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The Northern Gateway Pipeline: Seeking Consensus Is a Slippery Business

Teaching Notes

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Case Summary

In December 2013, the Joint Review Panel (JRP) for the Northern Gateway Pipeline (NGP) will prepare a recommendation to the National Energy Board (NEB) on whether to approve the construction of one of Canada's most divisive pipeline projects.

Mr. Al Monaco, president and chief executive officer of Enbridge, faces a predicament between ensuring the pipeline is constructed with minimal added cost and achieving their social license to operate by opposing stakeholders. Not only is the pipeline considered to be critical to the continued economic growth of Canada's oil industry by connecting sites of extraction in land-locked Alberta with tidewater and access to Asian markets through British Columbia, the project is expected to accrue over CAD 28 billion in pre-tax earnings for the industry in the first decade alone. However, the pipeline is contested due to a range of environmental, social, and economic risks associated with the project. While Enbridge takes a favorable approach to the pipeline's development, the company must work closely with stakeholders to mitigate their concerns, in particular by reducing environmental risk and encouraging local economic development. Enbridge must negotiate with other stakeholders to identify a set of conditions that are favorable to all parties involved. The negotiation will be critical in shaping Canada's energy and environmental future.

This case requires students to engage in a negotiation simulation whereby they take on the role of one of the six key stakeholders that originally participated in the JRP consultation process that will inform this decision. The negotiation can result in a range of outcomes, from project approval with a combination of conditions to manage environmental and social risks, to a non-agreement whereby the project is not approved.

Teaching Objectives

The purpose of this negotiation simulation is to apply the tenets of active learning through a collective action problem posed by a divisive energy development project. Students will also learn that trade-offs occur in any decision involving a collective action problem which can lead to agreements but also to failure.

Scenarios and cases tend to leave decision-making to the class as a group or smaller groups rather than creating different and competing perspectives through stakeholders with structured roles. In contrast, a negotiation simulation requires that students develop an individual understanding of the trade-offs involved to make multiple decisions as they seek to align or contest with the other involved stakeholders. To support this objective, this case uses a negotiation simulation to understand the competing interests that influence a single decision over a contested energy project.

In addition, the simulation helps to develop negotiation skills such as coalition building, practicing strategies for creating a best alternative to negotiated agreement (BATNA), establishing a zone of possible agreement (ZOPA), and considering a set of all possible agreements that could be reached among parties (Bazerman, Curhan, Moore, & Valley, 2000). Students also experience the challenges involved in process management, such as communication between parties through working groups and steering committees (Susskind, Mnookin, Rozdeiczer, & Fuller, 2005).

Target Audience

This case and negotiation simulation can be used in undergraduate, graduate, and professional courses at both introductory and advanced levels of political theory, social science, and environmental studies. In the

context of business and management, this case can be applied in courses on Engaging and Managing Stakeholders, Corporations and Society, Business Strategy, and Business Negotiation Skills. Research on pedagogy has demonstrated that students value active learning opportunities that deal with real scenarios as they help students overcome barriers associated with their own experience, which may not reflect the behaviors associated with stakeholders involved in high-stakes decision-making (Susskind, & Corburn, 2000). Scenario-based teaching motivates students to engage in the real world learning material, helps to translate theory into practice, and develops students' researching, writing, reasoning, and speaking skills.

Case teaching has traditionally been the dominant approach to using scenarios to replicate organizational decision-making in the classroom, particularly within business and public policy programs. Class simulations build on this approach by using a negotiation role-play as an additional layer of engagement and assessment, one that involves a multiple-decision requirement with contesting positions. Applications of this case can be generalized beyond Canadian issues and brought to bear on a range of social, environmental, and economic topics across the fields of public policy, political science, environmental studies, and management.

Suggested Teaching Strategy

This teaching plan provides a detailed walkthrough of each step involved with the case, including preparing the appropriate readings, supervising the negotiation simulation, answering questions, and moderating in class discussions.

The case, simulation, and debrief are designed to take place for up to three class periods (80 minutes each); however, materials can also be condensed into two classes or one class with one run of the simulation. Analysis questions can be combined or selected individually for application to the one, two, or three class formats.

