
Indigenous land rights in Canada: the foundation for development?

Robert B. Anderson*

Faculty of Business Administration, University of Regina,
Regina, Saskatchewan S4S 0A2, Canada

E-mail: Robert.Anderson@uregina.ca

*Corresponding author

Ronald D. Camp II

Faculty of Business Administration, University of Regina,
Regina, Saskatchewan S4S 0A2, Canada

E-mail: Ronald.Camp@uregina.ca

Leo Paul Dana

Department of Management, University of Canterbury,
Private Bag 4800, Christchurch 8020, New Zealand

E-mail: leo.dana@canterbury.ac.nz

Benson Honig

Faculty of Business and Economics,
Wilfrid Laurier University,
75 University Avenue West Waterloo,
Ont. N2L 3C5, Canada

E-mail: bhonig@wlu.ca

Jean-Marie Nkongolo-Bakenda

Faculty of Business Administration, University of Regina,
Regina, Saskatchewan S4S 0A2, Canada

E-mail: Jean-Marie.Nkongolo-Bakenda@uregina.ca

Ana Maria Peredo

Faculty of Business, University of Victoria,
3800 Finnerty Drive, Victoria, BC V8P 5C2, Canada

E-mail: aperedo@uvic.ca

Abstract: Throughout the middle decades of the 20th Century Indigenous people were the target of efforts to assist in economic development. In large part these externally developed, modernisation based efforts failed. In response, a second wave of Indigenous development has emerged; one in which

Indigenous peoples are striving to rebuild their 'nations' and improve their lot through economic development 'on their own terms'. Key to this approach is the pursuit by Indigenous people of the recognition of their rights to their traditional lands and resources. This paper examines the emergence of this second wave of Indigenous development in Canada.

Keywords: indigenous people; economic development; land rights; entrepreneurship; Canada.

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Biographical notes: Robert B. Anderson is an Editor of the *Journal of Small Business and Entrepreneurship* and Co-editor of the *Journal of Aboriginal Economic Development*. He is past President of the Canadian Council for Small Business and Entrepreneurship and a Director of the International Council for Small Business. Bob is an Associate Professor with the Faculty of Business Administration of the University of Regina, in Saskatchewan, Canada.

Ronald D. Camp II received his PhD from the University of British Columbia. He is an Assistant Professor in the Faculty of Business Administration at the University of Regina in Saskatchewan, Canada. His research focuses on the effects of culture in decision-making and management, especially as it pertains to cross-cultural business alliances. His current areas of interest include the effects of culture on the development of trust and the selection of business alliance partners and the long-term outcomes of these alliances.

Leo Paul Dana is Senior Advisor to the World Association for Small and Medium Enterprises. He is currently based at the University of Canterbury, in New Zealand. He formerly served as Deputy Director of the Nanyang Business School International Business MBA Program, and Visiting Professor of Entrepreneurship, at INSEAD. He is founder of the *Journal of International Entrepreneurship* and author of over 100 papers. His reference volume, *Entrepreneurship in Pacific Asia: Past, Present and Future*, has been on the best-seller list for over two years. His biography appears annually in the *Canadian Who's Who* as well as in *Who's Who in the World*.

Benson Honig received his PhD from the Stanford University. He is an Associate Professor, Wilfrid Laurier School of Business and Economics and Director of the Centre for the study of Nascent Entrepreneurship and the eXploitation of Technology (NEXT). Studying micro-enterprise and entrepreneurship worldwide, his current research interests include business planning, nascent entrepreneurship, social entrepreneurship, social capital, and entrepreneurship in environments of transition. His work has appeared in the *Journal of Management*, *Journal of Business Venturing*, *Academy of Management Learning and Education*, *Entrepreneurship, Theory and Practice*, *Entrepreneurship and Regional Development*, the ILO, and other locations. Previously he was an Entrepreneur and also a Manger at General Electric.

Jean-Marie Nkongolo-Bakenda received his PhD from the Laval University. He is an Assistant Professor, faculty of Administration, University of Regina. His recent research interests include globally oriented small- and medium-sized enterprises, organisational learning, organisational scanning, aboriginal and ethnic entrepreneurship, and strategic vision. He has published his works in such journals as *Revue Internationale PME*, *Journal of Comparative International Management*, and *The Journal of Entrepreneurial Finance and Business Ventures*.

Ana Maria Peredo received her PhD from the University of Calgary. She is an Assistant Professor in the faculty of Business at the University of Victoria. Drawing on her background in social and cultural anthropology, her research focuses on the role of business in fostering sustainable communities, especially among impoverished communities. Her current areas of interest are social enterprise, community-based entrepreneurship, indigenous entrepreneurship, global and local sustainability and the alleviation of poverty. She has published her research in such journals as the *Journal of Entrepreneurship Theory and Practice*, *Journal of Management Inquiry* and *Journal of Humanity and Society*.

