THE DOMINANT DISCOURSE IN INDIGENOUS CONSULTATIONS: WHEN RULES IMPEDE ENGAGEMENT

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ABSTRACT

In Canada, governments must consult Indigenous communities on resource projects. When a government agency believes in a project's necessity, it has the institutional power to control the argument exchanges and impose a dominant discourse for the project. For example, in determining the evidence availability and allocating the burdens of proof in consultations, rules of dominant discourse often make it easy for a government agency not to engage with opposing Indigenous arguers but rebut their arguments with an Argument Continuity. Argument Continuity is a set of arguments and counterarguments repeatedly produced and reproduced by the same dominant arguer through an adversarial reasoning process to dismiss unfavorable arguments without considering their merits. Argument Continuity is a new strategy of fallacious reasoning contingent upon motivated criticism – a hidden reasoning practice of dominant reasoning discourse. Argument Continuity advances critical discourse analysis by reconstructing the motivated criticism in the sequential development of reasoning goals, practices, and outcomes.

Although Argument Continuity is not specific to Crown-Indigenous relations, the institutional circumstances of Indigenous consultations make the institutionally dominant arguers (the Crown's officials) the most susceptible to expressing motivated criticism towards Indigenous resource development concerns. This dissertation clarifies the contextual circumstances under which the Crown's officials are more likely to produce Argument Continuities in adversarial reasoning exchanges with Indigenous communities. It tests Argument Continuities in two institutionally diverse contexts of consultations over the two controversial resource projects – the Trans Mountain project and the Site C project. The officials have controlled those consultations by imposing authority rules. With the help of the process-tracing method and the logic of increasing returns, I uncover how the authority rules distributed resources (evidence sources) and attached incentives (cost/benefits) to the reasoning exchanges between institutionally unequal arguers – the Crown's officials, industry proponents, Indigenous arguers. The resource-incentive mechanism underpins increasing returns that are self-reinforcing behavioral dynamics generated by power differentials to reinforce the institutional power of those who already control a reasoning context. Having access to more resources (evidence sources), more powerful arguers have more incentives to produce counterarguments reaffirming their priors and rebutting opposing arguments with Argument Continuities. When less powerful opponents are restrained in using certain evidence sources (traditional oral evidence) for building a convincing case for their beliefs, it becomes easier to undermine the plausibility of their beliefs by rendering epistemically diverse arguments as "unconvincing" and rebutting them with Argument Continuities. In unequal reasoning exchanges, Argument Continuity traces the effects of institutional power by connecting argument, counterarguments, and reasoning practices by the more powerful arguers to the resources/incentives given by the rules of reasoning exchanges.

Recognition

I am a non-Indigenous Canadian scholar conducting interpretive analysis of Indigenous consultation reports issued by government officials to describe and explain the reasoning practices employed by these officials in evaluating Indigenous arguments over two controversial resource projects – the Trans Mountain pipeline expansion project (hereinafter TM) and Site C Clean Energy project (hereinafter Site C).

Indigenous arguments are arguments produced by an Indigenous community or a person representing the Indigenous community involved in consultative exchanges over the project[1].

I understand the argument following the theory of argumentation, which defines any argument as a set of premises (evidence/data points) and conclusions (inferences) justifying beliefs that are position statements tested through argument exchanges.

As a part of the Indigenous argument, Indigenous evidence consists of Indigenous Traditional Evidence and other evidence sources used by the Indigenous arguer (Indigenous community, person representing Indigenous community) to justify the Indigenous community's position over the project. Where Indigenous Traditional Evidence appears as a part of the Indigenous argument, I recognize the sole authority of the Indigenous community to interpret and adjudicate the use of this evidence. So, I neither interpret the Indigenous argument nor reconstruct its premises and conclusions in the accepted argumentative form. Instead, I strictly limit my analysis to reconstructing the arguments produced by the government officials in response to Indigenous arguments to trace how the officials evaluate Indigenous arguments.

I focus on accurate reasoning, and motivated criticism as two mutually exclusive strategies government officials apply to evaluate Indigenous arguments. I adjudicate the use of those reasoning strategies by officials from non-Indigenous theoretical and methodological perspectives. However, this fact does not undermine the plausibility of my findings and recommendations for helping Indigenous arguers recognize motivated criticism and resist it in Indigenous consultations. At the same time, government officials can use my findings to improve reasoning practices in reasoning exchanges with Indigenous arguers.

[1] The Crown's duty to consult is owed to Indigenous communities, not Indigenous persons (*Behn v. Moulton Contracting* 2013).

Acknowledgments and personal research experience

In 2018, starting my research on Indigenous consultations over TM, I was sunk in piles of government consultation reports issued by a responsible government agency – the National Energy Board (NEB). Jargonistic sentences have been written in response to Indigenous communities raising concerns about carbon emissions, oil spills, and irreparable damage to the traditional lifestyle. As the court recognized, those concerns were specific, focused, and easy to grasp (Tsleil-Waututh Nation et al. v. Attorney General of Canada et al. 2018: 763), but NEB, instead of considering their substance, carefully analyzing their merits and demerits, just reiterated that it "was not still convinced" and "additional data collection" is required to verify their plausibility (NEB Reconsideration Report 2019: 397, 435, 457).

NEB rejected numerous Indigenous arguments opposing TM by repeating the same phrases in response to outstanding Indigenous concerns supported by new pieces of Indigenous evidence. Were Indigenous communities so incompetent in justifying their concerns? At that stage of my project, I did have just tiny pieces of evidence that were the same worn phrases of the NEB's officials. I wished to turn them into theoretically grounded explanations of why Indigenous arguments could not convince the Crown's officials of the plausibility of Indigenous concerns.

A year later, I have been fortunate to take the "Indigenous Peoples and Public Policy" course with Dr. Ken Coates, professor, and Canada Research Chair in Regional Innovation at the Johnson Shoyama Graduate School of Public Policy. The course challenged an initially wishful thinking of the relations between Indigenous peoples and the Canadian government by introducing different meanings of the categories of governance, knowledge, and sovereignty widely used by governmental officials in formulating, adopting, and implementing Indigenous policies.

In Indigenous policies embodied in governmental reports and regulations, officials offer particular categories of Indigenous capacities and construct specific ways for Indigenous peoples to conceive of and conduct themselves. I learned that any governmental categorization means the explicit recognition of this category as a part of the dominant institutional framework as it often accompanies producing authority rules enforcing categories implementation. However, the Crown's reconciliation with Indigenous peoples is a two-way process of communication that cannot succeed through the lens of imposed governmentality based on state power and institutional hierarchy (Poelzer and Coates 2015). Therefore, for every Canadian policy analyst contributing to reconciliation, critical thinking about the imposed institutional framework of Indigenous categories and capacities becomes vital for conducting critical public policy analysis through the lens of challenging the pre-established categories and concepts of governmentality. I heartily thank Dr. Ken Coates for being my critical-thinking mentor through this course and then my supervisor, influencing

and inspiring my critical analysis of state governmentality in Indigenous consultations over resource projects.

I started my research of the TM consultations by looking for the categories through which NEB determined Indigenous arguers' reasoning capacity in consultative exchanges over TM. In the Indigenous hearings of 2014, NEB categorized Indigenous communities as "interveners". The status of interveners was given to 400 participants of the Indigenous hearings, and numerous government departments were among them. Did this number speak for the NEB's recognition of the cultural sensitivity and distinctiveness of Indigenous "interveners" in Canada? In Canadian legal proceedings, interveners do not possess independent reasoning capacity as they are not a party claiming an independent claim (Muldoon 1989: 3). As the Supreme Court of Canada has recognized, interveners must neither take a position on the outcome of an appeal, whether in written or oral argument, nor challenge findings of fact, introduce new ones, or try to expand the case (SCC, Notices, November 2021). By categorizing epistemically and culturally distinct Indigenous communities as "interveners," the agency implicitly limited the reasoning capacity of Indigenous arguers that, for example, during the same hearings of 2014, were not allowed to present Traditional Oral Evidence – only written arguments and written summaries of oral arguments were acceptable forms of exchange (NEB Reconsideration Report 2019: 617). Likewise, in the second round of Indigenous hearings of 2018, Indigenous arguers were restricted from challenging the reasoning agenda set up by NEB in the List of Issues: they could bring the evidence relevant to this list (NEB Reconsideration Report 2019: 23).

Restrictions on the ability of arguers to challenge the agenda of reasoning and bring new evidence out of the scope of previously submitted ones are the most common ways of keeping argumentative stability in government-led reasoning (Shepsle and Weingast 1981: 511). It is widely recognized among argumentative theorists that requesting evidence of a certain quality is a forceful injunction to undermine criticism by making an opponent provide the requested evidence based on specific rules (Govier 1992; Krabbe and van Laar 2011). In government-led reasoning exchanges, those rules are not pragmatic rules structuring a critical discussion but are mandatory and non-negotiable restrictions that can impede or preserve the reasoning capacity of arguers communicating from unequal institutional positions.

In the second stage of my research, I focused on the rules of Indigenous consultations to trace the power dynamics in reasoning exchanges and understand how those dynamics shape the reasoning capacity of arguers communicating from unequal institutional positions. My first paper, The Trans-Mountain Pipeline Expansion Project: Path Dependency in the Crown's Reasoning, published with the American Review of Canadian Studies, explains the argumentative stability of the Crown's reasoning in

the TM consultations by applying the logic of increasing returns to the institutional context of the NEB's reasoning over the TM-related underwater noise, oil spills, and the disruption of the traditional marine resource use. The paper describes how the interplay of the NEB's institutional dominance, reliance on formal rules, and its own findings produced increasing returns that are self-reinforcing reasoning dynamics. Those dynamics turned reasoning for TM into a sequence of behavioral steps where the evaluation of arguments against TM was contingent upon the production of the arguments confirming the TM necessity. This sequence undermined the decision-making ability of the Crown to value arguments against TM equally with arguments for TM. I have incurred debts to unknown reviewers of this journal for their suggested readings on the relationships of power in government-led reasoning exchanges. Those readings kept me busy for months but eventually let me describe how institutional power perpetuates biases and undermines critical engagement with epistemically diverse actors in unequal argument exchanges.