Click the links below to download the files needed for the simulation:

Confidential Instructions

Student Scorecard

Instructor Master Scorecard

Class 1: Pre-simulation Preparation: Negotiation Skills and the Northern Gateway Pipeline

In preparation for the first class, students must read the business case and recommended publications on negotiation skills, energy and resource politics in Canada, and the NGP (Further Reading). At this point, the instructor positions students in the role of specific stakeholders involved in the JRP.

The instructor may begin this class by contextualizing the case with students. We recommend beginning the conversation with discussions around the Canadian oil sands, existing pipeline capacity, the NGP, the role of Enbridge in this project, the JRP, and the trade-offs between the economic benefits and environmental and social costs. These topics will be a review from the case study and are meant to ensure all students have a common situational understanding of the case.

The instructor can then dedicate a portion of the first class for students to understand their stakeholder positions. At this point, the instructor can introduce the basic tenets of the stakeholder salience model. The *stakeholder salience model* categorizes various stakeholders by their power to influence decisions, the legitimacy of the stakeholder's relationship, and the urgency of the stakeholder's claim. Students should be familiar with

the model as it is included as a required reading for the case.

Stakeholders that possess more attributes are more influential. The Yinka Dene Alliance may, for example, have legitimacy (as land owners on the pipeline route) and urgency (construction will take place on their land), while NRCAN may have power (as a representative of the government) and institutional legitimacy (given its regulatory authority over pipelines). Students may also be asked to give an in-class presentation to represent their stakeholder's position on the pipeline, to discuss perceived opportunities for coalitions, and to rank other stakeholders in terms of power, urgency, and legitimacy. This activity will help prepare students for the upcoming negotiation.

After discussing the stakeholder salience model, the instructor can introduce and explain the difference between the integrative and distributive models of negotiation. The *distributive bargaining strategy* is a competitive zero-sum negotiation in which one stakeholder can gain only if another loses. Stakeholders are encouraged to compete to gain a larger portion of a fixed resource. Distributive bargaining requires stakeholders to identify their best alternative to a negotiated agreement (BATNA), reservation point, and the zone of possible agreements (ZOPA) to maximize their position and outcome in the negotiation. Alternatively, *integrative strategies* encourage stakeholders to identify opportunities for mutual gain and value creation. Integrative negotiations emphasize relationship building, trust, and cooperation. This strategy requires stakeholders to identify their own interests and the interest of other stakeholders and to find common ground. This requires separating the person from the problem, focusing on interests rather than positions, and identifying options for mutual gain.

Finally, the instructor can provide some information on collective action problems. *Collective action problems* occur when conflicts between individual stakeholder interests undermine collective interests. Students may be asked to discuss whether a collaborative or competitive approach would be more effective and whether they would stand their ground or be willing to compromise. Effectively, collaboration is essential to achieving agreement in this negotiation. Engaging with the recommended readings on negotiation strategies will help students prepare for strategies to achieve consensus on conflicting positions.

- 10 minutes: Introduction to the case and readings
- 20 minutes: Contextualizing the NGP
- 20 minutes: Stakeholder positions and salience
- 20 minutes: Negotiation strategies
- 10 minutes: Closing remarks and questions about negotiation

Class 2: In-Class Negotiation Simulation

We recommend instructors send students their confidential stakeholder exhibits and scorecards no more than two days prior to the in-class negotiation. The stakeholder exhibit package includes a summary of stakeholders involved and a list of 20 conditions that are being negotiated in the simulation. The simulation requires that at least 10 of the 20 conditions must be agreed upon by at least five of six stakeholders for the project to be approved, over three rounds (20 minutes each). Participants will collaborate on approving conditions that best represent the interests of their respective stakeholder. The voting process will be done three times and agreed upon conditions will prevail into the following rounds. Thus, when a condition is accepted, the decision is final and cannot be changed in subsequent rounds. These details are provided to students in their confidential instructions. Classrooms may be reorganized as necessary to facilitate discussions better. Several group tables should be available as well as a long "board-room" style main negotiation table.

