

THE POLITICS OF TEK IN OIL AND GAS: KNOWLEDGE (RE)CONSTRUCTIONS
AND ASSIMILATION

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ABSTRACT

Indigenous Knowledge, now known by some as Traditional Ecological Knowledge (TEK), has informed Indigenous ways of life since time immemorial. Relatively recently, it has become of interest to dominant, settler society in Canada. The way in which I situate this research aims to examine TEK studies' institutional processes, lived experiences of those processes, and finally how and why TEK is being collected and used for natural resource management in recognizing Indigenous Knowledge and reconciling a hegemonic relationship. The importance of this research is evident not only due to an increasing interest in TEK by dominant society, but also in terms of what it represents to Indigenous peoples versus how it is being defined, collected, and constructed by settler colonial state institutions to facilitate capital gain through resource exploitation.

Through a socio-historical and contemporary analysis of colonization in Western Canada and the role oil and gas plays in the culture of liberal capitalism and knowledge development, TEK can be unpacked and understood in the context of settler colonial relations and structures. The methodologies employed for this research include a review of relevant literature as well as interviews with individuals who have experience contributing and collecting TEK for oil and gas development. This research suggests that TEK is inadequately understood and collected by industry and state institutions, used to appease regulatory requirements, avoiding legal battles with Indigenous communities through what industry and government understands as 'regulatory certainty'. In this way, the state has failed in attempts to recognize Indigenous Knowledge systems and continues to oppress, manipulate, and exploit Indigenous peoples and lands.

FOREWORD

This research began with an interest in the environmental impacts Alberta's oilsands development is having on Indigenous communities in the region. As I began to broaden my perspectives on the environmental issues impacting communities, through various courses in Environmental Studies, I came to realize that the issues that needed to be tackled were largely at the whim of political decisions and economic incentives. In addition to this, I came to a deeper understanding of settler colonization, Indigenous ways of knowing, and Indigenous theoretical perspectives through course work and field experience.

As my Area of Concentration, Resource Policy and Indigenous Justice in Canada, is relatively broad it was vital for me to narrow this research to something that would inform my learning objectives, add to the growing dialogue surrounding resource development and Indigenous justice, and allow for a more in depth analysis as opposed to superficial speculation. My experience working within the political realm of industry, collecting Traditional Ecological Knowledge (TEK) from Indigenous communities impacted by development led me to focus on the politics dictating the collection and use of TEK in resource management. This research allowed an in depth synthesis of the topic and its relation to larger issues linked to the foundations that maintain settler colonial social structures. In utilizing a critical stance on the topic, I was challenged on a personal level, questioning my own position in perpetuating oppressive colonial structures potentially reproduced through academia. I remain grateful for the opportunity to reflect on both a personal and academic level through course work, experience, and this research.

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TABLE OF CONTENTS

Introduction	1
Chapter 1: What is Traditional Ecological Knowledge and why is it important?.....	5
<i>Brief background on Indigenous Knowledge use in Western Society</i>	6
<i>What underlies the term “TEK”?</i>	8
<i>How TEK is understood: Western, regulatory, non-Indigenous and Indigenous perspectives</i>	10
Chapter 2: Methods and Ethics.....	15
<i>Ethical principles and methods in Indigenous research</i>	16
<i>Institutional ethnographic methods and interviewing</i>	19
<i>Text analysis</i>	23
Chapter 3: A brief history of colonization, the culture of liberal capitalism, knowledge and power.....	25
<i>Brief History of Colonization in Western Canada</i>	27
<i>Culture of liberal capitalism</i>	32
<i>Knowledge and power</i>	39
Chapter 4: Politics of TEK, recognition and reconciliation.....	43
<i>Recognition and reconciliation: A settler colonial state objective</i>	45
<i>Politics of TEK in Oil and Gas Development</i>	48
<i>Shell’s Jackpine Mine Expansion Project: A Case Study</i>	57
Conclusions	65
<i>On the gifts of recognition and reconciliation: “It’s another infested blanket covered in cash this time.”</i>	65
<i>Mechanisms to move forward: Positive refusal through pressure and resistance</i>	69
<i>Closing thoughts and recommendations</i>	73
Bibliography.....	76

LIST OF ACRONYMS

ACFN – Athabasca Chipewyan First Nation
AESRD – Alberta Environment and Sustainable Resource Department
ATK – Aboriginal Traditional Knowledge
BAU – Business as Usual
CEAA 2012 – Canadian Environmental Assessment Act, 2012
EA – Environmental Assessment
EIA – Environmental Impact Assessment
FMFN – Fort McKay First Nation
FMMFN – Fort McMurray First Nation
FNPOA – First Nations Property Ownership Act
FPIC – Free Prior and Informed Consent
IBA – Impact Benefit Agreement
IK – Indigenous Knowledge
IRC – Industry Relations Corporation
JOSM – Joint Oil Sands Monitoring
JPME – Jackpine Mine Expansion
LARP – Lower Athabasca Regional Plan
MCFN – Mikisew Cree First Nation
NGO – Non-governmental Organization
RAMP – Regional Aquatic Monitoring Program
RCAP – Royal Commission on Aboriginal Peoples
RFMA – Registered Fur Management Area
TEK – Traditional Ecological Knowledge
TK – Traditional Knowledge
TLU – Traditional Land Use
TOR – Terms of Reference
TUS – Traditional Use Study

INTRODUCTION

As a settler colonial state, Canada maintains an ambivalent relationship with Indigenous peoples and the knowledge systems which inform Indigenous life. This relationship begins with European settlers' reliance on Indigenous Knowledge (IK) of the land in order to survive upon their arrival and throughout further exploration and settlement. Once this knowledge had been sufficiently exploited and was no longer relied upon, notions that Indigenous ways of life were primitive, uncivilized and inferior compared to the Western way prevailed. Through this, settler society was able to justify assumptions of an innate superiority of Western knowledge systems. Despite attempts to destroy IK systems and Indigenous ways of life through forced assimilation and violence, IK persevered. IK now dwells in a place of alleged recognition by the settler state shadowed behind, and inferior to, Western knowledge, guarded by the continual exploitation of natural resources that fuel a capitalist culture.

As the exploitation of oil and gas continues to expand at an increasing pace within Canada, largely in northern Alberta's oilsands region, so do the potential impacts on Indigenous lands. Potential adverse impacts to Indigenous communities through resource exploitation and transport require consultation with these Indigenous communities, under Section 35 of the Canadian constitution. Consultation through Traditional Ecological Knowledge (TEK) studies predominantly conducted by proponents of development or third-party consultants is intended to identify and rightly acknowledge community concerns and the value of Indigenous knowledges. The uncertain relationship the settler state holds with IK, or TEK, then, seems to be shifting from ignorance to acknowledgement, but how, for who, and for what purpose? In order to develop an

understanding of the questions posed above, this research focuses upon the collection and use of TEK given that the term and its various applications to resource management have grown in popularity in the last three decades, receiving attention from academics, government and industry alike (McGregor, 2000). Through both primary and secondary research this paper seeks to understand TEK processes and the settler colonial relations that shape those processes as visible in contemporary oil and gas development in Western Canada.

TEKs use in Environmental Assessments has been critically analysed in terms of natural resource development (Stevenson, 1996; Nadasdy, 1999; Usher, 2000; Paci *et al.*, 2002; Nelson, 2005; O’Faircheallaigh, 2006; Booth and Skelton, 2010; Kirchoff *et al.*, 2013), issues of knowledge hierarchies and ‘integration’ into Western science (Agrawal, 1995; Simpson, 2001; Agrawal, 2002; Carter, 2006; Bohensky and Maru, 2011; Evering, 2012), and settler colonial power relations (McGregor, 2000; Simpson, 2001; Ariss and Cutfeet, 2011). McGregor (2000) and Simpson (2001) critique TEKs use in resource management, Caine and Krogman (2010) on Impact Benefit Agreements (IBAs) and power relations and Szablowski (2011) on free, prior and informed consent (FPIC) in relation to mining activities. The above three studies recommend further research exploring power imbalances concerning the extractive sector’s consultation with impacted Indigenous communities.

Existing power imbalances in consultation processes controlled by government/industry with Indigenous communities largely stem from the methods, intent and goal of TEKs collection and use. Information collected through TEK and Traditional Land Use (TLU) studies are often integrated into oil and gas development/management

frameworks that are formatted and managed by state sanctioned regulations. Industry and economic metrics, as part of broader Western knowledge systems, heavily influence these regulations. In attempts to realize IK systems, often the dominant society, knowingly or not, compares and contrasts it to Western science and ways of knowing. For two interconnected reasons, comparing or integrating TEK to Western science can be disparaging and assimilative. First, this assumes that Western science is an invisible marker to which all knowledge systems and signs of 'progress' should be compared, rather than accepting and extending knowledge through a different world view. The dominant approach assumes that Western science holds objective, ultimate truth and is therefore a superior knowledge system. Second, IK systems are assumed to be of little use to dominant society and development, external to its application within a Western framework. This is a close-minded notion in that the value of a spiritual and cultural aspect of knowledge can be neither meaningful nor useful for environmental and resource management. Furthermore, integration of a highly contextual IK system into a highly reductionist, objective field of knowledge is inappropriate (Agrawal, 1995; Assembly of First Nations, no date; Nelson, 2005; McGregor, 2000; Agrawal, 2002; Brant Castellano, 2004; Simpson, 2001; Evering, 2012). I believe the potential to use both Western science and TEK exists, but this must be done with both knowledge systems understood and accorded the same level of respect and acknowledgement. Achieving this within an industry and society that largely revolves around and prioritizes capital gain is a major hurdle to pass.

In the resource management realm, TEK is a relatively new and ambiguous term. As a result, the processes taking place to incorporate TEK into oil and gas development

continue to grow and evolve with various challenges. Accordingly, consultation and engagement practices for resource development have been met with dissatisfaction from both parties involved in the process (McGregor, 2000). McGregor (2000), however, notes that attempts in identifying and analyzing the “effectiveness or appropriateness of TEK research processes are often met with resistance.” (p. 437). It is questionable then, if both parties participating in consultation are dissatisfied, why does there exist a resistance for critical analyses? What institutional systems are in place to resist this type of progressive research? Through this research, I intend to add further critical empirical analysis to the dialogue and literature surrounding settler colonial relations and the use of TEK in resource management. Interviews, analysis of regulatory publications and consultation of further academic research and theory are the central tools that I employ. It is my contention that the collection and use of TEK in resource management has become a pacifying tool for government and industry alike to fulfill regulatory requirements in a system that at its root promotes economic liberalism and maintains hegemonic control.

In order to examine this topic, I organize the rest of this paper as follows. First, Chapter 1 provides an overview of how TEK is explained and understood by those in government, industry and Indigenous communities drawing from both secondary sources and the results of my interviews. In Chapter 2, I offer further description of the ethical considerations, methodology, and methods that framed and affected my research. Chapter 3 outlines the history of European colonization in Western Canada, in terms of treaty making and resource exploitation. This is followed by descriptions of the dominant culture of liberal capitalism and prevalence of power abuse through knowledge

manipulation using relevant literature and interviews. In Chapter 4, I explain Canada's goal to reconcile a damaged relationship between the state and Indigenous peoples through the inclusion of TEK in resource management processes. Here, I use information gathered from interviews I have conducted, current literature, and documents available from Shell's Jackpine Mine Expansion Project in northern Alberta's oilsands to identify how TEK is being used and manufactured in oil and gas regulatory practices. I conclude this paper with an overview of the challenges facing current methods of TEK use in oil and gas development, questioning the overall adequacy of recognition and reconciliation efforts. I propose the notion of positive refusal through resistance and the exertion of pressure to challenge the status quo in order to address the existing challenges. Finally I offer three overarching recommendations informed by common themes I heard throughout interviews.

CHAPTER 1: WHAT IS TRADITIONAL ECOLOGICAL KNOWLEDGE AND WHY IS IT IMPORTANT?

Depending on how an individual or group understands and interprets it, TEK can be defined in a multitude of ways. Houde (2007) contends that such a diversity of TEK definitions exist because it "connects such varied dimensions as the type of knowledge, the identity of knowledge holders, and the process of knowledge acquisition" (p. 3). For example, TEK could refer to a farmer's knowledge of seasonal changes, weather patterns, or understanding when to harvest and under what conditions. It could refer to a gardener's knowledge of his or her own backyard. It could be knowledge of an intricate river system, where and when to fish, hunt, which plants to pick and for what they are

used. Defining TEK becomes increasingly convoluted given that individuals, communities, and institutions perceive it differently, holding varying worldviews, and seek it out with differing intentions. In further understanding TEK, it is important to note from the outset that it is not an Indigenous term. It appeared in Western settings as it became useful for Western society. For the purposes of this paper, TEKs collection is understood to serve as a form of consultation and engagement to justify continued resource exploitation under conditions of rising Indigenous protest and resource claims. (McGregor, 2000). This paper focuses on the meaning born from TEK's instrumentalization, integral to its development within the auspices of oil and gas regulatory processes. Often, I will use the term Indigenous Knowledge when knowledge is discussed outside of the institutionalized practices of TEK collection and use. However, I choose to use Traditional Ecological Knowledge, rather than Indigenous Knowledge in reference to its instrumentalization by dominant settler society, specifically oil and gas development, throughout this paper.

This chapter seeks to review how TEK has grown in popularity based on its application in different settings, provide various perspectives on what TEK is, and emphasize the meaning and importance of IK systems as a way of life and a way of viewing relationships with the land. I include pertinent interview findings and literature from Indigenous and non-Indigenous peoples to illuminate and support these points.

Brief background on Indigenous Knowledge use in Western society

Compared to Western science, IK systems were considered inadequate and inferior until components of it become useful or required for development purposes

(McGregor, 2000; Agrawal, 2002). This perception is consistent with dominant views held throughout settler colonization. During the 1950s and 1960s Indigenous and traditional knowledges were regarded as “inefficient, inferior, and an obstacle to development” by settler society (Agrawal, 1995, p. 413). Literature that emerged in the 1980s presented an initial interest in TEK as it applied to agricultural systems and development (Brokensha and Riley, 1980; Gliessman, 1981; Altieri, 1987; Chambers *et al.*, 1989; Warren, 1991). Following this, TEK grew increasingly popular in relation to its application in environmental, ecological and conservation (co)management through its integration with Western science. Fikret Berkes is well known for his work with TEK in his 1999 book *Sacred Ecology* and other literature defining it and its use in adaptive management (Berkes, 1993; Berkes *et al.*, 2000) and ecological populations and co-management (Moller *et al.*, 2004). Beyond Berkes, TEK has been widely studied in the context of conservation, population ecology, and sustainable development, (United Nations Sustainable Development, 1992; Williams and Baines, 1993; Huntington, 2000; Drew, 2005).

