextinguished right to determine what took place on their traditional territory - they assumed someone else was at work manipulating a quiescent population.

This colonial assumption, in retrospect, had its humorous side. Immediately after the release of Volume One of the Berger Report, I remember a particularly scurrilous and unsubstantiated edition of what was then called *Edmonton Report* - the fore-runner of today's *Alberta Report* and *Western Report*, published by Ted Byfield and his son, Link, (neither of whom ever made an effort to restrain their advocacy of an unfettered market). The cover story was sensationally titled, "The NWT: How the Left Took Over"! Stuart Hodgson, the federally appointed Commissioner at the time, bought up hundreds of extra copies. To each he appended a card in the name of the Legislative Assembly of the NWT (a body struggling for legitimacy), with the caption, "We're worried about the future of Canada and her North", and sent it to MPs, MLAs and other opinion leaders across the country. It was a desperate act that accomplished little, but, perhaps, to undermine the credibility of those behind such mischief.

The following passage from the Byfield piece, written in the wake of the Berger Report, speaks volumes about that time, and about how much has changed since:

a bewildered Canada was gradually waking up to the fact that a radical socialist philosophy had taken hold of the native peoples in the Mackenzie Valley. How was it that these territorial natives whose politics up until now were generally considered non-existent should suddenly emerge with such advanced left-wing inclinations?

There were others besides Byfield who held such simplistic views, not least members of the RCMP. The Cold War was still very much alive in the minds of those responsible for counter-espionage, and life in Canada must have been pretty boring on that front. The thought that what was happening in the NWT might be part of a global Communist conspiracy caught the imagination of some police officers. On a number of occasions they would press examples of Soviet propaganda upon young Dene to gauge their reaction. I recall a friend who even got a free dinner and an evening of drinks from one zealous Mountie in return for providing "intelligence"!

We can laugh at these quaint events from today's perspective, but, while we saw them as bizarre at the time, they were also disturbing evidence of anti-democratic forces at work, disturbing because we had not yet come to see them as typical. Today, manipulation in mainstream politics is taken for granted and is one reason increasing numbers of Canadians are simply refusing to play in a game whose results they regard as "fixed".

It is easy to romanticize or exaggerate what was accomplished during those years. The truth is that there were big gaps between the vision and reality. The Brotherhood wasn't as democratic or representative as we might have hoped. Communities weren't as involved as we wished. We weren't as honest or as progressive as we liked to paint ourselves. There were some nasty political power plays. There were no saints. But under it all, there was real learning and growth, and I believe the results are there in the NWT

for all to see and learn from. Is it too much to claim that the NWT is a more democratic space today as a result?

This country has precious few examples of healthy relations between Aboriginal and non-Aboriginal peoples. The NWT has much to be proud of in that regard and much to teach our friends in British Columbia, for example, who recently elected a government intent on further poisoning relations by denying the creative role that recognition of Aboriginal rights could play in the future of B.C. The NWT portrays a very different model, one based on recognition of Aboriginal rights with its salutary positive impact on social and economic relationships.

What of the relevance of the Berger Inquiry today?

I now work in Ottawa for CPRN, a public policy think-tank. Once again, governments and their public services are expressing an interest in involving and engaging Canadians in decision-making. They are doing so because they are worried about their loss of legitimacy, as Canadians turn off and drop out of conventional politics. They are also aware that this diverse society is too complicated for governments to plan and act effectively without the social intelligence that comes from public involvement.

In that context, today's writing on citizen participation frequently refers to the Berger Inquiry as a model. Why? For a number of important reasons:

- It was a genuine effort to engage citizens in making critical decisions about their future (many of them were, of course, highly motivated);
- It provided the resources to ensure their views were heard;
- It provided the resources to research and prepare community evidence;
- It strengthened the communities that took part and contributed to their political empowerment;
- Its conclusions were not predetermined;

- The government of the day, for whatever reason, accepted the political risks of an open-ended process; and
- The evidence provided to the Inquiry by the people of the North and others clearly influenced the government's eventual decision.

And, of course, we shouldn't downplay the vital role Justice Berger himself played: as a proponent of an inclusive process and of funding for intervenors, as a tireless and respectful listener, as a thoughtful adjudicator, and as an advocate for his conclusions.