- 10 minutes: Introduction and clarifications

- 20 minutes: Voting cycle 1
- 20 minutes: Voting cycle 2
- 20 minutes: Voting cycle 3
- 10 minutes: Conclusion

The in-class simulation spans over 80 minutes, including an introductory recap (on the context of the case, the rules of the simulation exercise, and important time limits), three voting cycles, and a concluding outcome on whether an agreement is reached. Appendix 1 includes a list of the criteria and scores (i.e. scorecard) to be negotiated, including an explanation to guide each of the students based on the existing NGP proposal from Enbridge and alternative ideas suggested by opposing stakeholders. Where available, page references are given for the location of the point of debate within the JRP's Connections Volume 2 discussion paper listed in the Further Reading section.

Each voting cycle begins with an open discussion and concludes with each group casting their respective vote. Stakeholders cast their vote using a scorecard or simply by raising hands. The instructor tracks how many stakeholders vote for each condition. Each group first selects their respective stakeholder and voting round and selects "in favor" to each of the conditions they support. Only if an agreement is reached, the group with the highest percentage of their total potential points (point total divided by total potential points) wins the negotiation.

Class 3: Debrief

Some of the following discussion topics can be introduced after the exercise. They are meant to have participants reflect on the in-class simulation, consider how closely the simulation represents the "real world" pipeline scenario, and extend the case for critical thinking. At this point, simulation participants are expected to step outside their groups and reflect on the negotiation process more generally.

- 10 minutes: Introduction
- 20 minutes: Negotiation results
- 20 minutes: Negotiation strategies
- 20 minutes: Real world comparability
- 10 minutes: Conclusion

Suggested Answers to Discussion Questions

Class 1: Pre-simulation Preparation: Negotiation Skills and the Northern Gateway Pipeline

1. In your role as a member of the JRP, do you believe Canada would be better or worse off if the NGP project is built?

These questions are meant to spur conversations about the divisive nature of the pipeline project from the perspective of a key stakeholder. It is important to discuss the economic benefits and environmental costs equally and how the debate over the pipeline reveals a collective action problem. Advanced students will

effectively identify that the Canadian economy (and, specifically, the province Alberta) is closely tied to the oil and gas sector. Students may also highlight pipeline access to tide water is a “necessity” as waning demand from the United States is supplanted by growing demand in Asian markets. Critics like the provincial government of British Columbia would also benefit economically from the pipeline, however they believe that they are not adequately compensated for the disproportionate share of environmental risk they face. Environmental risks include oil spills (both through the pipeline and supertanker traffic) which threaten the profitable agriculture, seafood, and tourism industries in British Columbia. Beside the risk of spills, pipeline development disturbs native plant and animal species, increases the likelihood of permanent ground displacement like landslides, adversely impacts human health of communities who depend on the lands and waterways for sustenance, and results in carbon infrastructure lock-in. Students may be asked to submit a written assignment in preparation for the case discussion, where the student assumes the role of a member of the JRP and provides an informed opinion whether Canada would be better or worse off if the NGP project was built.

Advanced answers will identify the trade-offs between the societal costs and benefits of the pipeline and how these influence the collective action problem around the pipeline. Students would explain that the pipeline is a collective action problem because conflicting stakeholder interests dissuade cooperation and lead to suboptimal outcomes. The implication for the collective action problem is that some stakeholders may have different perspectives toward the economic value of society and environment, for example. However, these can be managed through effective regulation and social licensing through stakeholder engagement, by aligning the project with stakeholder positions. Some examples may include granting ownership and equity over the pipeline such that Indigenous groups regain control over their territory and right to self-determination, including stopping pipeline delivery in the future.

Class 2: In-Class Negotiation Simulation

2. Why are stakeholder perspectives so divisive?

3. How did you best represent your stakeholder’s position while still seeking opportunities to advance your interests through the negotiation? For those groups that did particularly well, what characteristics about their strategy or group led to their success? What role did issue saliency, urgency, and legitimacy play in explaining this outcome?