Often biopiracy and bioprospecting ensued during and following the extraction of ‘useful’ knowledge from Indigenous peoples. In these cases, medicinal healing properties of particular plants identified by Indigenous peoples were used by European settlers and sold as medicines and pharmaceuticals. The monetary gain and intellectual credit would be realized not by the Indigenous peoples who initially provided this knowledge, but by those who had extracted particular aspects of that knowledge and secured a patent. Marcellus (2008) points out how IK had been extracted by dominant society to not only formulize and patent medicines, but also patent its advertising,

allowing images of the romanticized, exotic “Noble Savage” to catch consumers’ intrigue. Thus, both IK and Indigenous identities had been strategically essentialized and exploited by settlers. Here, strategic essentialism refers to the ways in which society constructs a stereotypical image of the “authentic Indian”, in this case the “Noble Savage”, controlling dominant perceptions of a distinct Indigenous identity. In doing this, diversity within and between Indigenous nations in North America is dismissed and knowledge systems and identities are disempowered. Justifiably, this has led to great mistrust within Indigenous communities in sharing their knowledge as it is being strategically characterized within a glamorized past.

What underlies the term “TEK”?

Regrettably, the term TEK has the potential to maintain an essentialized categorization of IK being something of the past. To some, having the word traditional precede knowledge signifies a failure to account for “non-traditional” knowledges held by Indigenous communities. Often the word traditional is perceived as something temporally static; unable to evolve and grow, wedged in history. Treaty and Aboriginal rights, as acknowledged in Section 35 of the Canadian constitution, frequently have to be proven as traditional for its recognition. This more often than not entails the proof of those rights’ preexistence to European colonization. Sid Jules, a member of the Simpcw First Nation, stated in an interview that “TEK is contextual, dynamic and forever refined”, therefore not confined to the past.

Often government will ask Métis and First Nation communities to prove how their rights – in the traditional sense recognized in the constitution – will potentially be compromised by development in order for government or industry to even initiate the first stages of consultation. Dermot O'Connor with Willow Springs Strategic Solutions works with a number of Métis communities impacted by resource development. During an interview, Dermot posed the following impactful questions:

How do you know what aspect of an Aboriginal persons life is related to some atavistic cultural practice that preexisted the arrival of the Europeans and what is just part of being a subject within a dominant society that is primarily capitalistic and resource extractive based? So, the question is, is it even fair? ... People are still hunting, fishing and snaring things for food and all of those things will continue even if someone is jumping off of a quad to do it. So, what is traditional, what is not, and who decides?

When interpreted as a set of practices fixed in the past, the use of the term traditional generates discrepancies in what is and is not considered a traditional practice recognized as a right to an Indigenous individual or community. Beyond this, who determines what appropriate accommodation would involve for an infringed upon right? How do you accommodate a traditional right if it is something of the past? Stevenson (1996) claims that, “For government and industry to concentrate on traditional knowledge in EIA [Environmental Impact Assessments], to the exclusion of indigenous knowledge, serves neither their interest nor those of aboriginal people.” (p. 281). Focusing on traditional knowledges and having those inform Aboriginal rights is problematic if viewed as temporally static. Thus, labeling IK as traditional has harmful connotations and leads to misunderstanding of the evolving nature of knowledge.

How TEK is understood: Western regulatory, non-Indigenous and Indigenous perspectives

Aboriginal Traditional Knowledge (ATK) is defined by the Government of Canada (2013) as, “knowledge that is held by, and unique to, Aboriginal peoples” which is “built up by a group of people through generations of living in close contact with nature.” The *Canadian Environmental Assessment Act, 2012* (CEAA 2012), identifies the use of ATK in section 19.3 stating, “The environmental assessment of a designated project may take into account community knowledge and Aboriginal traditional knowledge.” (Government of Canada, 2012). The statement, “*may* take into account” makes it very clear that the inclusion of ATK is not a requirement in the federal environmental assessment process. However, federally and provincially regulated projects may be required to integrate TEK if mandated by a project’s Terms of Reference (TOR). Additionally, some oil and gas corporations proposing a project will include TEK collection in the planning processes voluntarily as part of the company’s Aboriginal engagement processes if TEK is not required by the TOR for a project. Often the corporation’s purpose in doing so is to build relationships and/or avoid confrontation inside and outside of the courts and in the public sphere through social and mass media. In *The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*, neither TEK nor ATK is explicitly mentioned, however the policy identifies traditional uses as inclusive of “burial grounds, gathering sites, and historical ceremonial locations” (Government of Alberta, 2013, p. 1). It should be noted here that this provincial policy, which also addresses the Crown’s Duty to Consult with Aboriginal peoples, is meant for First Nations, to the exclusion of Métis

even though Métis are recognized as having Aboriginal rights within Section 35 of the constitution.

In Alberta, Métis generally find it increasingly difficult to have their constitutionally recognized rights acknowledged, forcing them to go to great lengths to prove their culture and traditional way of life will be adversely impacted by development projects¹. Community leaders are rarely consulted and very infrequently are Métis consulted with as a community or group presumed to hold shared cultural values and communal rights. Rather, Métis are approached individually making it increasingly challenging for Métis settlements to defend their collective rights and lands. This issue is further discussed in Chapter 3.

Beyond descriptions of TEK in regulatory frameworks, Fikret Berkes (1999) defines it as:

a cumulative body of knowledge, practice, and belief, evolving by additive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment (p. 8).

Wanda Lewis (2012), former Cultural Resources Manager at TERA Environmental Consultants (now CH2M Hill), explains TEK is knowledge held by Indigenous people concerning the natural and spiritual world with both spatial and non-spatial elements. It is:

generational observations of the biotic world, perceptions of interrelationships between species, local names for plants and animals, the spiritual nature of the plants and animals

¹ Aboriginal is inclusive of Métis, First Nation and Inuit in Canada. Métis have both Indigenous and European ancestral lineages. Following the passing of Bill C 31 in 1985; the *Indian Act* was amended to reverse sexist provisions that forced enfranchisement upon Indigenous women and their children if they were to marry a non-Indigenous man or Indigenous man who did not have Indian status (ie., they lost Indian status). Additionally, prior to this bill, if a child's mother and maternal grandmother did not have status (Indigenous or not), even if the father and grandfather did, they lost their status and were forcibly enfranchised. Bill C 31 reversed these provisions, which has implications for an increase in the number of Métis who could claim status. At the same time, non-Indigenous women who married status men that had gained status prior to 1985 lost their status. At any rate, this complicated Métis settlement membership and therefore consultation and engagement processes.

(i.e. in an animist worldview), the origins of the plants and animals, and observed changes over time in these communities. (p. 2).

From an Indigenous perspective, Deborah McGregor (2000), an Anishnabe academic, maintains that TEK “is an active, living thing; a way of being, a “verb”, so to speak. TEK is best expressed in how you live and how you relate to Creation.” (p. 444). Similarly, Lovelace (2009) states, “Our indigenous knowledge systems are complex, holding generations of information about land, ecological processes, human relations, and spiritual realms.” (p. xviii). Winona LaDuke (1994), Anishinaabekwe scholar, describes TEK as:

the culturally and spiritually based way in which indigenous peoples relate to their ecosystems. This knowledge is founded on spiritual-cultural instructions from “time immemorial” and on generations of careful observation within an ecosystem of continuous residence. (p. 127).

Brant Castellano (2004) notes that in contrast to Western science, “the heart of Aboriginal science acknowledges the spirit of the plant, animal, or the land and the importance of relationships in supporting life” (p. 104). Percy Potts, a respected Elder from the Alexis Nakota Sioux First Nation in central Alberta stated the following in an interview:

Traditional Knowledge is a living thing...Traditional Knowledge is so simple yet so complicated. That’s the part that they [industry and the regulators] are not getting. The connectedness of everything; the rivers, the lakes, the watersheds, how they are all connected and all work together to feed the fish, the moose, the elk. And then we, in turn, feed off of that as human beings. What’s so hard about that? If you mess with any part of it, then its going to affect the rest of it, its going to throw it all off balance. What’s so difficult in understanding that?

These descriptions of TEK from Indigenous perspectives identify deep cultural and spiritual roots to IK as a way of life. In considering the integration of TEK in an environmental assessment or monitoring program for oil and gas development, the spiritual and cultural importance of an area described through TEK can neither be delineated by the boundaries of an archaeologically identified site nor plugged into a

database alongside Western science. Unfortunately, this becomes difficult to appropriately identify and accommodate within processes that are formatted to meet industry's needs and conform to Western knowledge systems.

Glen Coulthard's (2014) concept of "grounded normativity" assists in grasping the aforementioned Indigenous epistemological and ontological understandings of the world through varying knowledge systems. Grounded normativity refers to "the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time." (Coulthard, 2014, p. 13). Many aspects of this definition mirror descriptions of TEK identified above. In relation to oil and gas development, Coulthard (2014) suggests that Indigenous struggles against liberal capitalism are largely land struggles:

struggles not only for land, but also deeply informed by what the land as a mode of reciprocal relationship... ought to teach us about living our lives in relation to one another and our surroundings in a respectful, nondominating and nonexploitative way. (p. 60).

This is vital to the understanding of how resource extraction impacts Indigenous communities' connection to the land. The context in which those managing TEKs use in resource development, then, should acknowledge, understand and respect Indigenous perspectives. Unfortunately,

the governance of this land by traditional ecological knowledge has been adversely affected by genocide, colonialism, and subsequent circumstances that need to be considered in the current dialogue on North American resource management, the role of the environmental movement, and indigenous peoples (Laduke, 1994, p. 130).

The question then becomes, what *is* considered in the current dialogue regarding how TEK is understood and used in resource management?

Daniel Stuckless, working with the Fort McKay First Nation in Alberta's oilsands region expresses the misunderstandings and misconceptions of what TEK is and thus its inappropriate use:

TEK ends up being a catch phrase for working with Aboriginal people...we want your TEK means I want your knowledge. We want your TEK means I want your opinion. We want your TEK means I'd like you to be involved. We want your TEK means I want your endorsement. All of that is the same to the non-trained eye or the non-educated practitioner, right? ... So there is just a disconnect in how or what TEK is, first of all. And then the disconnect between various forms – people saying they want TEK but really not knowing that they want.

Melody Lepine, with Mikisew Cree First Nation Government and Industry Relations, adds to this in asserting:

... they [government and industry] don't quite understand it [TEK]...they don't know how to apply it in a Western science framework that is highly reductionist... I think they're afraid of it as well because it will add to their whole equation in assessing impacts. I think it is something that will be a little bit more complicated for them to avoid or minimize.

Instead of a nuanced understanding of the broader world view from which it stems, TEK is being studied and instrumentalized in oil and gas development and management frameworks. Thus, it is misunderstood, misinterpreted, and improperly defined in ways that conform to regulatory processes rather than its appropriate context. As Mr. Stuckless identifies, similar to 'sustainable development' TEK has become a popular catch phrase in resource management. Being a catch phrase growing in popularity, with little understanding of its meaning, TEK is in danger of being used inappropriately to promote a company's social license to operate.

As described in the next chapter, I employed research methods that would allow me to better understand how both Indigenous and non-Indigenous peoples involved in TEK processes for oil and gas development perceive the issues I have discussed thus far. The following chapter describes and outlines the rationale for the methodological framework I chose to grasp the topic. Moreover, I attempt to further unpack my personal

biases and positionality as a white, middle class student conducting this research to meet the requirements of an academic institution.

CHAPTER 2: METHODS AND ETHICS

Being a non-Indigenous researcher associated with an academic institution, the methodology I adopt is vitally important for the success of this research. In order for this study to avoid maintaining, (re)creating, obscuring, or perpetuating uneven power relations in which Western academic institutions are embedded, I strive to make a conscious effort to remain attentive to biases and predispositions rooted in my thinking and writing. Through maintaining a critical and reflexive attentiveness to these biases, I am able to unpack my own presumptions and those exposed in the literature, government documents, and various regulatory documents for proposed extractive projects and monitoring frameworks. In this way, part of the approach I adopt includes an ongoing evaluation of normalized social structures entrenched in Canada's dominant societal customs.

Institutionalized actions play a significant role in maintaining various aspects of a settler colonial state predicated on capital growth, in part by perpetuating Western forms of knowledge, power and the normalization of our social organization. Here, social organization is understood as “the interplay of social relations, of peoples ordinary activities being concerted and coordinated purposefully.” (Campbell and Gregor, 2002, p. 27). In a settler colonial context, Mark Rifkin (2014) explores the everydayness or seemingly commonsensical activities of settler sovereignty and how these activities are

established through the continual colonization and dispossession of Indigenous peoples' lands and bodies. Linda Smith (2012), a Maori academic, illustrates this point in writing; "A major sociological concern becomes a struggle over the extent to which individual consciousness and reality shapes or is shaped by, social structure." (p. 52). The reality that many quotidian aspects of settler life are established on Indigenous dispossession is uncomfortable and confusing to many non-Indigenous peoples, but is important to grasp in understanding contemporary social relations in Canada. This is particularly relevant in the continual development of oil and gas and the ways in which Indigenous peoples have been able, through the colonial legal and political systems, to participate.

Consultation through the collection and use of TEK in oil and gas management then, must consider the significant and seemingly trivial institutional organizational and social relations that shape it. The methods I describe below, including interview analysis and text/discourse analysis, aim to highlight some of the historically-based and institutionalized aspects of TEK collection practices and uses in oil and gas management, while remaining attentive of my position in society. As contextualized in the next section, in my research I seek to challenge dominant structures and relations, while maintaining an ethical consciousness and reflexivity.

Ethical principles and methods in Indigenous research

Glesne (2006) considers the importance of building rapport in research by wearing appropriate attire, having a sense of humor, being friendly, sensitive, nonjudgmental, having patience, etc. However, Glesne (2006) follows with a warning: attaining rapport cannot be confused with building friendship as friendship is cautioned

against because it can compromise researcher objectivity. While remaining valuable aspects to keep in mind when gaining trust and building the foundations for a trusting research relationship, these ethical considerations differ between social groups and among individuals. Cultural appropriateness plays a large role in building rapport or relationships, and in many cases, friendship is part of this rapport. Kellner (2002) describes this as the difference between the letter (the ethics code) and spirit (morality). In my experiences collecting TEK and working with Indigenous communities impacted by development, I have found that building relationships based on trust and Kellner's "spirit" is appropriate and appreciated. It is also crucial to develop an understanding of varying ethical protocols unique to Indigenous communities – the more understanding the better (Kovach, 2009). These points are validated in what Brant Castellano (2004) writes regarding Indigenous research ethics:

Research that seeks objectivity by maintaining distance between the investigator and informants violates Aboriginal ethics of reciprocal relationship and collective validation. If the researcher assumes control of knowledge production, harvesting information in brief encounters, the dialogical relationship with human and non-human sources is disrupted and the transformation of observations or information into contextualized knowledge is aborted. Attempts to gain an understanding of Aboriginal life and concerns from an objective, short-term, outsider vantage point have produced much research that Aboriginal Peoples reject as distortions of their reality. (p. 105).