I also published a chapter describing the role of power in consultative exchanges, The Trans Mountain Pipeline Expansion Project: When Deference Turns into Deterrence, in the book edited by Indigenous scholars L. Forsythe and J. Markides Walking Together in Indigenous Research (New York: Press Inc, 2021). This book was brought about by the efforts of Indigenous and non-Indigenous scholars presenting research on relationships between Indigenous and non-Indigenous societies in Canada. Scholars collectively raised the concern of a lack of reciprocity in those relationships. That motivated me to focus more on power differentials to understand better why the Crown failed to engage reciprocally in the TM consultations.

I learned how power asymmetries could perpetuate asymmetrical treatment of arguments/evidence presented by Indigenous communities. For example, whether Indigenous evidence was consistent with the evidence presented by the TM proponent, NEB applied different reasoning strategies in exchanges with Indigenous communities. Regarding consistency, NEB acknowledged the merits of Indigenous arguments and accepted them. Otherwise, NEB looked for demerits in Indigenous arguments and rebutted them without considering their merits – just restating the arguments/evidence presented by the TM proponent as a response to the Indigenous arguments challenging the TM proponent's assessments. In their formal appearance, those restatements were consistent with NEB Rules of Practice and Procedure 1995 as given "in a timely fashion and with the use of all available information" (Crown Consultation and Accommodation Report 2019: 11). In their substance, they violated the pragma-dialectical nature of argumentation[2] – did not

[2] Pragma-dialectical nature of argumentation consists of two-way reasoning interactivity when opponents exchange with each other with an intention (reasoning goal/pragma) to resolve their disagreement on the equal consideration of all merits and demerits of

represent argumentative moves of resolving a difference in arguments (produced by Indigenous communities and the TM proponent) by comparing their merits and demerits. It is hard to detect the hollow moves an institutionally dominant arguer produces in unequal reasoning exchanges with opponents. Those moves being produced under the authority rules become embedded in the dominant reasoning discourse. So, I needed to reconstruct the whole dominant discourse[3] to see hollow moves in their relations with other elements of a dominant discourse.

In the third stage of my research, I introduced Argument Continuity (AC) – a new category of argumentative discourse analysis to trace the effects of power in reasoning exchanges. My second paper, Argument Continuities in Theory and Practice: Evidence from Canada, published in the Journal of Argumentation in Context (2022, 11:2, 200-242), defines ACs as a set of arguments and counterarguments repeatedly produced and reproduced by the same dominant arguer through an adversarial reasoning process to dismiss unfavorable arguments without considering their merits. ACs have their own life cycle – a chain of reasoning dynamics developing path-dependent and increasing the cost of adopting a certain argument/counterargument over time. They reconstruct the dominant discourse of motivated criticism in the sequential development of reasoning goals, practices (practices of argument production and argument evaluation), and outcomes. The paper applies the informal process tracing to test the likelihood of producing ACs under two rival contingent events – biased (looking for demerits of opposing arguments to reject them) and unbiased (comparing merits and demerits of opposing arguments to reflect upon them) evaluation of opposing arguments. With the help of the doubly decisive test, the paper reveals that motivated criticism (biased argument evaluation) is both a necessary and sufficient event for producing ACs in adversarial reasoning exchanges. The paper tests the life cycle of ACs in the reasoning exchanges over TM-related underwater noise, heritage resource impacts, and diluted bitumen spills. Based on observed evidence, it develops three theoretical propositions of ACs, which can serve as guidelines for researching the disconfirming mode of reasoning in other contexts of public policy reasoning permeated by conflict and power asymmetries.

I wish to acknowledge the generosity of the Editors of the Journal of Argumentation in Context in helping me acquire versatility in the argumentation field and develop a theoretically-fledged concept of AC. I am incredibly thankful to Dr. Christopher W. Tindale, the Director of the Centre for Research in Reasoning, Argumentation, and Rhetoric, for giving encouraging feedback on ACs as a theoretically viable new strategy of fallacious reasoning, which connects the fallacious (hollow) moves to

all arguments articulated by arguers irrespectively on their reasoning position or power status.

[3] Discourse clearly articulates the relationships between text (arguments/counterarguments) and practices of text production/evaluation (Fairclough 1992).

motivated criticism, "meets a gap in current fallacy-theory, where motivated criticism discourse has been overlooked as a source of fallacious responses" (personal correspondence, August 20, 2022).

Reconstructing the dominant discourse of motivated criticism in the Indigenous consultations over TM, ACs reflect the continuous struggle of the disadvantaged arguers to get equal recognition for both merits and demerits of their arguments. In the Editorial with the 2020 Canadian Science Policy Centre Conference, I described ACs as impediments to reciprocity and epistemic vigilance in Indigenous consultations. Later, I developed this proposition in my third paper, Dominant Discourse in Indigenous Consultations: A Comparative Study of the Crown's Reasoning, published in the International Journal on Minority and Group Rights (2023, 30, 1–30). In Indigenous consultations, the Crown is a veto player, naturally predisposed by power asymmetries to determine the depth of Indigenous consultations and make a final decision about the project necessity *(Haida Nation v. British Columbia* 2004: 39). It easily, through imposing authority rules, can produce a dominant discourse favoring a certain outcome in consultative exchanges with Indigenous communities. The paper argues that authority rules often become a source of inequalities in public policy reasoning – distorting the reasoning capacity of arguers communicating from unequal institutional positions by attaching different incentives (cost/benefits) to exchanges of arguers dependently whether they challenge or promote a government agenda of reasoning. Applying the theory of institutional analysis (Ostrom 2011), the paper evolves around answering whether the rules of Indigenous consultations are the destiny for motivated criticism and ACs production. It tests ACs in the two institutionally diverse contexts of Indigenous consultations: under the structure of the rules of the TM consultations and the Site C consultations (as the antidote to the institutional context of the TM consultations). In the Site C consultations, regulatory and hearing stages were designed and conducted based on the rules of the Agreement collectively agreed upon by numerous institutional actors rather than on the rules of a single agency (TM case). The Agreement allowed Indigenous arguers articulate evidence in various forms with the help of diverse procedures contributing to reaching a compromise on some Site C-related Indigenous concerns. The rules of the TM exchanges were designed by NEB solely responsible for conducting regulatory and hearing stages of the TM consultations. Restricting the reasoning capacity to criticize the TM project, the rules of the TM consultations made it more costly for Indigenous arguers to bring evidence inconsistent with the proponents' assessments. As a result, ACs were more likely to be produced to rebut Indigenous concerns under the rules of the TM consultations than under the rules of the Site C exchanges. The paper concludes that reasoning strategies (motivated criticism/accuracy

reasoning[4]) and reasoning outcomes (ACs/compromise) are contingent upon the rules of reasoning exchanges. I have incurred debts to unknown reviewers of this journal for their comments on deepening my understanding of a feedback mechanism between rules and behavior (reasoning practices) that let me describe it in the form of costs of compliance imposed on Indigenous arguers in institutionally unequal reasoning exchanges with the Crown's officials and industry proponents.

Three journals – American Review of Canadian Studies (2021), Journal of Argumentation in Context (2022), and International Journal on Minority and Group Rights (2023) – expanded my dialogue with diverse literature in institutional analysis, political science, cognitive psychology, and public policy argumentation. In this dialogue, my research of Indigenous consultations acquired interdisciplinary features. I put together diverse theoretical perspectives in describing and explaining the restatements produced by officials in consultative exchanges with Indigenous arguers. I believe that any public policy analysis should be interpretive, bringing together diverse perspectives to make policy findings/recommendations more plausible or, in the words of argumentative theorists, the most convincing ones at the time of their production.

In this learning endeavor, conferences were another important venue for testing and improving my research. Since 2019 I have presented my research at twelve conferences: "Advancing Critical Discourse Analysis of Motivated Criticism in Indigenous consultations" (to be presented at the *27 International Political Science Association (IPSA) World Congress of Political Science*, July 15-19, 2023, Buenos Aires, Argentina); "Argument Continuities in Theory and Practice: The Case of Superficial Indigenous Consultations from Cnada" (to be presented at *the 10th Conference of the International Society for the Study of Argumentation (ISSA)*, July 4-7, 2023, at Leiden University, the Netherlands); "Indigenous Consultations: When Rules Make Indigenous Disagreement Costly" (to be presented at *the 80th Midwest Political Science Conference*, April 13-16, 2023, Chicago, USA); "Deliberative Context is not the Whole Story of Deliberative Reasoning: the Site C Case of Disagreement Management from Canada" (presented at *the 94th Annual Southern Association of Political Science Conference*, January 11-14, 2023, Florida, USA), "Argumentative Discourse in Indigenous Consultations: Why Indigenous Arguments do not Convince the Crown" (presented at *the European Consortium for Political Research Joint Sessions of Workshops* 2022, April 19-22, 2022, at the University of Edinburgh, UK), "Indigenous Consultations in Canada: A Comparative Study of the Crown's Reasoning" (presented at the 79th *Midwest Political Science Conference*,

[4] Accuracy reasoning is reasoning by comparing the merits and demerits of all articulated arguments for and against something. Motivated criticism is the directional reasoning for or against something. It is contemplated by looking just for flaws in unfavorable arguments to disregard them.