Once the negotiation is complete, a discussion can occur using the questions above to understand the varied, and often conflicting, interests of their stakeholders.

These questions encourage participants to apply their readings on stakeholder theory and negotiation skills, discussing which stakeholder groups benefited or lost in the negotiation and why. Advanced students will propose that stakeholders have different sources of salience. The student may argue that Enbridge has urgency to transport the oil as soon as possible, NRCAN and BC have the power to accelerate or delay the agreement, and the Yinka Dene have legitimacy given consultation requirements. Students are encouraged to discuss strategies like trade-offs, multi-decision management, zones of possible and best alternative agreements, coalition building, and communication strategies. Advanced students might prepare in advance for the

negotiation by identifying opportunities for coalition building and potential points of contention.

The instructor can now ask students to think about and discuss their scores. In a negotiation like this, there are winners and losers. Results are often suboptimal. Encourage discussion among participants at this point, encouraging them to describe their disputes with other stakeholder groups. It may become evident here that some students may have simply been more effective negotiators. Students may share anecdotal examples of where they gained or lost positions and their reaction to this experience.

Class 3: Debrief

If the instructor holds the negotiation over two classes, the questions below can be included in Class 2.

4. How did the negotiation process, voting criteria, and scores reflect each participant's understanding of their stakeholder?

This question asks about the alignment of the negotiation to the reality of the multi-stakeholder negotiation and collective problems. The purpose of this simulation is to recreate the divisive nature of stakeholder hearings throughout the JRP process. It is important to have participants recognize that it is often difficult—if not impossible—to find one ideal solution to controversial real-world issues. Advanced students may critique the chosen criteria and their respective scores and are encouraged to elaborate on where these fell short of their understanding of their respective stakeholder.

5. How might your views on the pipeline development change in light of current economic and environmental circumstances?

This question aims to open discussion on the pipeline project in its current state. While the pipeline was approved by former Prime Minister Steven Harper, Canada's new Liberal government has directed the NEB to dismiss the project application, arguing that the project is likely to cause significant adverse environmental effects that are not in the interest of local affected communities and Indigenous Peoples. Advanced students may raise familiarity over the federal buyout of the CAD 9.3 billion Kinder Morgan Pipeline, which has since been rejected by the Federal Court of Appeal for failure to adequately consult with First Nations. Moreover, students may note that the price of international oil has fallen markedly following the record highs in 2011 to 2014. Given the higher cost of Canadian oil (CAD 60–100 a barrel), lower oil prices have discouraged further exploration and investment. However, students may argue that investments in the oil sands have since doubled in 2017. Finally, in response to international climate concerns, Canada's Liberal government has also proposed a Canadian price on emissions. They may also note that Alberta Premier Rachel Notley has refused to impose a price on carbon without pipeline approval. Canada will face difficulty meeting their climate goals (emissions 30% below 2005 levels) if production of the oil sands continues unabated. Students may present these and other perspectives on how discourse on pipeline development has changed since the NGP recommendation was released.

What Happened

The JRP released its decision on the NGP on December 19, 2013. The report outlined that the project would be approved if a set of 209 conditions was to be met (National Energy Board, 2013). Former Prime Minister Steven Harper approved the project for development (McCarthy, & Chase, 2014). Canada's new Liberal government, however, rejected the pipeline's approval, citing that Indigenous communities were not adequately consulted (Tasker, 2016). This decision was justified by a Supreme Court of Canada decision that confirmed Indigenous Peoples were not granted sufficient consultation as described in the constitution (Bergner, 2016). The pipeline is currently not under construction or operation.