While this rings true for TEK studies being conducted for resource development, it also speaks to ethical intentions and methods for any research conducted with Indigenous communities. Cultural differences and varying worldviews cannot be overlooked. I endeavored to keep this in mind, practice and reflect upon in order to maintain ethical relations throughout my research.

Linda Smith (2012) reminds us that Indigenous peoples have often resented settler academics conducting "research" in communities; imposing their beliefs and biases to "study", "help" or "improve" Indigenous problems that are (mis)understood through a

non-Indigenous lens. De Leeuw *et al.* (2013) warns that conducting research through academic institutions can lead to “deep colonizing (unintended) consequences that obscure ongoing relations of inequality and conquest.” (p. 382). Macoun and Strakosch (2013), in unpacking settler colonial theory, remind settler academics to not discount their own positions within the colonial relationship. In relation to Indigenous research methods versus ways of knowing recognized within the dominant Western paradigm, Linda Smith (2012) points out how “‘authorities’ and outside experts are often called in to verify, comment upon, and give judgments about the validity of indigenous claims to cultural beliefs, values, ways of knowing and historical accounts.” (p. 76). I discuss this point further in my analysis of TEK collection in Chapter’s 3 and 4. Personally reflecting upon her points though, I must clearly understand my place in this research and challenge myself to unlearn various assumptions of settler institutions and social structures.

My familiarity with the contradictions embedded in being a white, middle class, privileged student conducting ‘research’ with Indigenous peoples is admittedly imperfect. However, by continually being cognizant of the potential role I could play in perpetuating harmful settler colonial relations I hope to alter that all-too-often power-laden, normalized relationship. In identifying this problem, I aim to further explore how, through literature and experience, I can work towards dissecting my own academic colonizing realities. While the methodology I have employed includes Indigenous theoretical perspectives it does not follow that I am employing (appropriating) Indigenous research methodologies. Rather my intent with this research is to build consciousness among settlers involved in oil and gas development within institutions, academia, the public, and government alike to make the necessary changes required in

TEK practices for a fair process to be realized. I thus conduct this research in the hope of engaging settler colonial institutions in a decolonization process, learning *from* Indigenous peoples and knowledges. Ideally this learning process may counter government and industry tendencies to assimilate and appropriate IK in order to rid the assumption that Western ways of knowing are superior. Leanne Simpson (2001) further articulates this point: “It is not Aboriginal people who have to *change* or be *developed*, it is Euro-Canadians. And I like to think that Euro-Canadian NGOs, researchers, academics and community developers have a role to play in this transformation.” (p. 145, emphasis original). I am hoping to play a part in this transformation.

The strategic combination of the research methods described below, in conjunction with sound ethical practices, provides the basis for a comprehensive analysis of TEK as an expression of social structures and power relations evident in Canada as a settler colonial state.

Institutional Ethnographic methods and interviewing

In order to pursue a well-rounded and in depth understanding of how individuals involved in TEK studies perceive and experience its application in the context of oil and gas development, institutional ethnography methods of inquiry were used to support the interviews I conducted. As laid out by Dorothy Smith (2006), institutional ethnographic research methods take into consideration social relations and power structures that exist within global capitalistic society, structures clearly relevant to understanding the context of Canadian oil and gas exploitation and Indigenous justice. Through institutional ethnographic methods, employing qualitative research, I aim to better recognize how

social relations shape, and are shaped by, TEK's collection and use in oil and gas management. Rubin and Rubin (1995) describe qualitative research as a tool "to explore the broader implications of a problem and place in its historical, political, or social context." (p. 52). Such an approach is appropriate to this research as it pursues an in-depth understanding of individuals' experiences and the broader implications of TEK studies – Indigenous justice and resource management in their social and institutional contexts.

According to Campbell and Gregor (2002) institutional ethnographic methods make "use of the socially organized character of everyday life to explore its puzzles." (p. 29). This research can utilize this method of inquiry to expose and better understand "experiences of specific individuals whose everyday activities are in some way hooked into, shaped by, and constituent of the institutional relations" (DeVault and McCoy, 2006, p. 18). In a settler colonial context, Rifkin (2013) frames these relations, "as symptomatic of an unstated set of nonnative inclinations, orientations, modes or perception, forms of networking, and durable lived assemblages shaped by processes of settlement and experienced as the stability of the given." (p. 7). Rifkin's framing of social relations is important to informing the analytical method I chose to reveal the less-often acknowledged inequalities in the Indigenous 'rights' and 'reconciliation' discourse in Canada. These are the underlying presuppositions that determine colonial relations driven by capital accumulation and therefore the continual dispossession of Indigenous lands. In my mind, if this study is to appropriately research the use and practice of TEK in oil and gas management, it must recognize how it is situated in a settler colonial

context that informs the social and institutional relations, and everydayness in individual, institutional, and community experiences that often go overlooked and unquestioned.

For many Indigenous communities impacted by oil and gas activity, consultation with industry proponents, government, and third-party consultants is part of a socially organized structure comprising relations based upon and maintained through settler colonial cultural norms. These norms are centered on the need to ‘develop’ the land and economy through projects afforded by science, technology, and capital. Often, for non-Indigenous peoples, colonial institutional structures and ways of operating are perceived as normal – generally unseen and unchallenged – but have important implications for Indigenous peoples and communities directly and indirectly impacted by growing natural resource exploitation. Interviews were conducted with both Indigenous individuals involved in TEK/TLU studies as well as non-Indigenous individuals hired by industry or Indigenous communities conducting TEK and TLU studies to gain a better understanding of these social and institutional structures.

It is important to note the differences in how studies for oil and gas management are part of the lives of those involved. Those hired to partake in TEK studies who are not members of Indigenous communities disturbed by development can often remove their more personal lives (i.e., family, culture, home life, recreational life, etc.) from the process. Indigenous peoples impacted by development – who are involved in processes that are intended to rightfully acknowledge IK and voices in resource management – are not able to separate their personal lives to the same extent from the development, from the land, from their families, history, intergenerational knowledge, and concerns with projects. Leanne Simpson (2001), a Mohawk academic, discusses how the transfer and

sharing of IK “in the past was fully integrated into daily life, and the interconnectedness of all creation is integrated into the very structure of Aboriginal languages.” (pp. 142-3). IK is an essential part of life in many communities; Simpson (2001) makes clear that Anishinaabe knowledge is a part of who she is, saying “it comes to me through relationships, with family, Elders, spiritual leaders, and interactions with the spiritual world.” (p. 138). Clearly, development on the land and environment upon which IK is based would impact Indigenous communities and individuals in a different way than those involved in the process as consultants.

In the context of this research, those individuals working to collect and analyse TEK and facilitate these studies, as well as Indigenous individuals and communities participating in the study, maintain their particular positionality because of the institutional sedimentation of those positions within the realm of oil and gas development. Further these positions are shaped and (mis)informed by the formatting and methods chosen by the institutions whose predetermined priority is capital gain through the unfettered development of oil and gas. DeVault and McCoy (2006) ascertain that these positions and processes have the potential to produce homogenous experiences, or maintain broader inequalities. The interviews I conducted allowed for a better comprehension of the conditions under which TEK studies are currently being undertaken for oil and gas development. In this sense, interviews were vital in moving beyond scholarly articles and theoretical understanding so as to grasp how information is collected, used, experienced and perceived by those involved.

Initially my intention was to interview five individuals from either position – Indigenous individuals involved with TEK studies and non-Indigenous individuals

outside of communities hired to do these studies – hoping to balance the perspectives represented, as advised by Rubin and Rubin (1995). Prior to the interviews, I conducted research to ensure an understanding of the discourses and existing work done around TEK and consultation in resource management in Western Canada’s oil and gas sector. In a two month period from December 2014 to February 2015 I conducted ten interviews. Six were with non-Indigenous individuals in Alberta working in some capacity with TEK, TLU and/or oil and gas industrial relations. And four were with Indigenous individuals in Alberta and British Columbia involved in TEK and TLU studies for oil and gas development. Each interview took approximately one hour, was audio-recorded and subsequently transcribed. An analysis of the interviews and further explorations of the significance of the conversations that took place is found throughout this paper. Anonymity was respected unless otherwise requested for all participants.

As discussed in Chapter 1, the use of TEK in resource management is relatively new and therefore neither well understood nor well conducted. Consequently, experiences of individuals involved provides essential information for meaningful and appropriate progress to take place. Information attained through interviews could not have been acquired solely through a review of relevant literature. In conjunction with these interviews, I conducted textual analysis. Given that texts/discourse hold power and are able to continually transfer information and form perspectives, this offered an important complement to interviews.

Text Analysis

Campbell and Gregor (2002) point out the importance of unpacking text as it “has the capacity to carry a particular idea or meaning across sites and perpetuate it.” (p. 36). Critical examination of a range of literature on TEK suggest how both Indigenous and dominant or mainstream texts have the potential to carry meanings which, particularly in the latter case, perpetuate potentially harmful ideas or ways of implementing and understanding non-Western knowledge. Keeping this in mind, I reviewed a number of publicly available regulatory documents (provincial and federal environmental assessments and environmental reporting) and reports written by, or on behalf of, Indigenous communities (TEK/TLU studies written *for* Indigenous communities). Specifically, I examined documents related to Traditional Knowledge and land use from the Canadian Environmental Assessment Agency website for Shell’s Jackpine Mine Expansion Project in northern Alberta’s oilsands region. In identifying what is included, or excluded, in the regulatory documents – presumably informing decisions – I gained insight into TEKs practical use in regulatory settings. I also examined TLU studies conducted on behalf of impacted Indigenous communities in the oilsands area through their own consultants. Community specific TLU studies enable a better understanding of cultures, concerns, values, and traditional practices of the communities involved and the potential impacts of development on them. These documents are reviewed to evaluate and contrast them with Traditional Knowledge and Land Use Studies conducted and recorded by project proponent firms themselves in the environmental regulatory review processes. Additionally, I critically analysed the successes, or failures, of the integration and use of TEK stated in regulatory documents and guidelines such as the Lower Athabasca Regional Plan, Joint Oil Sands Monitoring Program, and consultation

guidelines to further understand the implications of its growing popularity and use through written documents.

Socio-historical and theoretical analyses added a critical component to my understanding of TEK collection and use conducted within the institutions of oil and gas development. Because this research is intended to critically engage with texts and experiences obtained through interviews, theoretical perspectives are necessary to explain institutional phenomena in order to interpret deeper meanings. The employment of both non-Indigenous and Indigenous theories sheds light on the interviews and textual analyses conducted acknowledging that “indigenous voices have been overwhelmingly silenced” and challenge the “Western academy which claims theory as thoroughly Western, which has constructed all the rules by which many indigenous world has been theorized” (Smith, 2012, p. 30).

Accordingly, the next chapter provides a discussion on colonization, the culture of liberal capitalism, and knowledge control through a number of Indigenous and non-Indigenous theorists and academics that critically interrogate settler colonial relations. These theories consider the socio-historical roots of the overarching colonial power relations imbued in TEK consultation in resource development and how TEK may further reproduce or co-opt, Indigenous peoples into these colonial power relations.

CHAPTER 3: A BRIEF HISTORY OF COLONIZATION, THE CULTURE OF LIBERAL CAPITALISM, KNOWLEDGE AND POWER

Many agree that power is integral to consider and discuss when examining the use of IK systems by the dominant society (Agrwal, 1995; Stevenson, 1996; Nadasdy, 1999;

McGregor, 2000; Simpson, 2001; O’Faircheallaigh, 2007; Carter, 2008; Caine and Krogman, 2010; Bohemsky and Maru, 2011; Szablowski, 2011; Evering, 2012). The ways in which IK is (mis)used then, within dominant regulatory structures, must be explored in terms of the power and power relations held by the oil and gas industry and regulating government bodies. This chapter offers necessary background and understanding of the influence of settler dominant culture in resource development – argued here as predicated on a culture of liberal capitalism – on Indigenous communities in the past and how that is influencing current relationships.

In this chapter I outline a history of settlement in Alberta’s northern region, largely Treaty 8 territory, through literature drawn primarily from Rene Fumoleau² (2004). Through this socio-historical analysis, I review the political, economic, and ultimately ideological justification for colonial paternalism and manipulation. Settler colonization was founded upon the marketization of North American territory, supported by the assumption of a superior European society. Further, I explain Bruce Braun’s (2000) geologizing of space in the Canadian government’s inclinations to see material value – through money and power – in the land. Accordingly, the land that was now available on the market for settler society not only had value perceived in private property ownership but also from its underlying geological formations.

Following this, I consider how development of the land was facilitated and justified through the culture of liberal capitalism and a political economy based upon

² Rene Fumoleau is a priest from France who moved to the Northwest Territories (NWT) in 1953 and later made his way South to northern Alberta. Beyond his pastoral duties, Father Fumoleau committed much of his time to learn about Indigenous culture and life in the area he was located. His book, *As Long as This Land Shall Last: A History of Treaties 8 and 11*, was originally published in 1973 and again in 2004. For this book, Father Fumoleau researched government and church archives and interviewed approximately 70 Dene individuals living in the NWT and northern Alberta. He provides a strong voice for Indigenous rights. See <http://oblatesinthewest.library.ualberta.ca/eng/media/b-bio-fumoleauR.html> for more information.

individual ownership and what was considered to be progress. I discuss this phenomenon in relation to David Harvey's (2006) accumulation by dispossession in that neoliberal structures are continually forcing Indigenous communities away from their lands and political economies, towards capitalism via natural resource development. Institutions and governments often fail to recognize the legitimate variances between Indigenous culture and that of the dominant society due to the normalization of liberal capitalism in Canada. This has allowed the continual development of oil and gas, among other natural resources, with a great lack of meaningful or appropriate Indigenous involvement. As an avenue for Indigenous involvement in development processes, employed by government and industry, TEK's facilitation through settler institutions often fails to use IK appropriately. Here, I explain from where this failure originates and why it is still prevalent. Ultimately, there exists an uneven acknowledgement of IK systems within a society structured upon Western knowledge and market incentives.

Brief History of Colonization in Western Canada

"...going all the way back to colonialism.

Bring it right back to that settling.

It is directly related to what is going on now."