April 7-10, 2022, Chicago, USA), "When Argumentation Comes to Favour of Deliberation: Two Cases of Disagreement Management in Government-led Consultations" (presented at *the 2022 Southern Association of Political Science*, January 13-15, 2022, San Antonio, USA), "Consultations with Indigenous Peoples of Canada: A Study of the Crown's Reasoning" (presented at the 2021 *Canadian Political Science Association Annual Conference*, June 7-10, 2021), "Pipeline Approvals: Epistemic Success of Consultations with Indigenous Peoples (exemplified by the Trans-Mountain Pipeline Expansion Project)" (presented at *the 8th Annual Research Conference of the Canadian Association of Programs in Public Administration*, May 23-24, 2019, in Montreal, Canada), "The Trans Mountain Case: When Deference Turns into Deterrence" (presented at "Rising Up: *A Graduate Students Conference on Indigenous Knowledge and Research in Indigenous Studies" Conference*, March 15-16, 2019, Winnipeg, Canada), "Consultations with Indigenous Peoples: From Bargaining to Deliberation" (presented at *"Research Conference: "Research for a Better World – A Holistic Approach", February 27-28, 2019,* Saskatoon, Canada). I have been fortunate to have my papers assigned to such Canadian and international discussants as Martin Papillon (Université de Montréal, Canada), Kathy Brock (Queen's University, Canada), Dale Turner (University of Toronto, Canada), Rebecca Reid (the University of Texas at EL Paso, USA), Maria Armoudian (the University of Auckland, New Zealand), Mikkel Berg-Nordlie (Norwegian Institute for Urban and Regional Research, Norway), Mette Marie Staehr Harder (Karlstad University, Sweden), Jo Saglie (Institute for Social Research, Norway), Jill Tao (Incheon National University, South Korea).

I sincerely thank Dr. Jeremy Rayner, a Johnson Shoyama Graduate School of Public Policy professor, for advising on numerous venues, including the European Consortium for Political Research, where a knowledgeable audience helped me improve my papers significantly.

As political philosopher John Mill (1859/1999) said, when our ideas are challenged by others and survive criticism, they become better ideas. Paraphrasing Mill, we cannot improve our ideas without exposure to adversarial interactivity. Such interactivity allows emerging scholars to develop their thinking through presenting, publishing, getting critical reviews, and responding to those critics by updating initial ideas and making them more convincing. My research has been discussed at conferences and reviewed by 15 journals (journals do the greatest job in criticizing as they mostly intend to reject a paper and do not engage with an author in face-to-face communication, while conference participants mostly give positive feedback on papers already accepted for presenting). These interactions pushed me to reconfigure my research substantially and prepare for defense.

Introduction

"To let the federal government be its own judge and jury of its consultation process was flawed in so many ways"
(Syeta'xtn (Chris Lewis) of the Squamish Nation[5])

Research problem. In Canada, the Crown[6] has the legal duty to consult Indigenous peoples if a resource development can potentially adversely affect Indigenous/treaty rights. In cases where Indigenous rights/titles are established (by treaty or court), the Crown is required to seek Indigenous consent over decisions that may impair established rights/titles. Although the Crown has no duty to agree with Indigenous arguers (Haida Nation v. British Columbia 2004: 42) and even can override Indigenous rights/titles "in the circumstances" and proceed with a project without Indigenous consent (*Tsilbgot'in Nation v. British Columbia* 2014: 165), the Crown always looks for Indigenous consent to gain legitimacy on a controversial project (Coates and Favel 2016).

Theoretically, consenting is communicative by nature (Healey 2020). In this sense, it could positively affect any communicative processes, particularly the contemporary reconciliation processes between the Crown and Indigenous peoples (Papillon and Rodon 2017)[7]. However, when the act of consenting is integrated into the one-way decision-making process as its "desirable requirement," which can be overridden by a more powerful actor, it loses its argumentative rationality. It recalls authoritative consent as "one of the oldest principles of Western constitutionalism" (Tully 2001: 24), where the more powerful actor seeks consent from less powerful actors without sharing decision-making authority but making them follow it. Even securing consent over a controversial project does not give an institutionally dominant legitimacy, as the latter comes from communicative influence rather than institutional dominance (He and Warren 2011: 273).

[5] https://www.cbc.ca/news/canada/british-columbia/trans-mountain-pipeline-challenge-bc-first-nations-supreme-court-of-canada-1.5634232

[6] The duty to consult applies only to the Crown – the executive branch of Canada's Federal and provincial governments (*Haida Nation v. British Columbia* 2004, para 53). Officials belonging to federal and provincial levels of jurisdictions that have statutory authority to implement the Crown's duty to consult with Indigenous communities are counted as the "Crown".

[7] From this communicative perspective, collaborative efforts can promote consent-based relationships between the government and Indigenous communities. For example, on June 6, 2022, *the Tahltan Nation and the Province of British Columbia* entered into the first consent-based decision-making agreement negotiated under British Columbia's Declaration on the Rights of Indigenous Peoples Act.

Many scholars describe consent-seeking Indigenous consultations as failing to address the power asymmetries (Rodríguez-Garavito 2011: 266) by securing all participants' equal capacity to influence a final decision by giving diverse reasons/arguments to which decisions are then responsive (Valadez 2010: 60). The reasoning exchanges often resemble an act of persuasion where a more powerful arguer tries to get less powerful arguers to agree, not through undertaking argumentative moves suggesting disagreement expansion and resolution on the merits of all available arguments and evidence (convincement), but rather via imposing a dominant argumentative discourse which makes it easier to confirm favorable arguments/evidence and dismiss unfavorable ones.

Theoretical background. Argumentation is fundamentally about beliefs change (Hahn 2011: 173) through convincement, which is resulted from dealing with "the substance of the argument" (Landemore and Mercier 2012: 920) rather than with an arguer's commitment to confirm what s/he initially believes in. The latter is a consent-seeking act of persuasion that threatens argumentation if it favors arguments brought up into reasoning rather than grown-up from it. Arguers who come to reasoning to learn from others and then, in the process of reasoning exchanges, get others to agree to their arguments by accepting criticism and bringing additional evidence to resolve it, do not violate the pragma-dialectical nature of argumentation and contribute to critical engagement with opponents (van Eemeren 2017). Conversely, arguers who come to the reasoning to get others to consent to their prior beliefs irrespectively what they could learn in reasoning exchanges violate the pragma-dialectical nature of argumentation by getting others to agree. As scholars point out, argumentation brings epistemic outcomes for those entering reasoning without an "initial attempt to persuade" (McBurney, Hichcock and Parsons 2007: 98) but to learn and explore possibilities for collaborative finding "the most convincing argument" (Fishkin 1991; Moshman 2021). This is precisely what argumentative and deliberative theorists suggest in promoting the value of dissent in reasoning interactivity (Mercier and Landemore 2012). To approach the full scope of alternatives, pragmatically-oriented arguers (deliberators) should seek dissent from each other appreciating different sources of evidence and looking for arguments favoring and opposing their prior beliefs.

However, the reality of public policy argumentation is often far from an ideal way of convincing through securing diverse evidence sources to the reasoning for and against a proposed option. Instead, it usually occurs in an institutional setting that more institutionally powerful arguers control. Those settings vary in form – polls, citizen juries, public meetings, forums, consultations – but are usually held by a government that is an institutionally dominant actor, or veto player, retaining the authority of a final argument justifying a decision.

Consultations are a twisting venue of public policy argumentation as they might be used to pursue diverse discourses and reasoning outcomes. Sometimes a government undertakes consultations "to reframe problems to prospect for profitable opportunities" and let non-government participants vent their disagreement; sometimes, consultations compromise conflicting beliefs and identify points where business and diverse values intersect (Aakhus and Bzdak 2015: 193). They can secure the integration of those who disagree at all levels of their organization or exclude them, making it increasingly hard to criticize and challenge what has already been put on the government agenda. Consultations can secure the use of diverse evidence sources or dismiss some knowledge undermining the capacity of arguers to construct a convincing case for their beliefs. Outcomes of consultations vary from getting consent on a decision to changing or even abandoning it (Risse 2000). However, in a case when a government believes in a project's public convenience and necessity and has already stated its support for the project (for example, by purchasing a project), government-led consultations may turn into "authoritative consultations" (He and Warren 2011) whose rationale lies with getting the public to authoritative consent to what government beliefs rather than with engaging with the public over compelling facts and values (Aakhus 2013: 122). These dangers of public policy argumentation are especially consequential in Indigenous consultations on resource projects, which are inherently permeated by belief clashes and power differentials (Dryzek 1997).

In Canada, Indigenous consultations are a unique legal venue for Indigenous communities to articulate their resource development concerns and have those concerns heard and resolved by the Crown honorably in the way of meaningful two-way dialogical engagement (*Tsleil-Waututh Nation et al. v Attorney General of Canada et al.* 2018: 558). That means the Crown's duty to consult cannot be twisted to valving Indigenous concerns without their consideration and reflection. Otherwise, consultations will violate the Crown's obligation to uphold the honor of the Crown (*Haida Nation v. British Columbia* 2004) to be generous and flexible with people who were never conquered and whose identity and knowledge existed long before Canada was established as a state (Poelzer and Coates 2015). Indigenous culture structures Indigenous concerns, which are epistemic by nature and rooted in distinct ways of getting, testing, and translating evidence (Valadez 2010). Opposing a project, Indigenous arguers often produce arguments built upon traditional sources of knowledge and supported by experience-based evidence, which is sometimes hard to quantify and supply following the scientifically preferable technics of data collection.