Further Reading

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Tasker, J. P. (2016, November 29). *Trudeau cabinet approves Trans Mountain, Line 3 pipelines, rejects Northern Gateway*. CBC. Retrieved from https://www.cbc.ca/news/politics/federal-cabinet-trudeau-pipeline-decisions-1.3872828

Appendix 1: Scorecard

ROUTE	**R1**	70% of the pipelines will go through previously altered land, which includes areas parallel to old roads, pipelines, pump stations, and high voltage power lines. *69% of the proposed route runs through previously disturbed land. Enbridge argued that only in cases where there is no feasible alternative would undisturbed land be used for construction. Opponents argued that more should be done to use existing corridors through disturbed land for the pipeline route.*
	R2	Switch proposed route to alternative route B (divert north at Fort St James) to avoid National/Provincial Parks and sensitive forests. *The Route B corridor can avoid additional disturbance to sensitive ecological areas by using previously altered land. Enbridge rejected the route, arguing that it involves significant geohazards that could not be mitigated.*
	R3	All pipeline infrastructures that pass through Aboriginal Title land or have Aboriginal Title claims must have Aboriginal approvals. *According to Canada's constitution, the Federal Government must consult with Indigenous Peoples if infrastructure projects influence their treaty rights. The conditions for what constitutes a sufficient consultation is not specified and is contested by project proponents and opponents.*
	R4	The pipeline will not be re-routed around sensitive watersheds. *Opponents argued that more could be done to avoid sensitive watersheds. There are six major watersheds that the pipeline route will cross. Enbridge followed Fisheries and Ocean's Canada's Risk Management Framework to limit disruption to habitat and made adjustments in response to requests from the ministry and Environmental Canada.*
CONSTRUCTION	**C1**	Pipeline laying is done using Horizontal Directional Drilling techniques which tunnel under bodies of water for minimum environmental impact. This approach is more environmentally friendly than open cut crossing, which diverts waterways, excavates river bottoms, lays pipe and backfills causing environmental distress and disturbances. *The adoption of horizontal drilling for all sensitive watershed crossing represents a significant sustainability measure exceeding existing requirements. Enbridge has committed to use alternative crossing techniques in some watersheds with sensitive fisheries, but horizontal directional drilling is not required as long as impacts on habitat are minimized using other strategies (e.g., construction during low risk periods for fisheries).*

	C2	NGP is not responsible for exceeding any international design standards for land and marine oil spill response, prevention and recovery systems for BC's coast-line, ocean, and land to manage and mitigate the risks and costs of heavy-oil pipelines and shipments. *Stakeholders in British Columbia have requested that NGP develop "world lead-ing" response, prevention, and recovery systems that exceed international design standards. These requirements are not required under NEB regulations.*
	C3	NGP must comply with the safety conditions listed on the National Energy Board Act and by the Canadian Standards Association, and it must design safety man-agement, environmental protection, emergency management, third-party cross-ing, public awareness, and integrity programs, which are to be reviewed and au-dited by the NEB. *This is the regulation for safety conditions required by the National Energy Board Act. For any pipeline to be approved, it must meet this requirement*.
	C4	NGP can hire temporary foreign workers but must notify the NEB within 14 days of applying for workers. *This requirement aligns with existing labor regulation in Canada. Proponents sup-port temporary foreign workers to address labor shortages that can delay project completion. Opponents argue that domestic workers could be hired if the project allows time for sufficient recruitment.*
SUSTAINABILITY	**S1**	If old growth forests are destroyed, equal amount of forests elsewhere must be protected. *This measure is not required by Canada's Environmental Assessment Act. The current proposal notes that only a small area (527 hectares) of old growth forest could be disturbed. These areas will be rehabilitated using native seeds and transplanting and will be monitored throughout the project lifespan. The success and timeline of any rehabilitation has been questioned by stakeholders.*
	S2	NEB process be revised to reflect authority of provincial environmental review. *Interprovincial pipelines are under the jurisdiction of the Federal Government's environmental assessment. Some provinces and stakeholders believe pipelines should also be subject to provincial environmental review.*
	S3	NGP must have prepared and documented emergency response, recovery, and rehabilitation plans with dedicated financial resources for all areas of the pipeline