– Oh Yellowbird, Samson Cree First Nation

In the late fourteenth and early fifteenth centuries Christopher Columbus writes about his journey "discovering" American lands; lands that could be claimed and their resources exploited (Todorov, 1984). This was justified in the eyes of the colonizers' Lockean ideology through the concept of *Terra nullius* – land belonging to no one, over which sovereignty can be claimed, so that resources can be controlled and exploited. As

early as the mid 1700s, treaty negotiations between Europeans and Indigenous nations in northeastern Canada began. Throughout these so-called negotiations, natural resource exploitation had been on the settler's agenda. Miller (2010) exemplifies this in writing:

In 1846, Canada provoked leaders such as Chief Shinguakonse of Garden River by handing out mining licenses in territory not yet covered by treaty, and prior to 1862 the province issued fishing licenses that included rich grounds off Manitoulin Island that the local First Nations considered theirs. (p. 292).

The potential for natural resource exploitation in Western frontier lands proved to be a fundamental motivator for the establishment of treaty settlements with Indigenous communities, including Treaty 8 in northern Alberta, signed in 1899: "In the North, as everywhere else, economic considerations far out-weighed all others in the formulation of Indian policy" (Fumoleau, 2004, p. 50). Treaty 8 encompasses the largest oilsands deposit – the Athabasca oilsands – in northern Alberta. The intention of the "new sovereign nation" to "create and maintain the conditions necessary for capitalist expansion" is demonstrated through the circumstances under which Treaty 8 was negotiated (McCormack, 2010, p. 51).

Prior to the realization that below the surface of the Athabasca region rests a rich deposit of bitumen, in the 1870s and 1880s, the newly established Canadian government had little interest in taking responsibility for the Cree and Chipewyan communities suffering from disease and desolation due to white settler presence (Fumoleau, 2004). It is no coincidence that by the late 1800s a transition took place in the social constructions of nature in Canada. Bruce Braun (2000) identifies this transition as a geologizing of space. This way of seeing the physical world enabled new visions of Canada's physical territory as something vertical. Information gathered from the verticality of territory

allowed national geologic survey's to unearth previously unseen material value attributed to specific landforms. Braun (2000) contends that this perception of value:

would have important consequences for the mixing of capital, labour and land, but also for the regulation of 'men and things': for how the Canadian state perceived, acted towards and organized its 'territory', as well as for how individual subjects were constituted and related to these newly legible spaces. (p. 24).

Arguably, there existed clear intentions of the Crown's, and what would be Canada's, promoting liberal capitalism through the geologizing of space – finding value in nature through natural resource development. The construction and normalization of land ownership stems from the Lockean notion of private property rights – the necessity of civilization to progress by privatizing and developing land deemed to hold value. This ideological frame of thought continues to hold power today whether the value of land is accessed via development through agriculture or resource extraction. During Treaty 8 negotiations, this was the underlying intent – for the settler state to dictate the conditions of a settlement with Indigenous Nations facilitating development of the valuable components of land. Thus, the well-being of the Indigenous peoples whose land and labour were being sought through treaty settlements had been largely overlooked during and following the state's land acquisition.

In René Fumoleau's (2004) historical overview of the making of Treaty 8, two European settlers – Pierre Mercredi, an interpreter of the treaties, and James L. Cornwall (commonly referred to as Peace River Jim) – both identify gross manipulation and dishonesty demonstrated by the Crown within the treaty process. As recorded in Fumoleau (2004), Mercredi writes of his experience as an interpreter of the Treaty to the Chipewyan and Cree signatories, stating:

I know because I read the Treaty to them, that there was no clause in it which said they might have to obey regulations about hunting. They left us no copy of the Treaty signed, saying that they would have it printed and send a copy to us. When the copy came back,

that second clause (that they shall promise to obey whatever hunting regulations the Dominion Government shall set) was in it. It was not there before. *I have no doubt that the new regulation breaks that old treaty*. It makes me feel bad altogether because it makes lies of the words I spoke then for Queen Victoria. (pp. 79-80, emphasis added).

In the same vein, Peace River Jim notes the following:

The treaty, as presented by the Commissioners to the Indians for their approval and signatures, was apparently prepared elsewhere, as it did not contain many things that they held to be of vital importance to their future existence as hunters and trappers and fisherman, free from the competition of white man. (Fumoleau, 2004, p. 73).

As history presents here, there exist many limitations in asserting treaty rights across Canada. Treaty violations began at its conception and are constantly being contested in and out of provincial and federal courts, where these historic treaties are generally (mis)interpreted.

Similar to treaties, Scrip grants³ were arranged by Commissioners on behalf of the Crown. Scrip grants were one time payments of \$160-240 or offers of 160-240 acres of land designed to extinguish Aboriginal title from Métis individuals and/or families (Fumoleau, 2004). Similar to the treaty process, Commissioners would travel to Métis communities and grant scrip in order to ensure control over lands in the West. Commissioners held the authority to decide whether or not Métis were able to sign on to a treaty, which the Crown discouraged in order to distinguish Métis collective rights. Thus, it was always the case that Métis would be granted scrip (Fumoleau, 2004). Redeeming a scrip grant was made immensely difficult as the government office to do so was often located “hundreds of miles from where the grantees lived” and most land offers, if it were not money, were located in the southern portion of the provinces, so northerners had a difficult time relocating (Joseph, 2013).

³ Scrip grants were designed to extinguish Aboriginal title from Métis individuals and/or families, rather than collectively as treaties had done for First Nations. Similar to the treaty process, Commissioners would travel to Métis communities on behalf of the Crown and grant scrip in order to ensure control over lands in the West.

As briefly mentioned in Chapter 1, Métis in Alberta are not recognized as having communal rights and regularly have to go to great lengths to prove their constitutionally recognized Aboriginal rights. Dr. Timothy Clark, of Willow Springs Strategic Solutions, works with Dermot O'Connor for Métis communities in relation to resource development. Dr. Clark spoke of how Métis rights, as outlined in the constitution, are (with)held and forced into a “regulatory escalation” whereby the Métis have to go to great lengths to prove their rights will be impacted by development:

With Métis it's ad hoc, the actual policy is basically, “we will consult on a case-by-case basis where deemed necessary”. So the burden of proof is on the Métis community to show that they're going to be impacted by a project, when in fact the duty and the honor of the Crown should be tied into and proactively consulting with Métis, right? ... I mean, this is also a lot of time and money for people to work on that, and so effectively, what they're [government] doing is increasing the cost of constitutional rights, right? So for us to even recognize – because they certainly won't recognize the constitutional rights – but sort of de facto recognize constitutional rights and give Métis standing, “we're [Government of Alberta] going to up the ante and make you pay even more to get this stuff out.” And so, you know it's... it's ridiculous.

This history – which is often forgotten or concealed in mainstream texts – although not at all a complete history of colonialism in Alberta, is important to acknowledge because forgetting it creates, and has created, gross misunderstandings of Canada's colonial history and relationships with Indigenous peoples (Regan, 2010). Paulette Regan (2010) reveals treaty history's existing relevancy in understanding contemporary Canada in stating, “Perpetuation of the peacemaker myth is perfectly consistent with the manner in which non-Native Canadians have come to understand (or misunderstand) the history of Indigenous-settler relations and the settler role in treaty making and Aboriginal policy” (p. 95). In appropriately recognizing and acknowledging the realities of Canada's colonizing history and continual colonization, the influence of these power structures in the resource industry is realized.

For the purposes of this research and due to its limited scope, details of Canada's abysmal history of residential schooling as well as the extremely racist, sexist, and paternalistic Indian policies, and overall treatment are not examined in detail. Notwithstanding, these dynamics have played a significant role in the power relationships and structures that influence contemporary Canada. Rather, in this paper, I center the discussion on treaty negotiations, scrip, and settlement to illustrate the beginnings of an uneven relationship and mistrust based upon a paternalistic culture of liberal capitalism in promoting natural resource extraction.

Culture of Liberal Capitalism

Liberal capitalism is a term I have borrowed from Patrick Wolfe (1997) employed in this research in terms of deregulated, commodity-driven, free-market state economies. Here, I use the term to explain the dominant culture of free-market fundamentalism in Canada, historically and currently, that allows for Canada as a settler state to justify land exploitation for capital gain. Colonialism in North America, as a category of imperialism, was necessary for market expansion and resource exploitation. Wolfe (1997) describes the necessity of "imperialism as an outlet for surplus" in order for the practices of liberal capitalism to continue developing (p. 391). What allowed this commodity surplus, arguably, had been emerging technologies and the utilization of fossil fuels, which permitted increased productivity and access to global markets. What became necessary from commodity surpluses beyond market access, clearly, was a demand for that supply, which through imperialism and colonialism, would have to come from emerging global markets occupying the same perceived need for those material goods

(Wolfe, 1997). Huber (2008) contends, in the shaping of liberal capitalism in Canada, and globally, settler colonial social relations have indeed been molded by the dependence on fossil fuel energy.

Gismondi and Davidson (2012) identify the use of photographs taken during settler colonization of Alberta's northern region where there exists vast bitumen deposits, the oilsands. These images were arguably used to promote settler colonization and resource exploitation, conjuring a sense of nationalism by displaying the "wildness" of the region as well as its potential for technological and scientific ingenuity that would allow for resource development and economic gain (Gismondi and Davidson, 2012). The normalization of the oil and gas development rhetoric present during settler colonization persists in contemporary Canada predominantly through government and industry (Gismondi and Davidson, 2012). Industry intends to continue development of the Alberta oilsands to ensure ongoing capital gain. As of July 2014, the Alberta government had granted 92,000 square kilometers of oilsands leases with 99% of the surface mineable area (4,750 square kilometers) under lease (Alberta Energy, 2014). Indeed, the provincial government grants mineral leases prior to an environmental assessment or consultation with potentially adversely affected Indigenous communities (Government of Alberta, 2007). The government justifies this by pointing out that the granting of leases is not necessarily indicative of development. Nevertheless, it is forecasted that production in the oilsands will increase from 2.08 million barrels per day in 2013 to 4.81 million barrels per day by 2030 (Canadian Association of Petroleum Producers 2013; Alberta Energy Regulator, 2014). If estimated production rates of all projects presently announced, applied for, approved, and currently operating, were added together

production would total nearly 10 million barrels per day (Oilsands Review, 2015). Clearly, plans are in place to promote continued expansion of oil and gas extraction and transport.

Amendments and repeals within the two omnibus budget bills, as well as the *Protecting Alberta's Environment Act* are indicative of worryingly relaxed environmental policies that encourage resource development over environmental and social accountability. In addition to the recent policy alterations, the government further incentivizes fossil fuel development by decreasing corporate income tax. Corporate income tax has fallen each year from 2009 to 2012, while subsidies have increased. According to a Pembina Institute report published in July 2014:

It is not unreasonable to conclude that the value of foregone tax revenues and other direct federal support for the oil sector now comes close to exceeding the entire budget of Environment Canada, at the same time that the department's budget is being cut. (Dobson and Asadollahi, 2014, p. 1).

This becomes very problematic for Indigenous communities impacted by these policies as exploitative development perpetuates hegemonic structures which undermine Indigenous values, cultures, and voices. Federal Bill C 38 has been heavily contested due to its passing through parliament despite a severe lack of consultation with Indigenous communities and the Canadian public. In addition, this bill significantly weakens the Canadian Environmental Assessment Act, now *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Ecojustice (2012), Doelle (2012), and Gibson (2012) agree that this legislation has streamlined and watered down environmental protection regulations for oil and gas projects in the country. The Environmental Assessment (EA) process for large, federally regulated resource extraction projects is now less intensive and confined to strict timelines for EAs and consultation, ultimately undermining environmental integrity,

and thus Indigenous peoples' rights to their lands. Further, this legislation has significant implications for the breadth and depth of consultation and engagement that takes place with Indigenous communities due to restricted timelines for EAs. Gibson (2012) identifies this as an astonishing step backward in environmental legislation, which again points to the illogicality of this policy decision. With regard to CEAA 2012, Bruce Maclean from Maclean Consulting, who works with the Athabasca Chipewyan and Mikisew Cree First Nations in northeastern Alberta oilsands region, stated in an interview, "they took a process and made it worse." The unfettered promotion of development of the lands resources has been, and is, sustained through political regulation and rationalizations that encourage development while managing Indigenous lands and bodies to prevent their interference.

David Harvey's concept of accumulation by dispossession, expanding upon Marx's primitive accumulation, further elucidates the continual disenfranchisement of Indigenous land and community-based societal structures by impeding resource development. Primitive accumulation is understood at the transitional period from feudalistic to capitalistic social structures (Coulthard, 2014), creating a cheap labour force from a displaced working class (Holden *et al.*, 2011). Holden *et al.* (2011) explain the difference between primitive accumulation and accumulation by dispossession through the temporality attributed to Marx's primitive accumulation framework. Harvey (2006), in recognizing the contemporary nature of this phenomenon, explains this concept through the continual

commodification and privatization of land...conversion of various forms of property rights (e.g. common, collective, state) into exclusive property rights; suppression of rights to the commons; commodification of labour power and the suppression of alternative (indigenous) forms of production and consumption; colonial, neocolonial and imperial processes of appropriation of assets (including natural resources)... (p. 153).

Indigenous collective rights recognized through land title are repeatedly threatened in Federal politics, being viewed as an obstruction to exposing reserve lands to private property and development interests. For example, the First Nations Property Ownership Act (FNPOA), Pasternak (2015) points out, works to eliminate Aboriginal title to lands. This has implication for resource development on two fronts. First, the fiduciary and constitutional duties of the federal Crown stand to lessen, which may threaten some responsibilities of the Crown under treaties (Pasternak, 2015). Second, prime real estate for resource development becomes easier to access through individual payments and/or concessions. This allows for the development of what is left of recognized Indigenous lands, while at the same time discouraging communal aspects of Indigenous culture and encouraging assimilation of Indigenous communities into “modern society” so as to be more “compatible” with the culture of liberal capitalism.

The continual rationalization of the settler state in possessing land, the resources held within the land, and the strategic ways in which that land is managed, can be further explained by Aileen Moreton-Robinson’s (2006) description of Whiteness and white possession. Moreton-Robinson (2006) discusses Whiteness as an invisible marker whereby all racialized others are compared, creating a normalized standard for accepted social structures, which allows for the influential disavowal of practices of Indigenous knowledge and sovereignty. White possession, it is further argued, needs to be considered in terms of “how it functions to reproduce procedures of subjugation that are tied to racialized and racializing knowledges produced by disciplines dedicated to the sciences of ‘man’” (Moreton-Robinson, 2006, p. 389). In this context, I take white possession to be the assumption that the geologizing of space – understood as a science

of 'man' – has enabled a perceived natural/rational/fair/commonsensical *possessing* of geological material seen with value, allowing for material gain reproducing Indigenous subjugation. Here, geologizing of space is not only a window for increased certainty in mineral extraction, but it “opened new epistemological spaces which, in turn, made possible new domains for economic and political rationality.” (Braun, 2000, p. 24). It is thus significant to note that the culture of liberal capitalism through natural resource development was indeed not established upon purely natural, logical, or objective occurrences that are outside historical explanation. The geologizing of space, which allowed capital value to be quantified within the land, was the result of an epistemological shift rather than an independent, natural, objective manifestation.