For this reason, Indigenous evidence is accepted by a project protagonist to a degree to which it is useful in Western environmental government and expertise (Stevenson 1996) and rejected when it does not make a good fit with "the mainstream development discourse" (Davies 2002: 233). Based

on well-developed government mitigation and compensation policies, project protagonists try to persuade Indigenous communities about a project by using a "settler-colonial viewpoint in which development and progress are considered to be beneficial". In contrast, "Indigenous traditions can be refined to points on maps that can be avoided or mitigated with few long-term impacts" (Baker and Westman 2017). Scholars argue that the dominant culture of development and mitigation permeates all venues of Indigenous engagement (Howitt 2006, Alcantara 2013), including Indigenous consultations, where protagonists discover evidence confirming a project's necessity through a governmental agency-led environmental expertise and try to persuade Indigenous communities to accept their evidence through government-led reasoning exchanges.

Research focus and theoretical perspective. The Crown is an institutionally dominant arguer who produces a dominant discourse favoring a certain outcome in consultative exchanges with Indigenous communities: it is a veto player (Tsebelis 2002), naturally predisposed by power asymmetries to determine the depth of Indigenous consultations and makes a final decision about the project necessity (*Haida Nation v. British Columbia* 2004: 39). However, what makes a discourse dominant in the controlled context of reasoning exchanges is not the simple fact of its production by a more institutionally powerful arguer, but a dominant discourse is created through imposing authority rules.

As a product of power, authority rules have a predatory nature (Levi 1981) to maximize and reproduce the institutional power of those who already dominate and control a situation (Mahoney 2000). As a result, they often become a source of inequalities in reasoning exchanges, distorting the reasoning capacity of arguers communicating from unequal institutional positions by attaching different incentives (cost/benefits) to arguers' exchanges dependently whether they agree or disagree with the government agenda of reasoning. Making some evidence easy to bring, rules support the arguers favoring certain beliefs, which can be justified with the help of available evidence (Kunda 1990: 483; Kruglanski 1980). Making some beliefs easy to hold and defend, authority rules favor a certain discourse that is a dominant argumentative discourse.

Holding Indigenous consultations, the Crown structures consultative exchanges by imposing authority rules to which Indigenous arguers must submit. Determining what can be argued (scope rules), who will participate (boundaries rules), which evidence will be brought up by "participants" to support their arguments, and which epistemic procedures will be applied to adjudicate evidence relevance (information processing rules), the Crown's rules became venues for a dominant reasoning discourse. To understand how those venues affect reasoning dynamics – strategies and outcomes – I applied the theory of institutional analysis (Ostrom 1986, 2011). With the help of the resource-incentive mechanism (Pierson 1993), and the process-tracing method (Collier 2011), I

uncovered how the Crown's authority rules distribute resources (evidence sources) in Indigenous consultations and attach different incentives (cost/benefits) to the reasoning exchanges between Indigenous arguers and the officials, pushing them to communicate in a recourse-incentive dependent way.

Research exigency. When the institutionally dominant Crown believes in a project's necessity (for example, by purchasing it) and has the institutional power to impose dominant argumentative discourse for this project, it is more likely to avoid critical engagement with the Indigenous communities opposing this project and rebut their arguments with the repeating tokens of the same counterarguments – without considering their merits. Those responses are fallacious moves in adversarial reasoning exchanges.

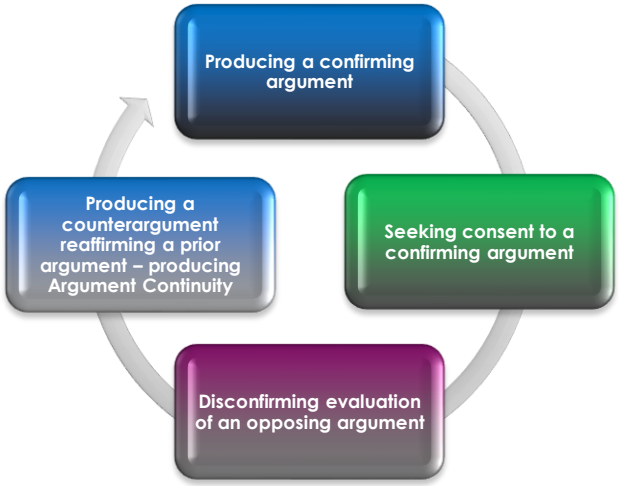
Fallacies are mistakes that violate the pragma-dialectical nature of argumentation, which is to learn and resolve a difference in arguments on their merits (Tindale 2007; van Eemeren 2017). Restatements are maximally poor fallacies, as they are "viciously circular", avoid novelty, and never allow a change in prior beliefs (Hahn 2011: 174). Furthermore, arguers who produce restatements are involved in motivated criticism: they give negative evaluations looking just for demerits in opposing arguments to reject them (Lodge and Charles 2000; Klaczynsk 1997). Unfortunately, motivated criticism is a hidden reasoning practice. Fallacious responses are often insidious and hard to detect (Walton 1999).

Restatements that an institutionally dominant critic produces are especially hard to recognize as fallacious moves. Violating the pragma-dialectical nature of argumentation and impeding novelty, restatements by dominant arguers often do not violate the institutional rules of reasoning exchanges. For example, in the case of Indigenous consultations over the Trans Mountain Pipeline Expansion Project, for the Crown to be responsive to Indigenous communities meant "to commit to always providing *timely* response information *where available*" (Crown Consultation and Accommodation Report 2019: 11, emphasis added). As a result, any responses committed in a timely fashion and using the evidence at hand can be counted for institutionally appropriate responses. However, their argumentative nature can be fallacious when those responses are rebuttals, not reflecting upon the merits and demerits of opposing Indigenous arguments but intending to dismiss them from scratch.

Rebuttals undermine communication at the ground level, as they block argumentative responses "for resolving a difference in opinions on the merits" (van Eemeren 2017). To detect rebuttals the Crown's officials produced through the dominant argumentative discourse in Indigenous consultations, I introduced and applied a new discourse analysis category of Argument Continuity (Pimenova 2022). Argument Continuity (AC) is a set of the same arguments and counterarguments repeatedly produced/reproduced by the same dominant arguer through a consent-

seeking reasoning process to dismiss and rebut opposing arguments/evidence. For example, suppose I find the counterarguments that repeat the previously articulated arguments by the same arguer on the same reasoning issue. In that case, I argue for ACs as a "reasoning behavioral dynamic" that continues through a reasoning process, starting with articulating a directional goal (to confirm something) and ending with "the repeating tokens of the same counterarguments". ACs detect the fallacious nature of this reasoning outcome in its relationships with other elements of a reasoning process by reconstructing the discourse of consent-seeking interactivity in the sequential development of reasoning goals, practices, and outcomes (Figure 1).

Fig 1 "Life cycle (Sequence) of Argument Continuity"



Residing in reproducing the previously stated arguments as a response to new opposing ones, ACs are fallacious patterns of consent-seeking interactivity of the arguers who enter an adversarial reasoning process with a directional goal of confirming their own previously produced arguments and putting more weight on these arguments rather than arguments produced by opponents irrespectively what they could learn in reasoning. Yet, exhibiting one-way reasoning, the arguer neither brings additional (new) evidence nor drops (changes) the previously articulated arguments. Finally, the arguer impedes the dialectical nature of argumentation, blocking the responses that would increase convincement through expanding knowledge flow. As the most likely fallacious outcome of consent-seeking (persuasive) interactivity between opposing arguers with power asymmetries, ACs reveal how one-way reasoning locks a dominant arguer in a self-gratifying circle of reasoning for or against an option.

Research design. Relying on published documents, I tested the life cycle of ACs in two cases of Indigenous consultations over the Trans Mountain Pipeline expansion project (TM)[8] and the BC Hydro's Site C Clean Energy project (Site C)[9]. In both cases, the Crown believed in the necessity of these projects and found them to be in the public interest[10]. Both the TM and Site C proponents were Crown corporations the federal and provincial governments owned accordingly. In both cases, the proponents participated as members of the Crown's consultative teams carrying the Crown's consultative duties towards Indigenous communities.

The Indigenous communities raised strong concerns with the assessments submitted by the proponents. The Crown responded differently to Indigenous disagreement being constrained or not by the prior assessments submitted by the project's proponents as a part of the project's application.

In the TM reasoning, the Crown "consistently attempted to overcome Indigenous disagreement" (Pimenova 2021) to proceed with TM as the TM proponent initially proposed it. As a result, almost all Indigenous evidence inconsistent with the TM proponent's assessments was rejected, and Indigenous arguments were dismissed as unconvincing and rebutted with ACs. In the Site C reasoning, the Crown was not constrained to the position of the Site C proponent and actively engaged with Indigenous communities letting them challenge the Site C proponent's assessments over such epistemically sensitive topics as the current use of lands and resources for fishing, hunting, and trapping practices of Indigenous communities. The Site C reasoning situation of giving a preference to Indigenous Traditional Knowledge in establishing a pre-industrial baseline for conducting Site C cumulative assessments gave a case in point that the institutionally dominant arguer applies diverse reasoning strategies even in the fully controlled contexts of adversarial reasoning exchanges.

[8] TM is twinning the existing pipeline system with about 987 km of new buried pipeline to transport oil to Canada's West Coast. In 2013 an industry proponent (Kinder Morgan Canada) applied to the National Energy Board (NEB) for TM construction. In 2016 it got government approval which the Federal Court of Appeal overturned in 2018. Following the court decision, NEB reconsidered the Indigenous consultations. In 2019 TM received reapproval from the government.

[9] Site C Clean Energy Project is a dam and hydroelectric generating station developed in British Columbia. In 2011 an industry proponent (BC Hydro) applied the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office for Site C construction. It received environmental approval in 2014.