		(marine and land) that include ecosystem services, social and community impacts in surrounding areas. *These plans are required by the National Energy Board Act, but there are no requirements to include "passive use" values, such as ecosystem services, and social and community impacts.*
	S4	Northern Gateway must file for NEB approval of a Pipeline Environmental Effects Monitoring Program for the project's operational life that includes greenhouse gas emission targets. *Enbridge completed a greenhouse gas assessment for construction and marine terminal operations and concluded emissions would be quite low compared to provincial and national emissions. Stakeholders argue that a more comprehensive greenhouse gas emission assessment should be completed, including upstream and downstream emissions.*
POLICY	**P1**	The federal government must designate pipeline corridor lands as reserves that the Yinka Dene define as culturally significant. *Changes in land rights are not required by the National Energy Board Act, but some provincial governments have expanded land rights in exchange for approval of economic development.*
	P2	Governments must commit funds and subsidies to the building of a domestic refinery in BC at tidewater, which will increase job opportunities (i.e., in the Canadian manufacturing sector). *Investment in a domestic refinery has long been considered uneconomic given sufficient refining capacity in the United States. Labor interests argue that a refinery is needed to increase domestic jobs benefiting from oil sands development.*
	P3	An independent Yinka Dene Representative must be on the pipeline environmental effects monitoring board. *Enbridge has committed to environmental monitoring of the pipeline, which is required by the National Energy Board Act. There is no requirement for any external oversight or participation in the board that manages the process.*
ECONOMIC DEVELOPMENT	**E1**	NGP commits to monitoring and fulfillment of employment obligations as outlined in the JRP (e.g., 15% employment of Aboriginal labor). *Enbridge has publicly committed to this number and notes that some of its previ-*

		ous projects had reached 22% employment.
	E2	The federal government is responsible for the creation of an insurance/compensation plan for marine spills that exceeds the current CAD 1.35 billion estimated to be available between private shipping and government programs. *Some stakeholders believe that the insurance fund is insufficient as the costs ignore disproportionate impacts on Indigenous Peoples and sensitive coastal areas. To date, no single oil spill has exceeded the available insurance funds for clean-up.*
	E3	No more than 10% of total development cost should be allocated to close the gaps in skills and training needed to ensure that residents and Indigenous Peoples benefit from employment. *Enbridge has publicly made this commitment. Skill development is a key priority for any economic development involving Indigenous Peoples.*
	E4	Pipeline must ship at least 525,000 barrels per day to ensure that supply is not trapped and to maximize economic benefit of market demand from Asia (total demand 2.2 million bpd). *This is the current design requirement for Enbridge to consider the pipeline economically viable.*
	E5	10% of development budget must be spent for local improvements in infrastructure (e.g., transportation/public works) within 5 km. *The current proposal will support improvements for local infrastructure along the corridor but not within the greater area of 5 km.*

The table below presents the scores for each stakeholder.

	B	**E**	**F**	**N**	**U**	**Y**
R1	0	10	10	10	0	−5
R2	10	−30	30	−10	5	10

R3	−5	−10	5	−10	0	30
R4	0	30	−30	5	−30	−30
C1	5	−10	10	0	10	5
C2	−30	10	−10	30	−5	−30
C3	−5	10	−10	10	−10	−5
C4	10	30	−5	30	−30	−10
S1	10	−5	10	−5	10	10
S2	30	−10	5	−10	5	5
S3	5	−10	10	−5	5	10
S4	0	−10	10	10	10	0
P1	−30	−10	5	−30	5	30
P2	−10	0	−5	−30	30	5
P3	−10	−10	5	−10	10	30
E1	−10	5	−5	5	−5	−10
E2	10	0	10	−10	0	5