Li (2009) asserts the co-emergence of indigeneity with capitalism arguing, “the very concept of indigeneity – in particular, the specification of an indigenous slot in terms of a bounded community that holds inalienable, collective, non-commodified rights to land – is a response to the risk of dispossession under capitalism.” (p.1). So, if Indigenous populations were viewed as uncivilized, primitive, and lacking any acknowledgeable degree of social organization and therefore unfit for capitalism, this was so because their existence *challenged* capitalism: “Indigenous peoples obstructed settlers’ access to land” and thereby obstructed access to and possession of the lands resources and perceived capital value (Wolfe, 2006, p. 388). As a result, in order to maintain capitalism and the culture that allows its growth, settler colonial logic was set on the elimination of potential threats. According to Wolfe (2006), this “logic of elimination marks a return whereby the native repressed continues to structure settler-colonial society.” (p. 390). However, this structure is often maintained through regulations that

are reactive, politically charged and do not stand upon a logical basis. This supports the aforementioned argument that liberal capitalism is not beyond culture and epistemological foundations; rather it is *built upon* these foundations, hence the *culture* of liberal capitalism.

Supporting Moreton-Robinson and Li's points, Bruyneel's (2007) "colonial ambivalence" can aid in explaining Canada's policies surrounding Indigenous peoples and the environment. Bruyneel (2007) uses colonial ambivalence to describe American Indian policy. The uncertain, or ambivalent, character of these policies in moving back and forth to suit the state's needs at the time is like an "imaginary Indian policy pendulum" (Bruyneel, 2007, p. 10). This is not unlike the Canadian experience. Reverting back to the discussion of treaty settlements and colonization in northern Alberta, Fumoleau (2004), in reference to a letter written by Deputy Superintendent of Indian Affairs, James A. Smart, states:

In the eyes of the law an Indian was treated as a child, not able to understand the nature and consequences of his actions. If Smart's argument would be applied to the signing of Treaty 8, it seems hardly likely that the "untutored savages" of the north would be able to legally-bind themselves by a treaty in the first place, much less be responsible for its legal consequences on future generations of Indians. (p. 65).

This points to the inconsistency in colonial rule and the lack of rationality in Indian policy during that period. Indian policy had to be put in place, whether it be logical or not, because "As the economic need for resources on Indian land grew, it became necessary to enact legislation to make Indigenous people wards of the state, thus more easily controlled." (Wilson, 2008, p. 55).

Similar to what Li (2009) discusses in the co-emergence of indigeneity and capitalism, indigeneity, as race, had to be defined in order to control individuals and groups through policy (Byrd, 2007; Kauanui, 2008; Tallbear, 2013; and Andersen, 2014).

What I find both interesting and unsettling is the settler state's ability to constantly reform and then normalize what is considered "pure", "hybrid", or "authentic" in terms of race. The construction of race here was shaped by the colonial state in the manner most convenient for the time and circumstance. This was and is occurring through inclusion and exclusion structures – status versus non-status Indian, Métis, etc. – similar to Bruyneel's (2007) colonial ambivalence, but specific to race. In my mind this necessity for legislation to control Indigenous peoples, often being inconsistent and ambivalent, is a result of what Audra Simpson (2014) terms "settler anxiety". That is, anxieties over the challenge posed by Indigenous sovereignty and knowledge systems to the settlers' presumed possession of the land and resources hoisted by the culture of liberal capitalism. Settler anxieties over Indigenous sovereignty, supported by IK systems, consequently are maintained by dominant society. Management of knowledge is facilitated through the power dominant society upholds in controlling what knowledge systems are accepted and how they are used and recognized.

Knowledge control and commodification

The power structures embedded in Canadian society feed the Eurocentric expressions and assertion of recognized knowledge systems. These include knowledge systems that create and shape Canadian law, norms, science, land management practices, and everyday life. The hegemonic power imposed upon Indigenous peoples by settler colonial institutions in Canada reinforce these colonial institutions and knowledge systems, while at the same time disempowering IK systems. The power that the dominant knowledge system holds is driven by the normalized consumer lifestyle that

liberal capitalism has facilitated. The importance of the relationship between knowledge and power is expressed by Foucault (1977) in the following statement:

Knowledge linked to power, not only assumes the authority of 'the truth' but has power to make itself true. All knowledge, once applied to the real world, has effects, and in that sense at least, 'becomes true.' Knowledge, once used to regulate the conduct of others, entails constraint, regulation and the disciplining of practice. Thus, there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time, power relations. (p. 27).

National and global neoliberal structures play a large role in molding what is and what is not putative "truth". This is coordinated to facilitate and maintain power over and within institutional settings managing oil and gas development. Dominant notions of truth and rationality have ultimately led to the denial of the value of IK systems unless they conform to Western ways of knowing in a way that does not challenge those ways of knowing (Brant Castellano, 2004). Unfortunately, as Nelson (2005) ascertains, knowledge is no longer understood as positioned in one's culture; that understanding has been "marred by the consistent and pervasive use of objectifying terminology." (p. 293). Often knowledge in Western scientific settings is considered as a decontextualized truth that exists beyond, and is validated outside of, cultural margins and is therefore superior to knowledge held within the margins of contextual, cultural understandings as per IK.

Generally, TEK is integrated with Western science in EIA reports that move forward through federal or provincial environmental regulatory approval processes. The differences and existing hierarchies between Indigenous and Western societies' knowledge systems are then reinforced by the attempts to transform, not incorporate, TEK into Western science or resource management mechanisms. As explained above, the wholeness of IK systems is based on holistic understandings of the relationships and interconnectedness found within the natural world. Value and meaning is lost from IK

systems when cultural and spiritual aspects of knowledge are rendered insignificant. Agrawal (2002) and Evering (2012) argue that knowledge integration models sought in oil and gas processes through TEK studies are fundamentally flawed when uneven relationships, or hierarchies, of knowledge systems are left unaddressed. Daniel Stuckless notes these issues in oil and gas regulatory processes:

If someone who gets paid \$1,500 a day and has a PhD comes to a hearing and states what he or she says as fact, it's completely taken as an expert opinion. If an Aboriginal Elder, 85 years old, comes into a hearing and says, "65 years of my life has been spent on this trapline and this is what I'm telling you..." it's taken as information... Not a fact, not an expert opinion.

The appropriateness of TEK studies is lost as its worth is undermined when decision-makers consider Western knowledge systems recognized by Eurocentric policies and legal frameworks more legitimate than IK. In seeing less worth in TEK, as a body of knowledge, or specific aspects of that knowledge, the motivations for its collection and use in regulatory management is established in its commodification.

Although including TEK in development and management processes is often seen as a positive step towards recognition, Nelson (2005) points out how TEK itself "has become a political commodity, a recognized and accredited entity within policy circles that is today one of the primary means of access for Aboriginal peoples in resource management regimes." (p. 301). Stevenson (1996) ascertains that TEK has become a commodity in conservation and environmental sustainability. Linda Smith (2012) expresses the prominence of knowledge production and commodification in stating, "The production of knowledge, new knowledge, and transformed 'old' knowledge, ideas about the nature of knowledge and the validity of specific forms of knowledge, became as much commodities of colonial exploitation as other natural resources." (p. 62). The danger of the impending commodification of knowledge occurs when "it can be used at

will by the power structures of the dominant society to support existing doctrines and the status quo.” (Simpson, 2001, p. 140).

In the context of this research, TEK is being commodified for the continuation of business as usual (BAU) in the development oil and gas. In an interview, Dermot O’Connor stated that as a result of collecting and documenting information from Indigenous community members, “their knowledge or their stories or their ideas or land uses are being bought and sold... It’s being commoditized and unfortunately we are part of that process.” Oh Yellowbird, from the Samson Cree First Nation in central Alberta who has experience working on TEK studies for oil and gas development, offers an interesting perspective stating in an interview that, “It’s business; it’s all business. They [industry and government] have to cross the T’s and dot the I’s.” In other words, the collection and use of TEK transpires only to support development, permitting capital gain. For Oh, as long as industry and government can confirm they have done their due diligence, appeasing the commitments agreed to in a project’s TOR or in legislation, development can move forward. So, whether knowledge is being commodified, or attained to ensure the land’s commodification, it is being sought and is engulfed within the oil and gas regulatory approvals process.

This chapter has set historical and theoretical foundations for recognizing deeply rooted colonial narratives that persist today, through the knowledge power nexus central to free-market fundamentalism. It is clear that many issues stem from socio-historical foundations rooted in colonization. The perpetuation of these dominating and destructive foundations continues through a culture predicated on the need to progress and develop through capital gain for the “good life”. In the following chapter, I complement this with

a discussion of concerns expressed in interviews, literature and regulatory documents regarding the collection tactics, characterizations, and manufacturings of TEK experienced within regulatory frameworks that continue to build upon colonial and capitalistic foundations, despite efforts to mediate or reconcile a damaged, dominating relationship.

CHAPTER 4: POLITICS OF TEK, RECOGNITION, AND RECONCILIATION

The Government of Canada has repeatedly expressed a goal of reconciliation with Indigenous peoples (Anaya, 2014). The premise is to reconcile past injustices and move forward with a renewed, respectful relationship. It is proposed by Newman (2014) that a potential middle ground and channel for reconciliation between government, industry, and Indigenous communities may be reached through engagement, consultation and partnerships made through resource management. The development of oil and gas on lands covered by treaty and/or Aboriginal title is on the forefront of many issues between government/industry and Indigenous communities. TEK – being a relatively new form of engagement/consultation and inclusion of Indigenous communities in resource management and planning – is thus understood as a building block in a recognized and prospective reconciled relationship between Canada and Indigenous peoples. TEK, in theory, also allows for the recognition of Indigenous voices and knowledge in resource management.

As previously discussed, TEK is included in oil and gas management largely through EA regulatory review structures. The EA process is determined by those with a normalized bias toward Western knowledge systems and the intent to gain regulatory approval for projects that will result in economic gain (O’Faricheallaigh, 2006; Evering

2012). Because TEK studies are formatted to conform to EA and regulatory requirements, the ways in which it is collected and used is largely formatted outside of impacted Indigenous communities, and as a result TEK is often misunderstood, and therefore misused. It is thus integrated into a system where there is a high potential it will be taken out of context, removing its epistemological value and relevance (Stevenson, 1996; McGregor, 2000; Simpson, 2001; Paci *et al.*, 2002; Nelson, 2005). For government and oil and gas proponents, time is money and securing money is often the ultimate goal, which entails less time and resources allocated to meaningful engagement and consultation. The latter creates conditions for a process that is frequently adversarial, manipulative and ambiguous. Although many agree there has been progress in using and collecting TEK – generally noting that TEK is actually being sought out and used in some capacity – there remain large hindrances and barricades to adequate TEK collection and application that need to be better understood and remediated in order to meet any recognition and reconciliation objective.

In order to consider the view that TEK maintains a role in the path to reconciliation, I begin this chapter with an overview of what reconciliation as a stated objective entails for resource development in Canada. Interview results and applicable literature support a critical evaluation of the processes involved in the collection and use of TEK. In particular, I examine the following: How TEK studies are formatted and who decides this; what procedures are in place for the implementation of TEK collection; who is included/excluded in these processes; and how collected knowledge is interpreted and used in EAs and environmental monitoring frameworks. Issues arising from these

themes are further illuminated in a case study of Shell's Jackpine Mine Expansion Project in the Athabasca oilsands region.

Recognition and reconciliation: A settler colonial state objective

*"Its just words and how they fashion
words for outcomes, like manipulation."*

- Percy Potts, Alexis Nakota Sioux First Nation

Following the 1990 Oka Crisis in Kanehsateka⁴ the Royal Commission on Aboriginal Peoples (RCAP) was commissioned by the Canadian government to reconcile the relationship between the settler state and Indigenous peoples (Epp, 2008). In 1996, following the release of RCAP's report, an oath of reconciliation by Jane Stewart, the at-the-time Minister of Indian Affairs, was publicly made (Epp, 2008). About eighteen years later in 2014, James Anaya, the United Nations Human Rights Council Special Rapporteur on the rights of indigenous peoples, released a report on the situation of Indigenous peoples in Canada. Anaya (2014) pointed out that while visiting government and Indigenous communities across the state, he repeatedly heard

a stated goal of reconciliation...by numerous government representatives with whom he met. Yet even in this context, in recent years, indigenous leaders have expressed concern that progress toward this goal has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them. (p. 14).

⁴ Kanehsateka is located near Oka Quebec, Mohawk territory. In 1990 the Mohawk people set up a blockade to contest the development of a golf course on Mohawk land that the Mohawk people were not consulted about and did not support. This stand-off lasted just over two months, with one Quebec police officer suffering a fatal gunshot wound.

Twenty-four years following Oka and eighteen years after an oath committing to reconciliation efforts made by the Government, progress has indeed been “undermined by actions of the Government”. One problem identified in the literature is that the focus of reconciliation in Canada is in the past, therefore failing to recognize recent and current acts of colonization and subjugation (Coulthard, 2014). As Wolfe (2006) asserts, settler colonization is a “structure not an event” and therefore needs to recognize and reconcile the failed and abusive past *and present* colonial structures (p. 388). If colonization is not understood as an ongoing structure, state apologies and acknowledgements of past mistakes take on a pacification role as they tend to refute or deny the contemporary aspects of colonialism (de Leeuw *et al.*, 2013). As Regan (2010) eloquently puts it:

Failure to gain insight into the historical roots of contemporary settler attitudes and actions towards Indigenous people and to make visible their continuity over time will make Canada’s apology to Indigenous people meaningless and reconciliation false. (p. 87).

Here, Regan refers to the state apology given by Prime Minister Stephen Harper in 2008 regarding Canada’s history of residential schools. While I do not intend to compare experiences with resource development to residential school experiences, the fact that there is a failure to acknowledge and act upon current acts of colonialism and oppression experienced by Indigenous peoples points to failure on all fronts of reconciliation by the state.

Whose responsibility should it be to promote a reconciled relationship that takes into account the persistence of colonial structures, then, and what needs to be done? According to Arris and Cutfeet (2011) acceptance is required by both sides, but more so the larger, dominant society – the settler state and settler society. Unfortunately, it is often the case that dominant settler state institutions take little responsibility for meaningful recognition and reconciliation. It is not unreasonable to assume that a

common perspective upheld among individuals and state institutions in the dominant society remains, “Indigenous subjects are the primary object of repair, not the colonial relationship.” (Coulthard, 2014, p. 127). Reconciliation has been adopted in a form that puts the onus on Indigenous peoples to “move on” and accept the dominant society’s way of life: to assimilate. This allows settler anxiety, intergenerational settler guilt, or general settler discomfort of an invented burden to remain obscured, while liberal capitalism continues to develop Canada through natural resource extraction and its transportation infrastructure.