[10] The federal government pushed TM for economic reasons. In contrast, British Columbia's government pushed Site C for political reasons, which revealed its consistency with the long-lasting provincial policy of colonialism and oppression towards Indigenous communities. For example, British Columbia's lawyers justified the reluctance of the government to recognize and protect the land rights of the *Tsilhqot'in* by articulating the argument that the *Tsilhqot'in* was not truly an organized society as its Nation followed a mobile lifestyle (Coates and Newman 2014: 11).

Research scope. The TM and Site C cases differ in the physical characteristics of projects, the nature of affected Indigenous rights/titles (treaty lands v. unceded lands), and the inter-jurisdictional nature of the responsibilities of the Crown's officials conducting regulatory reviews of these projects. However, these differences affect neither the scope nor the purpose of this research, that is, the study of the reasoning strategies applied by the Crown at the regulatory and hearing stages of the Indigenous consultations to detect the Crown's response pattern in Indigenous disagreement. This pattern is the main qualitative criterion upon which I screened the texts of the government consultation reports to reconstruct the reasoning practices employed by the Crown's officials in consultative exchanges with Indigenous communities opposing TM and Site C.

In both cases, the Crown relied on the environmental assessment process to fulfill its duty to consult. The National Energy Board[11] (NEB) conducted the TM environmental assessment process. In the Site C case, Canada and British Columbia agreed to a harmonized environmental assessment process (to avoid jurisdictional duplications) by mandating a Joint Review Panel to conduct it under the Canadian Environmental Assessment Agency and the British Columbia Environmental Assessment Office (JRP). In both cases, NEB and JRP were designated responsible authority to (1) identify the Indigenous communities whose rights could have been adversely impacted; (2) invite Indigenous communities to provide their comments concerning the environmental assessment process; (3) identify measures to address Indigenous concerns raised regarding the environmental assessment process; (4) issue reports containing the recommendation to the final decision-maker about a project's necessity. Although NEB and JRP were strictly speaking not the Crown (since they operated independently of the Crown's ministers) and did not possess approval authority on these projects, there is no difference between them and the Crown in terms of *carrying independent reasoning capacities* to engage with Indigenous arguers: both NEB and JRP had the statutory authority given by the National Energy Board Act (1995) and the Canadian Environmental Assessment Act (2012), to conduct an environmental assessment process and directly engage with Indigenous arguers during this stage such that the final decision-maker (the Governor-in-Council) could rely on their reports in fulfilling the Crown's duty to consult Indigenous communities[12].

In the TM case, the Governor-in-Council entirely relied on NEB's report and approved the project following the NEB's recommendations that TM

[11] NEB is the federal agency regulating proposed interprovincial and international pipeline projects. In 2019, its regulatory tasks were taken up by the Canadian Energy Regulator.

[12] When the Crown relies on agencies/tribunals or other entities formally acting independently from the Crown's ministers but existing "to exercise executive power as authorized by legislatures", any distinction between their actions and the Crown's actions falls away (Clyde River (Hamlet) v. Petroleum Geo-Services Inc. 2017: para 29).

had only a minor-to-moderate impact on the Indigenous communities. As the court recognized, the Crown consultation report simply reiterated the NEB report without engaging with the specific concerns raised by Indigenous communities (*Tsleil-Waututh Nation et al. v. Attorney General of Canada et al.* 2018: 727, 734). Therefore, all reasoning sequences of the Crown for TM have been built upon reasoning moves by NEB described in the NEB report. Likewise, all arguments and counterarguments produced and reproduced by NEB in fulfilling its mandate to assess TM were counted for arguments and counterarguments produced and reproduced by the Crown in discharging its duty to consult over TM, as there are no topical and factual differences between them.

The same logic was applied to reconstruct the Crown's reasoning in the Site C consultations. As a federal decision-maker in the Site C approval process, the Governor-in-Council authorized Site C (in parallel with the provincial approval process) without engaging in reasoning exchanges with Indigenous arguers, requesting additional evidence to clarify the significant adverse effects of Site C stated by JRP in its report[13]. Therefore, all arguments and counterarguments produced by JRP in fulfilling its mandate to conduct Site C's environmental assessment process were counted for arguments and counterarguments produced by the Crown in implementing its duty to consult with Indigenous communities.

Case selection rationale. I test ACs in two institutionally diverse cases of Indigenous consultations and argue for the contingency of ACs upon the rules of consultations (Pimenova 2023). So, the institutional context of consultative exchanges is the primary "explanatory variable" of ACs, and the institutional diversity of contexts is the rationale for case selection.

Applying the logic of "contrast of contexts" (Skocpol and Somers 1980), I contrasted the contexts of the TM and Site C consultations regarding their arguers and arguers' interactivity at the regulatory and hearing stages set up under the different legal regimes. JRP and NEB were legislative tribunals acting independently from the Crown's ministers. However, their responsibilities differed regarding being a sole or joint authority designated for conducting environmental assessments, including the Indigenous hearings. NEB conducted its master's assessments and hearings under its master's procedures. To avoid inter-jurisdictional duplication, JRP coordinated the Site C assessments under the procedures produced by the agencies (Canadian Environmental Assessment

[13] The Site C project was approved by the Governor-in-Council despite the JRP's conclusion that the project would cause significant adverse environmemtal effects. Here we can see some inconsistency in the paper's referring to the Crown as *all* officials implementing the Crown's duty to consult – a temporal separation between the Governor-in-Council and JRP deciding differently on the Site C necessity. But this separation did not affect the particular reasoning outcome of my research interest – the compromise reached by the Crown in reasoning exchanges over the issue of determining the temporal boundaries of the Site C cumulative assessments.

Agency/CEAA, British Columbia Environmental Assessment Office/BCEAO). Table 1 summarizes the main regime differences between the TM and Site C cases.

Table 1. Context of TM consultations v. context of Site C consultations

TM consultations	Site C consultations
Regulatory stage	
Single agency-led (determined by NEB based on the National Energy Board Act and Rules of Practice and Procedure 1995)	Cooperative (determined by the JRP based on the Agreement between the Minister of the Environment, Canada, and the Minister of Environment, British Columbia, the Canadian Environmental Assessment Act 2012, and the British Columbia Environmental Assessment Act 2018). The draft Agreement and the draft terms of reference of JRP were subject to consultations with Indigenous communities.
Who scoped environmental assessments?	
NEB (determined the need for TM; the potential impact of TM on Indigenous interests; the potential environmental and socio-economic effects of TM. Project-related marine shipping was not included within the scope of the NEB's environmental assessment) NEB did not consult with Indigenous communities on	CEAA, BCEAO, Advisory Working Group (at the pre-panel stage where the Environmental Impact Statement Guidelines were being prepared, reviewed, and amended by the Site C proponent after consulting with 29 Indigenous communities and following a recommendation from the Advisory Working Group) JRP (at the panel stage where the Environmental Impact Statement was submitted, reviewed, and amended by the Site C proponent)

the regulatory order	

Who conducted environmental assessments?

NEB	CEAA, BCEAO, Advisory Working Group, Indigenous communities, JRP

Who decided on the sufficiency of environmental assessments to proceed to the hearing stage?

NEB	JRP

Indigenous hearings stage

Separated from the regulatory stage (was organized and conducted after scoping the TM environmental assessments)	Integrated with the regulatory stage (was organized and conducted to scope the environmental assessments of Site C by considering Indigenous concerns)

Who held the Indigenous hearings? Who determined topics, participants, and procedures for Indigenous evidence testing?

NEB (to collect, test evidence, and recommend the TM approval)	JRP (to collect, test evidence, and make the Site C proponent justify Site C in the light of Indigenous concerns)
NEB did not consult with Indigenous communities on the hearing order	JRP consulted with Indigenous communities before finalizing and issuing all hearing procedures

Highlighting the discretionary nature of the TM assessment process (the process was designed and conducted by NEB; Indigenous hearings were separated from it), I considered the context of TM consultations as a context of directional reasoning for TM. Highlighting the cooperative nature of the Site C assessment process (it was determined and conducted by JRP; Indigenous hearings were combined with it), I considered the context of Site C consultations as a context of accurate reasoning over Site C. ***I hypothesized*** that in the context of directional reasoning for TM, the

dominant Crown is more likely to produce ACs than in the context of accuracy reasoning over Site C.

Method. I applied the institutional perspective of path dependence to analyze the path-dependent nature of the Crown's reasoning and clarify whether the institutional context affected the strategy choice. Therefore, from the path dependence perspective, I focused on (1) the institutional context of behavioral dynamics as a structure given by previously established authority rules (Ostrom 1986, 2011); (2) the resource-incentive mechanism connecting the context to behavioral dynamics (Pierson 2000); (3) the increasing returns ordering behavioral dynamics in its sequential development (Pierson 1993) with revealing the contingent event upon which a pattern or, in words of David Collier (2011), a recurring empirical regularity, starts reproducing itself through the sequence (Mahoney 2000).

Traditionally, the path dependence theory reveals and explains the reproduction of the institutional pattern. However, I adapted this theory to study the reproduction of argument patterns, that are ACs, by

- ✓ first, ordering the Crown's reasoning process in the sequential development of reasoning goals, practices, and outcomes to see and trace the pattern of argument reproduction (Pimenova 2021);
- ✓ second, elaborating on the nature, origins, and consequences of the motivated criticism (biased argument evaluation) as a contingent event setting up the mechanism of increasing returns for the argument pattern reproduction (Pimenova 2022);
- ✓ third, explaining the relations between the argument pattern reproduction, the contingent event, and the institutional context of reproduction through the feedback mechanism (Pimenova 2023).