Two results of the Inquiry's process and findings need underlining.

First, the energy industry and its supporters argued before Justice Berger in the mid-'70s that Canada desperately needed to tap into the stores of natural gas in the Canadian Arctic. We were told, in hyperbole not unlike that used to oppose the Kyoto Accord today, delay would cost Canada dearly. Anyone looking back on that assertion with the advantage of the last 25 years experience can indulge in a wry smile at the very least. The irony is that Justice Berger's moratorium saved major oil companies from a multi-billion dollar boondoggle. Only today, two and a half decades later, is that same Arctic gas approaching the threshold of economic feasibility. It's another sobering reminder (if one needed it in the age of Enron) that the market does not always allocate resources efficiently.

The other important result is that the north today is politically and socially a very different place. It is not a social paragon. Enormous problems still afflict it – high unemployment, and the evident signs of above average social distress. But the Government of the NWT is in the hands of the indigenous population, however tenuous its grip (the Premier and a majority of Cabinet members are Aboriginal, while the NWT Legislative Assembly is almost evenly split between Aboriginal and non-Aboriginal members). A number of land claims have been negotiated and resolved (again, there is room for debate about the terms of those settlements). Aboriginal groups have resources and legislative controls in their hands that were undreamed of 25 to 30 years ago. A

growing, politically literate Aboriginal middle class has a better sense of what it wants for its future and that of its children, and is far better equipped to encounter the very powerful forces pushing to exploit northern resources. It is still a very unequal match-up, but that could be said for much of the rest of the country as well.

The fact that a government controlled by Aboriginal people in the NWT is today calling for the construction of the same pipeline they opposed so effectively 25 years ago is not as ironic as it appears. While building that pipeline will still entail severe social and cultural costs, there can be little doubt that the people of the NWT are in a position to extract a greater share of the returns than ever before. The findings of the Berger Inquiry are one important reason for that, and provide a powerful demonstration of the benefits of citizen engagement.

If the Berger Inquiry is such a model, and I would argue it deserves to be regarded as such, we are entitled to ask why it hasn't been repeated.

It isn't that the Trudeau government embraced political activation as a goal when it set up the Berger Inquiry (it was beholden to the NDP for its survival at the time). It could be it didn't even consider that political development might be one of the most significant by-products of the Commission's hearings. If so, that's a pity, because the Berger Inquiry proved what a positive force true political engagement can be. Today, one suspects, that lesson *is* well understood and, ironically, has become a reason to avoid this kind of democratic exercise. Not only is such an exercise likely to complicate the political landscape - democracy is, after all, a messy affair - but it is also unpredictable. Quite simply, it is too unpredictable for today's control-conscious regimes.

Will the Berger exercise ever be repeated?

As a country whose society is becoming ever more diverse and complicated, we should certainly hope so. The truth is, effective government will become increasingly difficult without such involvement. However, if we expect another Berger Inquiry to be initiated

from the top, we will be disappointed. It will only happen if Canadians demand that level of involvement once again. I, for one, am an optimist, and I already see signs that a new generation is unlikely to settle for anything less. If they need a reference for the future, they can find it in the recent history of the North.

References:

Bean, Wilf. 2002. Forthcoming contribution to "From the Trenches", a collection of reflections on the Berger Commission.

Berger, Thomas R. 1977. *Northern Frontier, Northern Hoomeland: The Report of the Mackenzie Valley Pipeline Inquiry. Vol 1.* Ottawa: Minister of Supply and Services Canada

Jenson, Jane and Martin Papillon. 2001. *The "Canadian Diversity Model": A Repertoire in Search of a Framework.* CPRN Discussion Paper No. F/19. Ottawa: Canadian Policy Research Networks Inc.

Maxwell, J., Jackson, K., Legowski, B., Rosell, S., and Yankelovich, D. 2002. *Report on Citizens`Dialogue on the Future of Health Care in Canada.* Ottawa: Commission on the Future of Health Care in Canada.

Phillips, Susan D. with Michael Orsini. 2002. *Mapping the Links: Citizen Involvement in Policy Processes.* CPRN Discussion Paper No. F21. Ottawa: Canadian Policy Research Networks

"Wah-Shee and the Left: A Tale of the Territories", *Saint John's Edmonton Report*, Vol 4, No. 24, May 23, 1977.