The politics of reconciliation have recently converged, according to Coulthard (2014), “with a slightly older “politics of recognition,” advocating the institutional recognition and accommodation of Indigenous cultural difference as an important means of reconciling the colonial relationship.” (p. 106). Audra Simpson (2014), a Mohawk academic, views recognition as “the gentler form, perhaps, or the least corporeally violent way of managing Indians and their difference, a multicultural solution to the settlers’ Indian problem.” (p. 20). The management of Indigenous land and bodies is maintained through the politics of recognition and negotiations with Indigenous communities to a point where Indigenous difference does not threaten settler sovereignty. I argue settler sovereignty, or white possession, is predicated on liberal capitalism enabled through hastened resource extraction and therefore the dispossession of Indigenous land and bodies. Thus, TEK as a form of recognition which attempts to reconcile a damaged relationship will only be acknowledged by settler institutions – industry and government in this case – if it does not threaten ongoing oil and gas development. To this end, recognition and reconciliation strategies, in being controlled by the settler colonial state,

are strategies to placate and manage the ongoing “Indian problem”. Under this logic, the ways in which recognition takes place in resource management then must be governed and structured in a way that acknowledges Indigenous voice to a point that does not threaten further approval for development.

Politics of TEK in Oil and Gas Development

An anonymous interviewee (Anonymous 1), pointed to the consultation structure in terms of formatting, efficiency and money:

The purpose of them [community engagement meetings]... from a really negative point of view is just to tick that box, right? I mean I don't think anybody's that negative, but when it comes down to making your permit application on time, that's what it's for, right? And it's more for that than getting the information that might be actually helpful for planning your project – and that's sort of where its most useful – unfortunately, which isn't the purpose. There are some things you can do to get more information from people, but it costs more than renting a room for an afternoon, you know what I mean? And who wants to pay for that? It's not cheap to go out on the land you know, its not easy, its not cheap, health and safety, blah, blah, blah. It becomes a real hassle to do something that will actually be meaningful.

Of course, this is not to generalize and imply all engagement or consultative processes take place in this manner. Nevertheless, this is a reality for many communities impacted by resource development. Unfortunately, this reality has become the status quo for a number of companies engaging with Indigenous communities. Similarly, Bohensky and Maru (2001), ascertain that when knowledge is actively sought, its “integration has merely become a fashionable trend...that amounts to little more than a box-ticking exercise.” (p. 2). Whether to ensure timeliness and costliness in obtaining permit applications or because it is a popularly accepted engagement mechanism, these processes are being described as merely a “box ticking exercise”. This being the case – accommodating hastened development through a process identified as a “fashionable

trend” rather than working to facilitate meaningful engagement with Indigenous communities – the process is destined for failure. In Chapter 1, this point was made through the characterization of TEK being a poorly understood, but popular, “catch phrase”. Because it is a novel way of viewing the world to dominant society, thus poorly understood, industry and government are seeking ways to efficiently and effectively incorporate TEK into regulatory processes. Thus far, they have yet to be successful in this venture and are struggling along the way.

Efforts to resolve discrepancies with TEK use in these processes have been largely addressed in the form of technicalities. By this I refer to the technical procedures adopted to allow simplified integration of TEK alongside Western regulatory reporting mechanisms. Often deliberations take place over how best to record TEK: Which questions are most important to ask, how to ask them, what knowledge is relevant and should be included, and how to apply standard mitigation techniques to satisfy concerns expressed by Indigenous representatives. While these methods may be reasonable in the context of resource management, policy, and government reporting, I agree with both Nadasdy (1999) and Agrawal (2002) in that constantly refashioning technical procedures to address problems inherent in TEKs integration neglects the real challenges to be tackled with TEK use in oil and gas development associated with settler colonial power relations. These problems are further outlined below.

Caine and Krogman (2010) discuss power relations at length in terms of IBAs between industry and Indigenous communities, identifying the most important ways in which power can be forced or exercised: in “predetermining the agenda for consideration by decision makers.” (p. 82). As previously discussed, industry and government

predetermine the process of TEK collection to satisfy and prioritize industrial development above that of the Indigenous communities invited to participate (Stevenson, 1996). In their ability to structure and format TEK collection and consultation methods according to industry's pursuit of regulatory approval, industry and government maintain power through control. Of particular relevance here is a statement made by Percy Potts concerning *who* decides how TEK studies are formatted:

You know we have a, in my opinion, we have a totally new ball game, if we are allowed to develop that field [TEK and consultation] with the government. But the government develops that field on how consultation takes place. You know, they might as well just give us a royalty on the wellhead each month, because you know, that's basically what it boils down to now... The ones that are supposed to be working with us, *if they're dictating the terms of how we are supposed to proceed and won't incorporate the concerns that we have as Indigenous people, as the initial occupiers of this land called Canada, if they won't listen to us, what are we supposed to do?* (emphasis added).

Mr. Potts voices his concerns with settler state institutions dictating the ways in which the TEK process is conducted and questions what avenues are left when these structures are put in place without input of the communities that are being impacted. Sid Jules maintains similar concerns regarding the ways these processes are facilitated:

If we could get in on the ground floor and help with the scoping of these projects and the programs, I think that would go a long way. There is a lot of mistrust. And the other thing is access and use of information; making sure that the information we do provide is being used in context... There's a lot of things we don't discuss with industry or anyone else that we do discuss with our own people, particularly around the spirituality and the traditional stuff... I don't think they [non-Indigenous consultants] fully understand it [TEK], even when we bring them into the field.

Mr. Jules pinpoints similar anxieties to Mr. Potts, agreeing that the ways in which TEK and consultation takes place should not remain under the auspices of industry and government. Distrust held by Indigenous communities in allowing the collection and use of their knowledge by non-Indigenous consultants is also repeated by Mr. Jules. Individuals working for or with government and/or industry collecting TEK in an hour, day, or week, who may not understand the context of IK, could easily take that

knowledge out of context leading to its gross misuse and misinterpretation (Stevenson, 1996; Nelson, 2005). This is problematic as it was often expressed by interviewees that IK is not something you can learn and understand in an hour, day or week. Rather, IK systems are a way of life; knowledge gained through experiences over lifetimes and generations, not separated from its cultural and spiritual value.

During the interview, Daniel Stuckless expressed his concerns with the fleeting nature of TEK's collection and its subsequent manipulation:

It's really hard to have a fly-by-night consulting group come in, interview 5 to 10 Elders and have a good depiction of what the land use is, other than a very small snapshot...no where should a study ever be understood as some sort of complete picture of contemporary and historical land use. And I think that's one of the deficiencies of having *fly-by-night consultants who are also paid by the proponent to answer specific regulatory-type questions geared towards that process, rather than open ended questions* of "how do you use the land?"... We've moved away from trying to let third party consultants come in and dictate the TLU studies because of the nature of the questions they ask is very limiting (emphasis added).

Beyond the inadequacies of the ways in which TEK and/or TLU studies are conducted, non-Indigenous consultants and government or industry employees carry with them their strategic assumptions, perspectives, and prospective realities:

I think if somebody hired you right, like an environmental company hired you, they wouldn't hire you on the knowledge of the communities. They are going to hire you on knowledge that they know you are going to stand your ground on the Western scientific knowledge methods of how things work. So they are counting on you to hang on to that and not to be swayed by any concerns that we raise (Percy Potts).

Melody Lepine shared similar concerns regarding third party consultants:

We [Mikisew Cree First Nation] do a lot of these studies ourselves versus having a company or Golder [environmental consultant company, Golder Associates] or whatever just plop themselves in a community and do these studies. This way we can control the information: we write the report, transcribe the information and there's that level of trust... We get that a lot, interview fatigue...when collecting information from interviewing people, they get tired of saying the same things and they don't see anything done about it.

Ms. Lepine expressed a concern held by many Indigenous individuals involved in TEK, TLU and other consultative processes; the power held by third party consultants, industry and/or government to have IK extracted and manipulate it as they see suitable.

Unfortunately, communities frequently experience consultants or industry/government representatives visit, collect TEK, and leave. Consequently, the community may witness a project approval move ahead not knowing how their knowledge was integrated in the process, or if it had any influence at all on decisions made. Understandably, Indigenous individuals participating often feel that their voiced concerns are not taken seriously or are misconstrued, regardless of what they are told by those involved in the consultation or TEK collection process (Booth and Skeleton, 2011).

Attempts to validate, critique, or manipulate IK systems via Western knowledge systems are common occurrences within oil and gas development processes (Usher, 2000; Agrawal, 2002; Carter, 2006; O'Faricheallaigh, 2006). Bruce Maclean, actively working with Mikisew Cree and Athabasca Chipewyan First Nations community-based monitoring program, and Daniel Stuckless, with Fort McKay First Nation in the oilsands region, spoke frankly regarding the intimidating setting of hearings for proposed oilsands projects. These hearings are often regarded as an avenue for the recognition of Indigenous voices. Held in formal, Western institutional settings, Elders and knowledge holders are interrogated about their claims or statements regarding a proposed project. As Daniel Stuckless points out, this is often an adversarial and intimidating process: "I don't know if a lawyer lecturing a 90 year old women is a good public image strategy or not." Acknowledging that community members participating in this process stand to face deliberate bullying in an accusatorial setting fails to facilitate any form of suitable recognition. In settings such as this – with a perceived superiority of Western ways of knowing and the political power held over decisions for projects from the dominant, settler society – Indigenous community members are generally unwilling to share their

knowledge, as there is real threat of information being manipulated and used out of context (Nelson, 2005).

The decontextualization of IK has a pervasive potential to colonize Indigenous perspectives, regularly manipulating information provided by community members to promote or justify development. In discussing the attempts to integrate TEK within compartmentalized disciplines found in Western science, Melody Lepine identifies that it is acceptable to

do that with Western science data, but with Traditional Knowledge I think its completely different. You can't just manipulate it that way...I just find that they [industry] take what they want, what sounds good and what they think would be appropriate and they plug it [TK] in wherever they want.

Mikisew Cree First Nation, having unfavorable experiences with this and other related issues in the past, no longer allows companies to collect knowledge provided by the community and use it in reports without community consent. Similarly, at Fort McKay First Nation, Daniel Stuckless revealed that third party consultants are not permitted to have access to community knowledge and land use for oil and gas development purposes any more due to similar issues of misuse and manipulation:

We know that Alberta's interpretation of land use is synonymous with treaty rights and we don't agree with that. So, we're guarded against trying to be pigeonholed in a way that we're going to be limited.

The limitations Daniel refers to here indicate incomplete information gathered by third-party consultants within a short period of time from interviews with a few Elders or knowledge holders in the community. Mr. Stuckless held that third-party consultants would repeatedly come into the community, interview a community member for an hour, and make unmerited, overarching assumptions based on a single statement. Mr. Stuckless explained how some interviewees would state that their *personal* land-use is not going to be negatively impacted by development because the land they would use has

already been heavily developed and contaminated. When such a statement is made, third-party consultants make an assumption that treaty rights are not negatively impacted because that community member does not use the land for traditional practices recognized in the treaty (i.e., hunting, fishing, trapping). Following a conversation like this, a written claim by the project proponent is submitted, maintaining treaty rights will not be affected by the development of another project because they no longer use the land. In other words, the interviewee's statement that his/her land use will not be impacted is used to prove a project will not impact a community's treaty rights, and as Daniel mentioned, "I hate to say it – that people should be pretty intuitive and not go there – but that's the argument we see used against us." The entire consultation and TEK collection process is fundamentally flawed if assumptions concerning treaty rights can be based upon an hour meeting with an individual who no longer uses the land. It is clear in this situation that project proponents are using knowledge provided by a community against that community to warrant development; displaying an abuse of power by those who have an agenda to push through formal consultation processes.

On a larger scale, treaty rights are generally overlooked in a process where consultation and engagement processes take place on a project-by-project basis. When I asked Melody Lepine how the government has addressed TEK and treaty rights during consultation processes in the oilsands region, she replied:

They don't. They don't want to acknowledge that there's an impact, so they agree with the company that there is no impact or that if there is some level of impact, then things like reclamation, or things like, "Oh the oilsands is only taking up 5% of your traditional harvesting area, you can go elsewhere. You've got all this other area; go over there, go over there." But then over there, something is going to pop up, or there is no moose over there because its not suitable habitat over there. So they just have this... they treat us just like they would the actual animals.

This becomes problematic for cumulative effects and Indigenous rights impacted in an area littered with development, as they are essentially ignored within this larger scale. Opportunity exists in this situation for regional plans to play an important role in Alberta. For example, Alberta's oilsands region has undergone a flurry of regional monitoring frameworks, including the Lower Athabasca Regional Plan (LARP), which have had the potential to adequately address regional, cumulative issues with the inclusion of TEK. As Melody indicates:

LARP could collect and incorporate our Traditional Knowledge...That seemed like the perfect place to address really big, cumulative effects and really seek to address the regional issues that we have which are just being ignored from project to project. So, I think that's the answer to everything: is if LARP could incorporate TK in a meaningful way, respecting it and really trying hard to, you know... as simple as things like identifying Valued Ecosystem Components (VECs) and putting the value of those resources and placing the First Nations value on them to make them a lot higher or lower.

Unfortunately, so far, this has not become a reality despite stated provincial commitments to do so. The LARP does mention the inclusion of TEK in environmental monitoring, but has yet to show any inclination in moving forward with this endeavor.

Inclusion of Indigenous communities in monitoring processes "requires an interaction with the cultural needs of the people immersed in these systems"... "A world class monitoring program requires both science and Traditional Knowledge to develop this understanding." (Mikisew Cree First Nation Government and Industry Relations and Athabasca Chipewyan First Nation Industry Relations Corporation, 2013, p. 3). Prior to LARP, the planned-to-be "world class" Joint Oil Sands Monitoring (JOSM) program noted "The implementation plan will be delivered based on the principle of inclusion of Traditional Ecological Knowledge, and training and involvement of members of local communities in the actual monitoring activities." (Environment Canada and Alberta Environment and Sustainable Resource Development [AESRD], 2012, p. 6). The

development of this “world class” program was necessary following the failure of the former Regional Aquatic Monitoring Program (RAMP) to effectively monitor aquatic ecosystems in the oilsands region. The three year implementation plan for JOSM is scheduled to be fully implemented in 2015, and thus far the program has failed both in being a “world class” monitoring program and including TEK from Indigenous communities in the oilsands region. Since the release of the implementation plan in 2012, all five First Nations initially involved in the JOSM program have withdrawn their participation (Narine, 2014). They were involved at the outset to ensure that Indigenous perspectives and needs were going to be rightly recognized, as promised. Yet there has been a very obvious lack of appropriate involvement of Indigenous groups past the initial stages of this plan and a complete lack of TEK use throughout the program altogether.