I sequenced the Crown's reasoning process with the help of the informal[14] process tracing method (Collier 2011). The rationale for selecting this method lay in putting together interrelated pieces of evidence and testing their cumulative weight for the necessity and/or sufficiency of the contingent event of motivated criticism for pattern reproducing. I applied four special process-tracing tests: straw-in-the-wind test, hoop test, smoking gun test, and doubly decisive test. The doubly decisive test

[14]The informal process tracing treats a sequence as a primary explanatory tool revealing how a previously collected piece of evidence relates to a subsequently collected piece of evidence forming relations between a juncture, a contingent event, and an outcome of the sequence. The causal determinism of sequential development is defined using necessary and sufficient criteria. Conversely, the Bayesian process tracing uses a sequence, not as an explanatory but as a convenient tool for accumulating diverse evidence pieces, assigning them a proper numerical value, and then summing up those numerical values to test the relations lying outside the sequence: relations of the sequenced pieces with a hypothesis. The causal determinism of these relations is defined by calculating probabilities (priors and likelihoods).

provided both necessary and sufficient criteria for securing a strong endorsement of the determinant role of motivated criticism for producing ACs.

Motivated criticism is a contingent event known as the disconfirming (biased) evaluation of opposing arguments when arguers look for flaws in opposing arguments and give them negative evaluations to generate refutations (Klaczynsk 1997). If an outcome of a sequence can be traced back to its contingent event, the sequence should be considered path-dependent (Mahoney 2000). Tracing ACs back to motivated criticism, I proved the path-dependent nature of the sequence of AC in which the contingent event has set the mechanism of increasing returns.

Increasing returns are self-reinforcing behavioral dynamics generated by power differentials (Mahoney 2000), which are a source of authority rules (Ostrom 1986). Authority rules have a predatory nature (Levi 1981) to reproduce the institutional power of those who already dominate and control a situation. Authority rules set up the mechanism of increasing returns for argument pattern reproduction. I applied the mechanism of resources and incentives to understand how authority rules underpin increasing returns making an arguer repeat the same arguments as counterarguments (produce ACs) through the reasoning process.

Rules set up behavioral constraints and affordances by distributing resources (evidence sources) and attaching different incentives (cost/benefits) to the reasoning exchanges. When costs/benefits are traced back to the use of resources, institutionalists explain the effect of rules on actors' behavior through the resource incentive or, in their words, a feedback mechanism (Pierson 1993; Hacker 2004). Employing these lenses, I described how the rules of consultations distribute evidence sources between the officials, industry proponents, and Indigenous arguers and shape their reasoning interactivity by making it more or less costly to use certain evidence sources for challenging dominant beliefs (Pimenova 2023). When a dominant arguer has access to more resources (evidence sources) and more incentives for reaffirming priors, it becomes easier to produce negative evaluations of opposing arguments exhibiting motivated criticism toward less powerful arguers. Likewise, when less powerful opponents are restrained in using certain evidence sources (e.g., traditional oral evidence) for building a convincing case for their beliefs, it becomes easier to undermine the plausibility of their beliefs by rendering epistemically diverse arguments/evidence as "unconvincing" and rebutting them with ACs. AC traces the effects of institutional power by connecting arguments, counterarguments, and reasoning practices by the more powerful arguers to the resources/incentives given them by the distorted/controlled reasoning context.

Qualitative data collection and argument analysis. In interpretive research, public policy can be understood as a textual intervention into practice that is actual behavioral dynamics (Ball 1993: 12). Public policy

is "important, not the least because it consists of texts which are acted on" (Beilharz 1987: 394). So, to me, as a policy analyst primarily trained in jurisprudence (where legal texts are attributed the primary role in adjudicating causality through abductive reasoning[15]), the most informative grasp of officials' behavioral dynamics comes from studying *texts produced by these officials*. This perspective on public policy (as an official text) motivated me to look into Indigenous consultation reports produced by the Crown's officials implementing the Crown's duty to consult: the 2019 NEB Reconsideration Report on TM and the 2014 JRP report on Site C.

Those reports written by the agencies/tribunals register the reasoning practices of those agencies in the form of written arguments and counterarguments produced by the NEB and JRP's officials at the regulatory and hearing stages of the TM and Site C consultations.

The arguments and counterarguments are "windows" upon which I looked at the officials' behavioral dynamics employed to deal with outstanding (unresolved through regulatory and hearings stages) Indigenous concerns. To have a clear vision through those windows, I turned the arguments and counterarguments produced over these concerns into structured data by reconstructing their premises and conclusions using the standard argumentation scheme. Figure 2 exemplifies such reconstruction on the issue of TM-related underwater noise.

Fig 2 "The schemes of the argument and counterargument produced by NEB on the issue of the TM-related underwater noise"

Argument by NEB (regulatory stage, 2014)

Premise 1: There is a lack of Canadian standards and limitations in data

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Premise 2: The exact nature of the effect of underwater noise produced by Project-related marine vessels on marine fish is uncertain

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Conclusion: NEB was not convinced that these short-term effects of underwater noise produced by Project-related marine vessels would translate into larger, more substantial impacts

Counterargument by NEB (hearing stage, 2018)

Premise 1: Potential effects on marine fish and fish habitat from Project-related marine shipping are likely to be low risk

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Premise 2: There is no direct evidence of mortality or unrecoverable injury to salmon from shipping noise

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Premise 3: Marine shipping is not listed among thereat by COSEWIC assessment

---

Conclusion: NEB was not convinced that these short-term effects of underwater noise produced by Project-related marine vessels would translate into larger, more substantial impacts

[15] While in public policy decision-makers primarily rely upon inductive reasoning.

Second, with the help of the theory of premises acceptability (Blair and Johnson 1987), I evaluated the argument/counterargument's premises in their connection to a conclusion. A cogent and argumentatively valid argument should have premises relevant to its conclusion. To contribute to critical discussion and, for this reason, to be accepted, premises should give enough evidence to "squeeze" the conclusion which would be relevant to them; otherwise, "the arguer's task [deal with all known objections] has not been completed" (Blair and Johnson 1987: 54), and arguments/counterarguments will be counted for fallacious[16]. As Figure 2 demonstrates, the argument is incomplete; it has two premises, none of which can be accepted for the good reason that "its content is indeterminate" (Govier 1992: 400). Both premises are irrelevant to the conclusion and bring no independent reasons to believe in a conclusion. The same lack of relevance is observed in the structure of the counterargument.

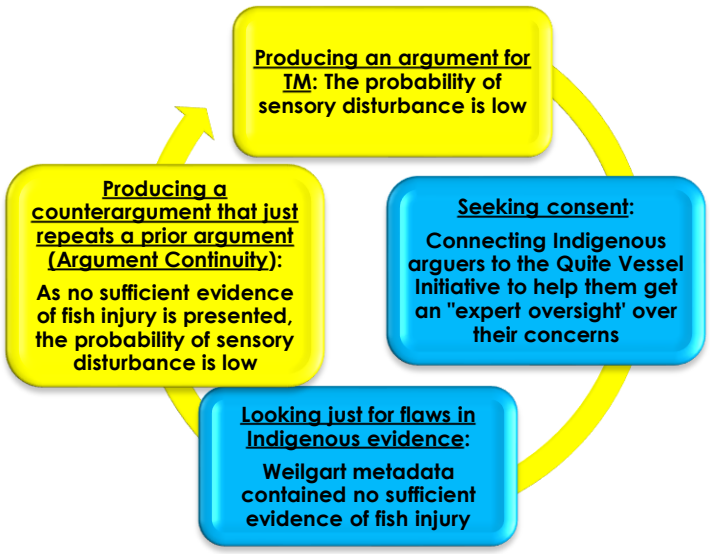
The argument of 2014 and the counterargument of 2019 have irrelevant premises and conclusions that "go beyond" their premises state. Moreover, those premises and conclusions repeat each other, making both the argument and the counterargument argumentatively unacceptable. Observing this persistent lack of relevance in the NEB's reasoning, I argue for the circular nature of the argument and counterargument produced by NEB on the issue of underwater noise. In their relationships, the argument and counterargument revealing a patterned lack of relevance of premises to conclusions constitute a fallacious response pattern to outstanding Indigenous concerns through regulatory and hearing stages of the reasoning exchanges. This fallacious response pattern is the decisive evidence that governs the disconfirming evaluation of opposing arguments – motivated criticism in adversarial exchanges (Pimenova 2022: 209, 219-220).

AC connects fallacious response patterns to motivated criticism by revealing consent-seeking interactivity in the reasoning practices – confirming argument production and disconfirming argument evaluation. Those practices are biased reasoning dynamics lying behind the text of arguments and counterarguments, repeating each others' premises and conclusions over time on the same reasoning issue. The repetitiveness of text-linguistic properties reflects the circular nature of reasoning dynamics. Articulating these relations between text and the practices of text (argument/counterargument) production, ACs reconstruct the fallacious discourse of motivated criticism. Figure 3 gives an example of a life cycle of AC produced by NEB over TM-related underwater noise in a

[16] A lack of relevance of premises to conclusions (internal relevance) is the criterion for identifying fallacies in adversarial reasoning exchanges (Tindale 2007: 23).

sequential development of NEB's reasoning dynamics/practices (blue) and reasoning outcomes/statics (yellow).

Fig 3 "Life cycle of Argument Continuity on the issue of TM-related underwater noise"



Research contribution. In the first paper, I explicated the specific uses of path dependency theory by applying it to sequencing the motivated criticism by the institutionally dominant Crown in the context of Indigenous consultations (Pimenova 2021). In the second paper, I connected the motivated criticism to fallacies production by introducing the concept of AC (Pimenova 2022). Finally, in the third paper, I revealed how the rules of reasoning exchanges perpetuate ACs by an institutionally dominant Crown in the context of Indigenous consultations (Pimenova 2023).