E3	5	10	0	10	−10	−30
E4	10	30	−30	30	−5	−10
E5	10	−10	0	−5	10	10

Appendix 2: Stakeholder Salience and Integrative Negotiation

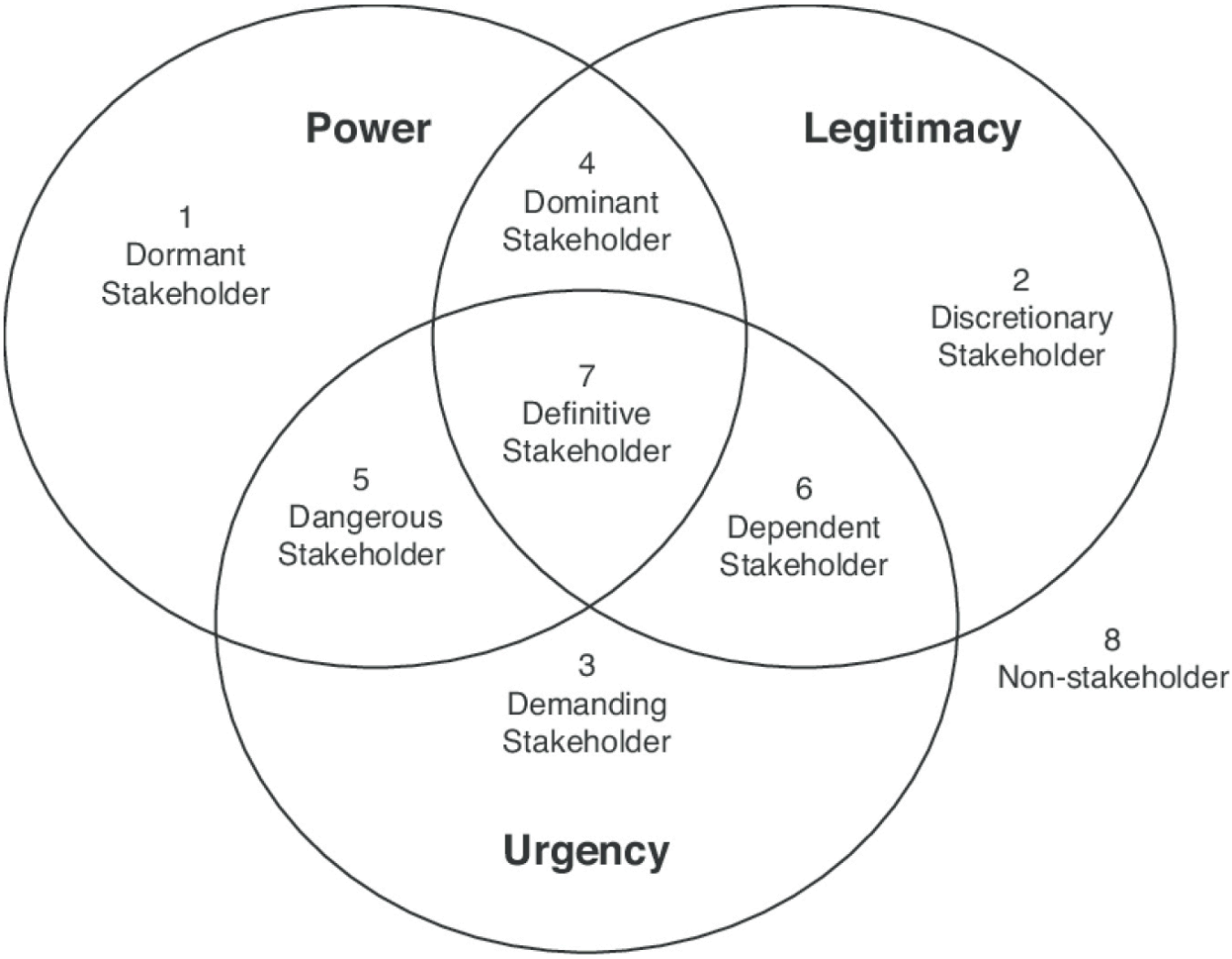

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Table 4.1 Factors to Consider When Choosing Which Strategy to Use

Condition	Distributive	Integrative
Goals	In Fundamental Conflict	Not in Fundamental Conflict
Relationship	Not a High Priority	Is a High Priority
Resources	Fixed or Limited	Not Fixed or Limited
Trust & Cooperation	Is Lacking	Exists

Hames, D. S. (2012). Integrative negotiation: A strategy for creating value. In *Negotiation: Closing deals, settling disputes, and making team decisions* (Chapter 4). Thousand Oaks, CA: SAGE. Retrieved from https://www.sagepub.com/sites/default/files/upm-binaries/42928_4.pdf

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