Indeed, the Fall 2014 federal Auditor General’s report identified these inefficiencies of Environment Canada, stating “further efforts are needed to meet commitments to engage stakeholders, including First Nations and Métis, and incorporate Traditional Ecological Knowledge into the Department’s monitoring activities.” (Office of the Auditor General of Canada, Fall 2014, p. 7). There seem to be few attempts to include TEK in these regional plans where it could prove very useful and meaningful for the recognition of IK, treaty and Aboriginal rights. This issue has reached the courts and continues to be contested by Indigenous communities seeking justice. In the meantime, projects are continually approved following the project-by-project regulatory review process; moving forward despite a severe lack of adequate regional monitoring and inclusion of TEK.

To provide a more grounded understanding of the challenges in the project-by-project regulatory process, below I use Shell's Jackpine Mine Expansion project as a case study. In conceptualizing the collection and use of TEK in the circumstances, the challenges discussed above are illustrated through a review of Shell's EA process.

Shell's Jackpine Mine Expansion Project: A Case Study

In December 2010 Shell's proposed Jackpine Mine Expansion (JPME) project was referred to a federal-provincial joint review panel under the *Canadian Environmental Assessment Act* (CEAA) (Canadian Environmental Assessment Agency, 2013). The project expands the already operational Jackpine Mine located north of Fort MacKay in northern Alberta, increasing production from 200,000 to 300,000 barrels of oil per day (CEA Agency, 2013). The 2007 Cultural Use Report conducted by Golder Associates Inc. (Golder), part of Shell's EIA, points out that the project will disturb traditional territories of the Athabasca Chipewyan First Nation (ACFN), Mikisew Cree First Nation (MCFN), Fort McKay First Nation (FMFN), and the Fort McMurray First Nation (FMMFN). According to this report, "The objective of the TLU study for the RSA [Regional Study Area] is to document the traditional land use of the FMFN, MCFN, ACFN, and FMMFN, as well as their traditional knowledge about the region." (p. 3-6). It is noted that the Métis Nation of Alberta does not have a specific area identified as representing their traditional territory, but acknowledges that they participate in traditional activities, such as hunting, fishing and trapping. From this particular document it is unclear how each First Nation and Métis Nation of Alberta was consulted by Shell, other than direct engagement with listed Registered Fur Management Area (RFMA) holders, six in total, and a review of literature pertaining to land use and history.

Section 8.3 of Golder’s EIA report, *Traditional Knowledge and Land Use*, puts a heavy emphasis on knowledge collected through interviews conducted with the six RFMA holders directly impacted by the proposed mine. The report states that both quantitative and qualitative information was based on affected RFMA holders (Golder, 2007). It is further detailed, “After interviews with the RFMA holders (trappers), interview reports were sent to each of the component leads⁵. Component leads reviewed the reports and where traditional knowledge has been relevant, has incorporated it into the assessment for their component.” (Golder, 2007, p. 8-27). This statement suggests that all RFMA holders are trappers, which is not always the case. Many RFMA permit holders may exclusively be the permit holder, while allowing others to utilize the trap lines. Further, the local RFMA holders may not all be Indigenous individuals from the surrounding communities and therefore do not necessarily represent those communities and their traditional knowledge or land use. This itself questions the extent to which TEK was sought and incorporated.

For this project, the TOR requires the inclusion of TEK in the EIA. Appendix 3.1, Assessment Methods, of the Golder (2007) report outlines the ways in which TEK was incorporated:

- The EIA technical components reviewed the TEK and identified items *relevant* to each technical component.
- The TEK was incorporated as part of the analysis quantitatively or qualitatively, *where possible*.
- A discussion outlining the *relevant TEK information*, how the TEK was integrated and where the integrated TEK can be found within the EIA was prepared for each EIA technical component. (p. 15, emphasis added).

Firstly, that the TEK collected is reviewed based on its relevancy is problematic as it is based upon assumptions made by the dominant, settler society on what is deemed

⁵ The ‘Component lead’ refers to the individual(s) in charge of specific social and scientific disciplines for the project including wildlife, vegetation, aquatics, etc.

pertinent, important, or manageable. The stripping of certain aspects of TEK considered irrelevant was carried out by those who are not committed to understanding TEK nor its importance to the community it comes from. Secondly, that TEK is incorporated or integrated “where possible,” suggests that substantial discretion is given to those in a position to make these judgments. This presents a very concrete example of third-party consultants collecting TEK and using it how they see fit within the structure of the regulatory framework.

Agrawal (2002) outlines the demands of the logic of development in using TEK. First, the “useful indigenous knowledge must be separated from those other knowledges, practices, milieu, context, and cultural beliefs in combination with which it exists” so as to acquire the relevant forms of knowledge, and second, “that particularized knowledge be tested and validated using criteria deemed appropriate by science.” (Agrawal, 2002, p. 290). These demands are outlined by Agrawal to demonstrate how TEK is used in development contexts, where it can be plugged into a database or methodological procedure. Agrawal argues for the inappropriateness of this knowledge “sanitization” – stripping it of its value and the contextual meaning that is essential to Indigenous knowledge systems. These demands are apparent in how Shell has chosen to include TEK in their EIA.

A letter submitted by DS Environmental Consulting on behalf of the ACFN Industry Relations Corporation in October 2010 specified, “Traditional Knowledge (TK) was not widely considered in the JPME application and assessment, and on at least one occasion, was discounted. The lack of TK included in the EIA is a methodological

failing” (p. 6). This same report identifies the lack of integration of TK in reporting wildlife populations:

This is not simply a disagreement about methodologies – it is a failure by Shell to seriously consider and integrate, or even be willing to test, traditional information. There is little point in using traditional information if it will be disregarded (which goes against the Terms of Reference). This is a clear case of Shell trusting in modelled prediction over the empirical observed data from TK. (DS Environmental Consulting, 2010, p. 45).

This indicates Shell simply refused to incorporate particular points provided to them regarding wildlife populations because of its incompatibility with what had been modelled through Western science in the EIA completed by Golder. Assumptions that science is fact – informing the significance of the effects of the project on the environment – whereas TEK is a “belief held by some,”⁶ points to a deeply damaged, uneven relationship between institutions of the settler state and Indigenous peoples being not only maintained, but also reinforced.

In September 2011, following the submission of letters to Shell by Indigenous communities questioning and criticizing the inadequacies of TEKs inclusion in the environmental assessment, Golder on behalf of Shell submitted additional Traditional Knowledge and Traditional Land Use information to the Joint Review Panel. In determining whether or not the impacts of the project on traditional land use are significant or not, the report reiterates, “Value placed on the resources beyond a scientific or ecological context are not considered in this determination.” (Golder, 2011, p. 5). It goes on to claim:

The significance assessment of the Project’s effects on traditional land uses was prepared from a scientific perspective and ecological context only and it concluded that the predicted residual effects for the Project are not expected to result in a significant adverse effect on traditional activities within the Terrestrial or Aquatics RSA, or within the larger traditional

⁶ This quoted phrase was used repeatedly to describe traditional land use concerns from First Nation community members on page 5 of the Shell Jackpine Mine Expansion and Pierre River Mine Project: Submission of Additional Traditional Knowledge and Traditional Land Use Information to the Joint Review Panel submitted in September 2011.

land use areas as identified by the various Aboriginal groups referenced above. (Golder, 2011, p. 8).

Reactions towards this statement from affected First Nations and Metis and the general misuse of TEK and land use were unfavorable toward both Golder and Shell. Non-scientific and non-ecological elements, such as culturally and spiritually significant foundations held within the land are intrinsically linked to TEK and TLU. Unfortunately, cultural and spiritual elements of land use are explicitly overlooked in the EIA. Following the 2011 additional TK and TLU report released by Golder, Melody Lepine on behalf of MCFN wrote a letter maintaining,

We remain concerned that, despite providing a great deal of information to Shell, Shell has still not changed its predications in relation to potential adverse impacts on our rights... We still do not understand how a proper assessment of impacts on our rights can be undertaken without considering our actual use of lands and resources and our needs, going forward, in relation thereto. (Lepine, 2011, no page number)

The ACFN Industry Relations Corporation (IRC) sent a similar letter in response to Shell's additional information report:

As detailed in this letter, ACFN disagrees with Shell's description, interpretation and analysis of the additional TK and TLU information provided by ACFN to Shell... ACFN remains frustrated and disappointed that Shell continues to assess Project impacts in a manner that systematically minimizes or excludes from consideration altogether the most significant impacts on ACFN culture, cultural practices, and constitutional rights. (King, 2011, p. 3).

Later in February 2012, MCFN submitted another letter stating similar anxieties including a concern that the Traditional Use Study (TUS) summary, "takes an insulting approach to our TK and TUS information by rejecting that information as "non-scientific value judgments"." (Lepine, 2012, p. 2). Indigenous communal land governance structures are explicitly cited as "not compatible" with modern land use (i.e. capitalism) in another report released by Golder (Golder, 2012, p. 6). This report suggests that the ways in which the "modern" world operates is incompatible with traditional Indigenous governance systems that recognize group over individual rights. Clearly, the credibility

of IK systems, informing and informed by communal rights, fails to be recognized through this regulatory process because it stands to threaten development. The host of reports and letters from Shell and Golder in the Shell Jackpine regulatory record, responding to Indigenous questions and concerns, is a consequence of the pressure communities such as the ACFN and MCFN are applying to challenge the complacency found in the BAU routine.

Despite the aforementioned shortcomings in TEK use, not to mention the predicted severe and irreversible damage to the surrounding environment, in July 2012 the Alberta government recommended the approval of the JPME project (Canadian Press, 2012a). As the project continued towards public hearings in 2012, the CBC reported several significant concerns scientists with the Department of Fisheries and Oceans and Environment Canada shared with the ACFN and MCFN related to water, wetlands, tailings and wildlife (Canadian Press, 2012b). In this same article, Shell expressed concerns over the onerous regulatory processes that are required for approval (Canadian Press, 2012b). It would not be completely unfounded to suggest part of this frustration held by Shell stems from the TEK and TLU obligations of the regulatory process.

In early fall 2011 a constitutional challenge was filed by the ACFN in hopes that the panel would take consultation into greater consideration for this project (Canadian Press, 2012c). The joint federal-provincial review panel made a decision that they lacked the authority to deal with constitutional issues, so this issue was taken to the Alberta Court of Appeal (CBC, 2012). The court determined that they could not make a ruling regarding consultation adequacy for both the ACFN and the Métis Nation of Alberta, and the panel was not forced to make a decision (Bankes, 2013; Canadian Press, 2012d). A

CBC article quotes a Shell representative as saying, “Who has the jurisdiction to determine the adequacy of consultation? ... We don't really know. It's kind of become a bit of shell game.” (Canadian Press, 2012d). Aside from the curious use of the “shell” pun, the fact that it is seen as any sort of “game” points to a significant problem in how consultation and engagement is perceived and practiced. This is not a game for the people who live in the region and who tirelessly work to maintain their culture, land and inherent rights. Subsequently, this issue was brought to the Supreme Court. Again, the court refused the appeal and it was subsequently dismissed (Canadian Press, 2013a).

Although the courts have often been perceived as an unbiased, objective avenue for Indigenous justice in Canada, Imai (2001) asserts the courts have allowed what they claim to be “compelling and substantial” reasoning to justify violations of Aboriginal and treaty rights. This is particularly evident when those Aboriginal and/or treaty rights may threaten further resource development. With no verdict made on the adequacy of consultation, the decision for the project was made without considering whether or not the ACFN and Métis Nation were sufficiently consulted with. Upon the projects approval on December 6, 2013, Leona Aglukkaq, Minister of the Environment, gave a decision statement claiming that approval was “justified in the circumstances” despite there being “significant adverse environmental effects” resulting from the mines expansion.

When asked during an interview what Melody Lepine’s experience was with Shell’s JPME assessment, she stated:

...we want to share our information to help them steward the land in a better way, to assess impacts and try to manage their projects better. But at the same time are we, in a way, agreeing to the project by sharing Traditional Knowledge? Are we kind of giving consent? So it’s a really tough one I think because then you really look at what Leanne Simpson is saying: The true fundamental reason we have it [TK] and we would keep that information

is sacred and not sharing it with people who are trying to cause impacts to the earth because it's against what the whole purpose of what our knowledge is based upon in the first place.

This is important to emphasize – that TEK can and should be used in a positive way to promote a more responsible and reciprocal relationship with the land – yet it is being collected and used in a way that suggests Indigenous participation or engagement is indicative of consent. Moreover, Indigenous communities are put in a situation whereby they have to balance the lesser of two evils (i.e., not participating and having projects move ahead or participating and risking the assumption that participation is consent and the potential for knowledge to be misused/misinterpreted), as there exist limited avenues for promoting the use of TEK.

When I asked interviewees if they have seen or experienced a progression in this field – using TEK in oil and gas management – many said “yes, but”. The “yes” part of the answer generally indicated improvement or progress because TEK is actually being requested and discussed in these settings. The “but” aspect of the answer, however, denotes the important issues raised in this chapter: The decontextualization, manipulation, lack of understanding, lack of effort in appropriate inclusion, and misuse of TEK judging it as little more than an appealing catch phrase used for industry and government to gain a social license to develop. In response to the question noted above, Anonymous 1 stated, “It’s just been the same... I haven’t seen much progress.”

The discussion thus far has indicated that TEK should be a valuable component of planning. That it should be respected and included in consultation processes, but in reality it has been misused, perpetuating and maintaining uneven power relation, further marginalizing and assimilating Indigenous communities into the constructs of capitalism. Hence, this process has done little in the form of recognition and reconciliation. The

settler state, then, has failed to facilitate reconciliation through TEK use and other Indigenous consultative mechanisms in oil and gas development processes. If these processes do not move past contemporary colonial barricades and empty political rhetoric, then the politics of recognition, reconciliation and TEK will continue to be manipulative, adversarial, and unsuccessful. This is further considered in the next chapter, followed by a discussion concerning the role of pressure and resistance as an alternative to the status quo.

CONCLUSIONS

On the gifts of recognition and reconciliation: "It's another infested blanket covered in cash this time."

– Oh Yellowbird, Samson Cree First Nation

Glen Coulthard's *Red Skin White Masks: Rejecting the colonial politics of recognition*, boldly confronts Canada's past and current superficial offerings of state defined recognition for Indigenous peoples. According to Coulthard (2014), the "politics of recognition" refers to:

the now expansive range of recognition-based models of liberal pluralism that seek to "reconcile" Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state. (p. 3).