There is still no research on reconstructing the dominant discourse of motivated criticism in Indigenous consultations. AC addresses this gap connecting the well-noticed worn phrases (the repeating tokens of the same arguments and counterarguments) to the hidden reasoning practices of motivated criticism. In the theory of fallacies, motivated criticism has been overlooked as a source of fallacious responses. ACs meet this gap and reveal motivated criticism by reconstructing the fallacious discourse in the sequential development of the directional reasoning goals, biased practices of argument evaluations, and fallacious reasoning outcomes (Figure 3).

ACs are not specific to the Crown-Indigenous relationships. However, this fact does not undermine ACs' usefulness in studying the dominant discourse of motivated criticism in any context of public policy reasoning permeated by power differentials. ACs are a specific tool for tracing the

effects of institutional power in reasoning interactivity by sequencing the reasoning moves of dominant arguers to make it obvious how dominant arguers respond to disagreement from less powerful arguers. This knowledge can tremendously benefit Indigenous arguers in recognizing and resisting the fallacious moves by the Crown's officials over outstanding Indigenous concerns. The prediction and early detection of ACs will increase the negotiation power of Indigenous arguers and improve government justification procedures in public policy argumentation.

Research agenda. In my Ph.D. project, I manually built six sequences of ACs reconstructing the fallacious discourse of motivated criticism over the outstanding Indigenous concerns about TM-related (1) underwater noise, (2) disruption of traditional marine resource use, (3) oil spills, (4) impacts to archaeological and cultural heritage sites (5) diluted bitumen spills, (6) adverse effects on marine commercial, recreational and tourism use. I learned that manual discourse reconstruction is time-consuming and does not help detect ACs in unstructured data of government consultation reports. My next step is automatically recognizing and predicting ACs while feeding the algorithm with previously unseen data from reports. I will write the supervised machine learning algorithm and teach it on the annotated data to predict ACs on unlabeled data. There is still no research on the automated detection of the fallacious discourse of motivated criticism in Indigenous consultations. The project will open a new line of inquiry in fallacies appraisal with the help of artificial intelligence algorithms.

Conclusion: findings and recommendations

Resource projects allow Indigenous peoples to be engaged in the Canadian economy and benefit from resource management (Coates and Holroyd 2019: 269). On the other hand, Indigenous communities sometimes risk having their traditional life of style disrupted by the resource project. In these cases, they express resource development concerns through the venue of Indigenous consultations.

When Indigenous people disagree with the project, their concerns are primarily epistemic by their nature, as they are often rooted in distinct ways of getting, testing, and translating Knowledge (Valadez 2010). Furthermore, Indigenous culture structures Indigenous disagreement, so in such cases, Indigenous concerns are epistemically distinctive and should be treated without compromising Indigenous identity and knowledge.

Indigenous consultations over resource projects could be one of the institutional venues for engaging Indigenous communities in the dominant resource development discourse in an epistemically beneficial way, accommodating the epistemic strength and diversity of Indigenous arguments while evaluating the adverse effects of project development. To this end, the Crown's officials need to hold Indigenous consultations through pragma-dialectical reasoning exchanges in which all arguers, irrespectively their positions and epistemic, would have their arguments/evidence considered on their merits. I call those consultations argumentative and argue that argumentative consultations are possible policy options even under structured power imbalances.

Argumentative theorists caution against the persistence of power in argumentative reasoning and call scholars to single out institutional power to make it visible and control its effects (Andersen and Hansen 2007: 553). I traced the effects of the Crown's power in the two institutionally diverse cases of Indigenous consultations by describing how rules, determining the evidence available, and allocating the burdens of proof made it more or less hard for a dominant arguer to rebut Indigenous arguments with ACs. I argue that rules can control motivated criticism in unequal reasoning exchanges.

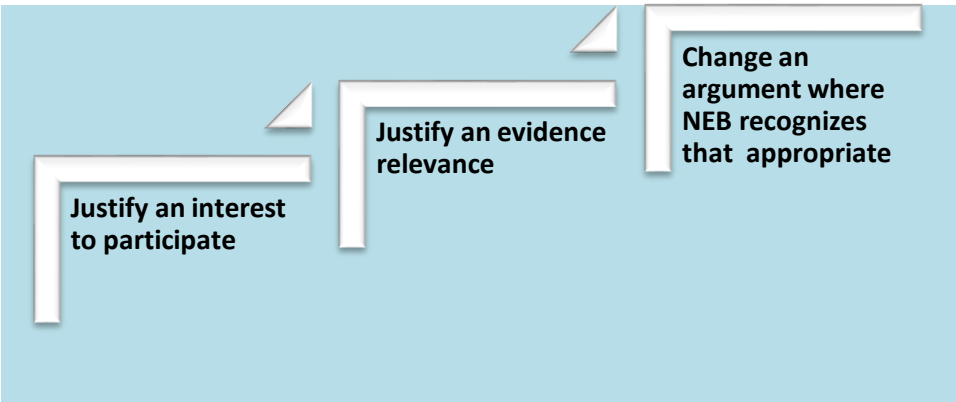
1. Rules of the TM consultations

NEB had independent discretion in designing rules for Indigenous hearings. Rules of Practice and Procedure (1995) let NEB decide upon the participant's status, issues to be considered, evidence to be admitted, and forms in which exchanges should be conducted (written or oral, cross-examinations, written interrogatories). A person interested in participating in NEB's hearing should justify an interest by proving the relevance of the evidence they want to bring. NEB could strike out any document, stay the application (whether or not it has been set down for a hearing), or stay the

proceedings until its "satisfaction that the Rules have been complied with". Figure 4 offers an illustration of some standard costs attached by Rules to an applicant for NEB's hearings.

Fig 4 "Costs (behavioral steps) of an applicant, including the Indigenous applicant, to NEB's proceedings"

Source: NEB Rules of Practice and Procedure 1995



If a person was accepted for participation in NEB's hearings, he became a party in a proceeding. However, NEB's discretion still constrains the possibilities for challenging an agenda of a proceeding. It is only to NEB to formulate issues to be discussed at hearings. At any time, NEB could direct parties in amending their applications, using certain documents, admitting certain facts in the justification of their positions (in applications), exchanging documents among parties, and any other matters that "could aid in the conduct and disposition of the proceeding" (sec. 26 of Rules).

Under these Rules, NEB, for example, in the first round of Indigenous hearings over TM (2014), did not allow Indigenous communities to present oral evidence – only written arguments and written summaries of oral arguments were acceptable forms of exchanges (NEB Reconsideration Report 2019: 617). Likewise, in the reconsideration round of Indigenous hearings of 2018, Indigenous communities were restricted from challenging the reasoning agenda set up by NEB in the Reconsideration List of Issues: they could bring "just new evidence" that would be relevant to the List of Issues (NEB Reconsideration Report 2019: 23). Nobody was allowed to re-file or retest evidence on the record of the previous hearings of 2014.

Restrictions on the ability of arguers to challenge the agenda of reasoning and bring evidence out of the scope of previously accepted ones are the most common ways of keeping argumentative stability in government-led reasoning (Shepsle and Weingast 1981: 511). In TM exchanges, those restrictions were costs of justifications that Indigenous participants carried to meet the NEB's Requirements and Rules to participate in NEB's procedures (Figure 4). The NEB's Rules seized disagreement space

making it hard to bring the evidence challenging the NEB's agenda of hearings and putting the burden of proving the evidence relevance on those applying to participate in hearings – Indigenous communities.

Controlling a reasoning agenda and evidence flow in hearings, NEB, even acting under the legislative authority (NEB Act of 1995), explicitly restricted the Crown's capacity to rely upon diverse evidence sources rather than evidence initially submitted as a part of the TM application. As NEB institutionally dominated the regulatory and hearing stages, the final decision-maker gave respectful attention to the NEB's assessments. Governor-in-Council did not challenge even when NEB erred in law by excluding marine shipping activities from the TM environmental scoping. Granting NEB enormous discretion in controlling the scope of Indigenous engagement through the determination of the conditions under which Indigenous arguers were given the status of "interveners" in Indigenous hearings, the types and content of arguments/evidence which Indigenous arguers could submit, the type of procedures according to which their submissions "could be adequately tested" (Rules of Practice and Procedure), rules made it easy for NEB to avoid critical engagement with Indigenous arguers and rebut Indigenous arguments with ACs.

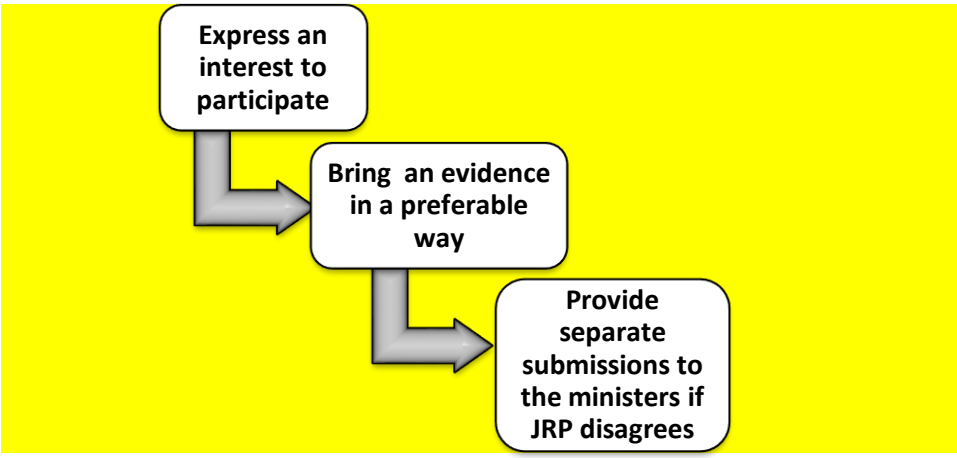
2. The rules of Site C consultations

In the Site C case, no single agency had discretion in structuring Indigenous participation in hearings. The inter-jurisdictional Agreement[17] was negotiated and issued to establish JRP for coordinating hearings integrated with the environmental assessment process. By Agreement, the status of Indigenous arguers was determined as "Aboriginal groups" and "Aboriginal persons" (not interveners). They could bring traditional evidence in their preferable (written or oral, individual or collective) way. No participants were obliged to justify in advance the relevance of evidence they wanted to bring to JRP's consideration. To participate in JRP's hearings, they just needed to state an interest in a project and give a summary of the evidence they wished to provide. Indigenous communities had no duty to satisfy JRP to have their evidence considered. If Indigenous communities disagreed with the JRP's assessments, they could provide separate submissions to the ministers without getting approval from JRP (para 9.4 Agreement). Figure 5 illustrates some standard costs attached by Agreement to an applicant for JRP's hearings.

[17] Agreement to Conduct a Cooperative Environmental Assessment, Including the Establishment of a Joint Review Panel, of the Site C Clean Energy Project Between the Minister of the Environment, Canada and the Minister of Environment, British Columbia (2014).

Fig 5 "Costs (behavioral steps) of an Indigenous applicant to JRP's proceedings"

Source: Agreement 2014



The low costs of Indigenous participation in hearings made it possible for JRP to rely upon diverse evidence sources. For this reason, the Site C proponent's application was not a dominant source of information. For example, in assessing the choice of a baseline in determining the cumulative effects of Site C, JRP was not constrained to the information initially distributed by BC Hydro, favoring post-industrial cumulative assessments. Instead, JRP accepted numerous testimonies from Indigenous communities about the effects of the previously built Bennett and Peace Canyon Dams. Based on Indigenous evidence in photos, maps, and oral testimonies, JRP recognized the necessity of including the Bennett and Peace Canyon Dams into the temporal boundaries of the Site C cumulative assessments. As a compromise, the Site C proponent was directed to change Site C's Environmental Impact Statement (JRP report 2014: 259-262). Rules of the Agreement were constitutive of accuracy reasoning over Site C's cumulative effects, as the costs of bringing opposing evidence were low (Figure 5), making it least likely to impede the Indigenous arguers from building a convincing case for their beliefs.

3. Policy recommendations

The Crown's reasoning over the cumulative effects of Site C empirically demonstrated that institutional power could have different argumentative facets, and argumentative consultations are a possible policy option for engaging Indigenous communities in the resource development discourse. The Crown's officials can bring institutional power into service of argumentative consultations by securing at least four steps.

Firstly, no single agency should be responsible for "mastering" consultative exchanges. In a controversy, the agency's discretion is most likely to lead to the bolstering effect in exchanges when, mounting favorable evidence, a dominant agency becomes increasingly convinced of its beliefs' correctness over time. More grounded beliefs become the subject of more fierce defending (Taber and Lodge 2006). To disregard inconsistent evidence, the agency is more likely to avoid critical engagement with opponents and respond fallaciously. Otherwise, a reasoning process led by a multistakeholder panel rather than a single agency is more likely to facilitate diverse reasoning exchanges and revising initial assessments[18].

Secondly, when the Crown relies on the environmental assessment process to conduct Indigenous consultations, Indigenous hearings should be integrated[19] with the project's assessment stage to enable officials to test the proponent's assessments (submitted as a part of the project's application) with the help of Indigenous evidence. Suppose Indigenous hearings follow the environmental assessment stage (as in the TM case). In that case, the proponent's evidence is commonly used to test Indigenous evidence, and any inconsistencies are justified as a violation of an agency's regulatory requirements (according to which the proponent has been obliged to submit its application). As a result, no conditions exist for preserving epistemic diversity in consultative exchanges, as no disagreement space is provided for those participating in the disjunctive hearings. Figure 6 schematizes the directional (one-way) and accuracy (two-way) reasoning models of Indigenous consultations consistent with the separated and integrated models of Indigenous hearings.

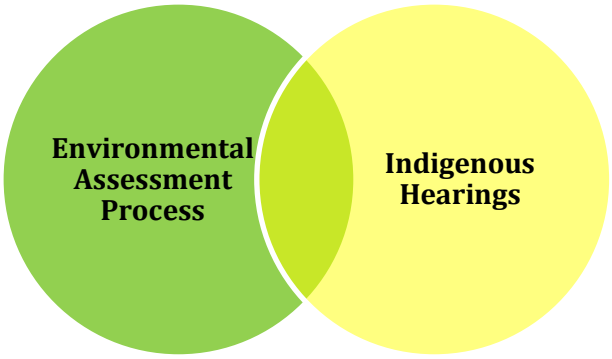
Fig 6 "Separated v. integrated Indigenous hearings"

6.1. Separated hearings with no overlapping (disagreement) space in the directional reasoning for the project

[18] In the NEB-led hearings, Indigenous communities were allowed to comment just on a final report by an agency while in the JRP-led hearings, Indigenous communities were invited to comment on a panel's report, panal's terms of references, a proponent's envirobnetal impact statement and its guidelines (at the pre-panel stage).

[19] It is essential to make a difference between integrating Indigenous hearings with the environmental assessment process (what I argue for) and internalizing Indigenous hearings into the environmental assessment process (what I argue against). The latter would mean narrowing the scope of the Crown's duty to consult just to cases where environmental assessments are required.

6.2. Integrated hearings with overlapping (disagreement) space in the accuracy reasoning over the project



Thirdly, the rules of Indigenous hearings should not diminish the reasoning capacity of Indigenous arguers by categorizing them as "interveners". Indigenous arguers represent Indigenous communities carrying the independent beliefs and arguments in reasoning exchanges over resource projects. Therefore, the status of interlocutors is more relevant to Indigenous arguers than the interveners' status.

Ontologically, those two terms – interlocutor and intervener – mean the different reasoning capacities of people involved in the reasoning process. Interlocutors are parties/partners involved in a discussion in their capacity to express independent claims and complete argumentative moves for a community or a group having an independent interest in defending its position (beliefs). Otherwise, interveners do not possess independent reasoning capacity as they are not a party claiming an independent claim (Muldoon 1989: 3). In the Supreme Court of Canada's motions, interveners are experts who are allowed to "shed light" on issues but "not permitted to raise new issues" (Rules of the Supreme Court of Canada, S.O.R./2002-156, r. 59(3)). Interveners must neither take a position on the outcome of an appeal, whether in written or oral argument nor challenge findings of fact, introduce new ones, or try to expand the case (SCC, Notices, November 2021). Granting epistemically and culturally distinct Indigenous communities the status of "interveners" in the Indigenous hearings designed to hear and address Indigenous concerns, NEB explicitly limited the reasoning capacity of Indigenous communities to "submitting experts" whose submissions could be easily rejected as being irrelevant and going beyond the hearing scope established by NEB[20].

[20] SCC laments the absence of meaningful engagement with Indigenous communities but leaves unchallenged the category of "intervener" that NEB used following the court motions.

Fourthly. The rules of Indigenous hearings should let Indigenous arguers bring their arguments in the easiest and most available way. For example, in historical hearings on Mackenzie Valley Pipeline[21], Indigenous communities were allowed to articulate their traditional evidence in a way appropriate to them rather than convenient to a responsible agency: "… the native people had substantial control over the timing, the setting, the procedure and the conduct of the Inquiry's community hearings. The Inquiry did not seek to impose any preconceived notion of how the hearings should be conducted. Its proceedings were not based upon a model or an agenda… All members of each community were free to question the representatives of the pipeline companies. … The native people had an opportunity to express themselves in their own languages and in their own way" (Berger 1977).

Rules bring stability to human interactions by ordering exchanges and outcomes. Too much stability threatens argumentation, an epistemic practice of exchanging diverse arguments to approach an indeterminate reasoning outcome. Indigenous hearings are a form of communication with epistemically diverse Indigenous arguers to articulate their concerns. The rules of Indigenous hearings are communication rules that should preserve the argumentative nature of hearings. No space for convincing is left when rules prescribe each step in hearings. In such a case, hearings will lose their argumentative nature. The epistemic success of Berger's hearings was related to the administrative independence from NEB's dense regulations structuring, which, when, and how arguments can be exchanged.

In reasoning exchanges between arguers with power differentials, disagreement should not be too costly for those who disagree and must submit. The burdens of bringing new evidence in response to opposing arguments are costs that shall remain with a producer of a controversial policy option (an industry proponent) rather than those who disagree (McBurney, Hitchcock, Parsons 2007: 116). Van Eemeren and Grootendorst (2016) have specified a critical discussion rule: whoever advances a standpoint is obliged to defend it if asked to do so; otherwise, a proponent will be immunized against criticism. To inspire learning and mutual criticism, the rules of Indigenous consultations must put burdens of bringing "new/additional evidence" for and against a controversial project on its proponent until Indigenous disagreement disappears.

Indigenous disagreement does not mean the failure of the Crown's consultations but its epistemic feature. However, when rules of Indigenous consultations impede taking advantage of the epistemic diversity of Indigenous arguers, such rules lead to epistemic failure in Indigenous consultations. Canada needs rules to secure the Crown's ability to gather and reconcile diverse evidence sources to test industry proponents'

[21] Berger Inquiry on the Mackenzie Valley Pipeline, generally considered the gold standard for hearings.

assessments against them. Do not frame Indigenous concerns as obstacles to the resources development discourse. They are incentives to improve it if the rules of consultative exchanges do not make it too costly.

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