I take this to mean that the settler state will work towards reconciliation via recognition of Indigenous difference through frameworks that support liberal capitalism, while maintaining and reinforcing settler sovereignty and authority. It is further argued by Coulthard (2014) that colonial forms of recognition only work to uphold racist, colonial practices and abuses of power, which reconciliation proclaims to remedy. In other words, state recognition supposedly intended to promote "reconciliation" is a façade that does

little more than maintain the dominant, colonial status quo. Dominant colonial structures have used both violent and non-violent force in order to maintain a culture grounded on individualistic practices and resource exploitation for capital gain. The exploitation of fossil fuels in Western Canada continues to subjugate Indigenous peoples and lands, despite offerings or “gifts” of citizenship, reconciliation, recognition, and consultation from the state. These “gifts” afforded by the state, in many cases, have been inappropriate as they are offerings that are presented to Indigenous peoples based on the colonizers agenda and cultural norms.

As identified in Chapter 4, monitoring and development plans in the oilsands region have been explicit in their stated intention to include TEK. However, these plans have failed in any engagement and implementation that truly includes TEK based on the needs *agreed upon* by impacted communities to ensure their rights are upheld. Likewise, in their assessment of mining policies and regulatory processes in Ontario, Ariss and Cutfeet (2011) demonstrate how energy and natural resource policies generally undermine Indigenous rights. They suggest it is doubtful “that there will be real inclusion of First Nations communities in those benefits [from resource development],” therefore resource development processes are seen as neither an avenue for recognition nor reconciliation (Ariss and Cutfeet, 2011, p. 34). Offers of recognition and reconciliation have always been framed within the confines of “a liberal, settler political culture” which continues to dismiss IK, concerns, and rights as inferior (Epp, 2008, p. 126). In this light:

one need not expend much effort to elicit the countless ways in which the liberal discourse of recognition has been limited and constrained by the states, the courts, corporate interests, and policy makers in ways that have helped preserve the colonial status quo. (Coulthard, 2014, p. 40).

Just as state institutions have limited the liberal discourse of recognition in order to maintain the status quo, as articulated by Coulthard, so have the collection and use of TEK in oil and gas development. This is echoed in what Mr. Potts explains regarding adverse situations created by resource development on Indigenous land:

One would hope that the consultation process would lead to alleviating that situation, but how can it alleviate that situation when consultation is a tool of the government being used by industry and everybody else making money off of it when at the end of the day, development is still going to take place whether we say 'boo' or not... See, in the meantime with all those smoke and mirrors that they're doing, they get their process through. It's just words and how they fashion words for outcomes, like manipulation.

Indigenous communities, with increasingly common confrontations with industry, government and/or third-party consultants exploiting and manipulating an engagement process meant to alleviate frustrations, in reality, are increasingly frustrated with how little control they have over the process and its outcomes. This, unsurprisingly, is leading to far less faith in the process by individuals and communities involved. Here, I think it fitting to refer back to James Anaya's statement in Chapter 4: The goal of reconciliation and recognition "has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them." (Anaya, 2014, p. 14).

Oh Yellowbird's perspective from his experience with TEK studies for oil and gas development indicates this:

Traditional Knowledge... I don't know how our stuff is really going to be utilized. It's a consultation right? It's a business meeting and business agreement pretty much. They [government and industry] think, "we've got to get through to these people and treat them good and pay them off until we got them on our side. So they don't have a protest." You're signing this off saying you're not going to have any kind of... you know, it's a release... Its business, it's all business... They [government and industry] think, "How do we remove barriers to development?" And we're seen as a barrier from the beginning of that process. It's not at all about building relationships; it's all a façade. It's another infested blanket covered in cash this time.

For Oh, the entire TEK, consultation and engagement process is a way to appease regulatory requirements and pacify the concerns of Indigenous peoples and communities, so that industry maintains regulatory certainty⁷. Indigenous communities are justifiably discouraged from participating in these processes and pushed to find other avenues to defend their culture, land, communities, families, and knowledge systems. As Leanne Simpson (2001) illuminates:

In the face of colonialism, non-participation has also proven to be an effective form of resistance. Refusing to participate in co-management agreements, EIAs, treaty negotiations, natural resource management agreements... are effective ways of resisting the dominance of Euro-Canadian society, and its assimilative tendencies... As our experiences with TEK have shown us, participation does not guarantee that Aboriginal people will be valued, listened to, and afforded the respect we deserve. (p. 144).

When Indigenous assertions of rights and sovereignties become unacceptable to the settler state, they are pushed aside or redirected. When these rights are asserted through blockades, protests, rallies and/or other acts of resistance, they are commonly considered acts of terror and threats to the state (Regan, 2010). An article published in March 2014 stated that federal government documents attained by *The Guardian* revealed, “The Canadian government is increasingly worried that the growing clout of aboriginal peoples’ rights could obstruct its aggressive resource development plans” (Lucaks, 2014). Obviously this is problematic as the federal government has expressed the goal of reconciliation with Indigenous communities, yet views Indigenous peoples’ rights as an obstruction to “aggressive resource development”. If Indigenous communal rights are an obstruction to the state’s development priorities, it would not be surprising to find other ways in which those communal rights are being undermined. The

⁷ Regulatory certainty denotes a confidence held by industry in having met all of the regulatory requirements to move forward with development, including Aboriginal engagement commitments. With regulatory certainty, industry seemingly upholds a social license to operate as they have covered all legal requirements for development authorized by the state and are therefore not threatened by legal repercussions.

aforementioned legislation, FNPOA, ridding communal rights and title over land on First Nation reserves is a clear example of attempts to grossly destabilize communal rights. In Chapter 4, I refer to a Golder report declaring communal land rights as “not compatible with modern land use” (Golder, 2012, p. 6). These are hard examples of Harvey’s (2006) accumulation by dispossession: Land privatization and commodification; disregard for communal rights; subjugation of Indigenous knowledge and ways of life; and the exploitation of natural resources.

If Indigenous rights, acknowledged in the Canadian constitution, are viewed as obstructions of development and private property ownership on reserves being stimulated through potential legislation, Jeff Corntassel (2008) is correct in emphasizing that “the existing rights discourse can take indigenous peoples only so far” (p. 105). It seems as if the state will make an apology to Indigenous peoples for past atrocities and at the same time, work to pass legislation that will continue to colonize, assimilate and undermine Indigenous ways of life. The rhetoric found in discussions of Indigenous recognition, reconciliation, rights, etc. cannot be dictated by a state that views Indigenous rights as a hindrance to an unwavering economic agenda.

Mechanisms to move forward: Positive refusal through pressure and resistance

The purpose of this research is not to criticize the existing environmental and consultative processes in resource development so as to prescribe and promote an alternative format for TEK collection and use. I am neither in a position to dictate how a community could best conduct TEK and/or TLU studies nor encourage participation in these processes at all. In this section, I intend to address ways in which positive refusal

through resistance and pressure are potential mechanisms to be heard in a process that is failing to appropriately include IK and voice. According to Coulthard (2014), expressions of resentment “can help prompt the very forms of self-affirmative praxis that generate rehabilitated Indigenous subjectivities and decolonized forms of life in ways that the combined politics of recognition and reconciliation has so far proven itself incapable of doing.” (p. 109).

Refusal through resistance and pressure is an exercise of sovereignty over the settler colonial state that can be applied in various contexts within Canada. As an alternative to recognition or participation, refusal offers an exercise in both individual and collective sovereign freedom for Indigenous peoples. Recognition, Simpson (2014) reminds us, only survives as far as the settler colonial state can continually manage the Indigenous population allowing continual capital accumulation. Once it is positioned with the potential to “challenge the norms of settler society”, (p. 20), juridical recognition from the state is inevitably denied. In considering positive refusal, I find the following very relevant:

If a refusal to recognize also involves using one’s territory in a manner that is historically and philosophically consistent with what one knows, then it is an incident of failed consent and *positive refusal*: Mohawks refused to consent to colonial mappings and occupations of their territory. Such refusals, or failures to consent, require a legal response to contain those who refuse, a move that then incites settler anxiety and the containability of Indian bodies and practices. (Simpson, 2014, p. 128, emphasis original).

Similar to the experience of IK in oil and gas development, the state and industry continually deny acknowledgment of the legitimate sovereignty practiced by Indigenous communities. Two current examples of positive refusal, refusing to accept and partake in BAU in oil and gas development, are exhibited below. Indigenous communities within

the oilsands region, particularly the ACFN, as well as the Unist'ot'en Camp in northwest British Columbia practice positive refusal, but within two very different contexts.

Ongoing and persistent pressure exerted by the ACFN and other First Nation and Métis communities in the oilsands region created a unified voice that industry, in this case Shell, could no longer avoid. Despite Shell's insistence, via Golder, to discount many of ACFN and MCFNs concerns over the JPME project, conditions attached to the JPME projects approval requires Shell to acknowledge and mitigate many of these concerns. A number of the 88 listed conditions of approval for the project can be attributed to recommendations recorded in ACFN's TLU report. These documented requirements are included in Shell's project approval because ACFN and other communities tirelessly pressured and challenged Shell to move past the status quo. To some, this may be seen as a relatively small victory, but it suggests the power of positive refusal through pressure exists and can incite change within a typically inflexible process. The ACFN not only pressured Shell and the panel within the rigid regulatory regime, but also looked to the courts for justice and took warranted advantage of social media. ACFN actively utilized media outlets to share their struggle and story with the public, catching the attention of Shell, the broader public, and many influential voices including Neil Young and David Suzuki. Along with the JPME, the Pierre River Mine is another large-scale strip mining project proposed by Shell north of the JMPE project proposing to produce approximately 200,000 barrels of oil per day. Suspension of the Pierre River Mine took place prior to the recent rapid decline of oil prices, and therefore cannot necessarily be attributed to the crashing oil prices. Conceivably, then, it is safe to assume that the pressure exerted by Indigenous communities during and following the JPME EA

process had an influence on the subsequent decision to suspend the Pierre River Mine. Unlike the Unist'ot'en camp, resistance in the form of barricades, protests, etc. is more difficult in a setting such as the oilsands where there already exists an abundant amount of security and exploitative development. Nonetheless, the pressure First Nations and Métis communities have forced upon industry and government occupy a form of positive refusal in refusing to accept normalized, institutional processes that undermine IK systems and voices.

The Unist'ot'en camp located in northern B.C. in the Bulkley River Valley, near the town of Houston, is a grassroots movement working against the colonial capitalist system of resource exploitation. The Unist'ot'en peoples are from the Big Frog Clan and are the original peoples of the Wetsu'wet'en territory⁸. Community organizers, or leaders, have been there since 2010, whilst planning for proposed pipelines has been underway. There are at least three proposed oil and gas pipelines planned to run through Wetsu'wet'en territory. Various forms of engagement and consultations, including TEK and TLU studies, have been and are still taking place along the proposed pipeline routes. The Unist'ot'en not only refuse to participate in any form of consultation or engagement, but have set up a main resistance camp and a number of smaller camps prohibiting access to their territory by developers. This has posed as a noteworthy threat to development in the area and proved as a great hassle for proposed pipeline developers, impacting their public image and their pockets as time is eaten up for delayed assessments, engagement, and construction. Many attempts to assess the proposed pipeline right-of-way have been interrupted and abruptly brought to a halt due to Unist'ot'en presence and their refusal to allow these assessments to take place. Environmental assessments are a requirement for

⁸ Information retrieved from http://unistotencamp.com/?page_id=2 on November 14, 2014

project approvals, whether provincially or federally regulated. By interrupting the EA process, the Unist'ot'en are successfully resisting exploitation of the land and demonstrating their sovereignty in a manner not permitted within a process structured by the culture of liberal capitalism. Similar to the ACFN, the Unist'ot'en have also utilized social media, gaining support within and beyond provincial borders. This has prompted a reaction in the government and industry, what I refer to as Simpson's (2014), "settler anxiety" through increased police presence and legal threats. Both the Unist'ot'en Camp resistance and pressure exerted by First Nations and Métis on Shell's mining developments are acts of positive refusal in an effort to incite change and challenge the dominant societal structures.

Closing thoughts and recommendations

Indigenous resistance movements and forms of pressure that took place with increasing regularity in the 1980s was, is, and will continue to be "an embarrassing demonstration that Canada no longer [has] its shit together with respect to managing the so-called "Indian problem"". (Coulthard, 2014, p. 118). In terms of TEK as a form of engagement, the format and structure of these studies must be decided, or at the very least agreed upon, by impacted communities, as should the terms of recognition and reconciliation with the settler state. If this does not happen, the politics of recognition, reconciliation and TEK in oil and gas development will continue to swing on the settler colonial states' policy pendulum; discussions littered with hollow ploys, with no real resolution to a deeply entrenched and damaged colonial relationship.

In order for TEK to be collected and used within oil and gas regulatory regimes, a number of changes must occur within the regulatory system itself, but also in the way dominant society perceives the value of Indigenous Knowledges and Indigenous ways of life. I would like to outline three overarching recommendations that are based on the following: Personal experience working with TEK in oil and gas development; what I have repeatedly heard from Indigenous peoples; what I have found relevant in related literature; and what I have come to learn about colonial attitudes and quotidian aspects of life largely dictated by capitalism. Particularly, I have reviewed and compiled what I commonly heard by those I interviewed, and therefore the following recommendations are not mine, but I support them as they are listed here:

- Communal rights and environmental stewardship cannot be characterized as threats to the state and cannot be actively undermined. Rights should not be difficult to uphold. Dominant structures and institutions must accept that participation in regulatory processes, discussion, negotiations, etc. does not entail consent. Free, prior and informed consent (FPIC) must be a requirement before any stage of development takes place.
- Slow down. Be willing to take the time and effort necessary to listen and learn *from* Indigenous peoples. If the intentions of consultation/engagement are misplaced and respect absent, then the process will fail. These processes must move beyond a “box-ticking exercise” full of hollow assurances and hastened procedures shepherded by third-party consultants. A one-size-fits all approach is inappropriate for different communities impacted by different projects. Impacted communities should be equal partners in *all* aspects and stages of development/management.

- Indigenous Knowledge must not be continually assimilated and commodified to conform to Western knowledge systems and capitalist structures. Openness and transparency is necessary by all parties involved with genuine intentions to work as equals. Industry and government must be open to and respect all aspects of IK that inform Indigenous ways of life, equal to their own. All parties should have equal opportunities of involvement available through capacity and funding.

Obviously, these are recommendations particularly relevant to TEK, but can also be extended to issues pertinent to reconciliation, or perhaps more suitably, decolonization of Canadian society as a whole. To be clear, these are suggestions for the dominant, settler-society to embrace. For its relevance here, I return to a statement identified in Chapter 2: “It is not Aboriginal people who have to *change* or be *developed*, it is Euro-Canadians. And I like to think that Euro-Canadian NGOs, researchers, academics and community developers have a role to play in this transformation.” (Simpson, 2001, p. 145, emphasis original).

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