1 Introduction

According to the World Bank “Indigenous peoples are commonly among the poorest and most vulnerable segments of society” (World Bank, 2001). Confronted with these depressing economic statistics, many, but certainly not all, modern nation states have recognised the plight of their indigenous communities. In response, throughout the middle decades of the 20th century, indigenous people, along with other poor populations of the world, were the target of a wide range of initiatives, efforts and programmes to assist in economic development. In large part, these top-down, externally developed, modernisation-based efforts failed to improve the economic circumstance of the world’s poor including indigenous people, while at the same time often damaging their traditional economies leaving communities less self-reliant and therefore worse off than before.

Reacting to these circumstances and the centuries of colonisation that caused them, indigenous peoples are struggling to reassert their nationhood within the post-colonial states in which they find themselves. For all, claims to their traditional lands and the right to use the resources of these lands are central to their drive to nationhood. Land is important in two respects. First, traditional lands are the ‘place’ of the nation and are inseparable from the people, their culture, and their identity as a nation. Second, land and resources are the foundation upon which indigenous people intend to rebuild the economies of their nations and so improve the socio-economic circumstance of their people – individuals, families, communities and nations.

This has resulted in a second wave of indigenous development (the first being top-down state directed efforts usually aimed at modernisation), one in which indigenous peoples are striving to rebuild their ‘nations’ and improve their lot through economic development ‘on their own terms’. Two factors play a critical role in this process. The first is the pursuit by indigenous people of the recognition of their rights to their traditional lands and resources by the nation states in which they are situated. The second is formation of mutually beneficial business alliances with multinational corporations (MNCs), the major players in the new global economy. The two aspects are closely related in that the realisation of the former gives indigenous people control of key resources important to MNCs enabling the latter.

This is not to say that all indigenous communities in fact form alliances with MNCs, only that the potential for such alliances is there. Some communities reject outright the opportunity to enter in such alliances, like the U’wa in Colombia who in their decade-long struggle with the Government of Colombia and Occidental Petroleum have received international attention and the support of environmental and human rights

activists throughout the world (Davis and Ferry, 2004). The U'wa opposed exploration and drilling for oil on their traditional lands in the Columbian Andes. Despite efforts by the Colombian state and Occidental to reach a settlement, the U'wa remained steadfast.

“They say that in this consultation the government will sit with us in order to see how, in our territory, we can live with OXY [Occidental Petroleum] and their oil exploration, without our culture, our world, being destroyed. For us, this is impossible Mother Earth is sacred, is not for violation, exploitation, nor negotiation; it is to be cared for, to be conserved. For these reasons we can not permit oil exploration on our traditional territory ... We will continue to fight to defend our right to live in peace within our own territory, with our own ways of thinking and our own customs, and we will not permit ourselves to be manipulated or fooled by trinkets or fine words.” (U'wa People, 1997)

The U'wa have threatened mass suicide if oil, ‘the blood of Mother Earth’, was extracted from their homeland (Raeburn et al., 2000). While Occidental removed itself from the project in 2002 and the U'wa hoped to turn inwards again and carry on living according to their own culture, concerns remain that other multinational oil corporations will form a partnership with the Colombian Government (Drillbits and Tailings, 2002).

Others, like the Deh Cho in the North West territories of Canada and discussed in more depth later in this paper, see potential in such partnerships with MNCs and negotiate their possible participation ‘on their terms’, with those terms often including many things not directly related to the partnership, and with parties other than the MNC, usually governments.

This paper examines the emergence of this second wave of indigenous development in Canada paying particular attention to the role of four key actors, indigenous people, the ‘civil’ sector, corporations and the state. It does this by describing the struggle by indigenous people of the Mackenzie River Valley in Northern Canada for the recognition of their right to their traditional lands and a meaningful role in the use of these lands and resources. As we follow the story from the 1970s to the present, we see a shift in state policy towards the recognition of indigenous rights to their lands and resources, and how this shift coupled with direct pressure on corporations from indigenous and other civil groups resulted in an evolution in corporate social responsibility (CSR) with respect to indigenous people. While the Canadian case is illustrative, these pressures and this evolution in CSR with respect to indigenous people are a global phenomenon.

Two sections precede the description of this evolution in CSR towards indigenous people. The first defines and describes indigenous people and their approach to development. The second provides a theoretical perspective on indigenous development, specifically focusing on the role of the community, the state, the civil sector and MNCs (as the principal actors in the global economy) in the process.

2 Who are the indigenous?

A useful definition is that framed by the General Council of the International Labour Organisation in 1989. According to their convention, formally ‘entered into force’ in 1991, indigenous people are:

“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.” (International Labour Organisation, 1991)

The United Nations employs a similar definition, generally omitting references to maintaining social, economic, cultural and political institutions. A 1995 resolution, for instance, states that,

“Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants ... of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means.” (General Assembly The United Nations, 1995)

The World Bank declines to adopt a formal definition, choosing instead to specify a number of typical characteristics that are relevant to considering a group indigenous. Some of these echo elements in the above definitions, but others extend to a fuller account of indigenous circumstances. The Bank identifies indigenous peoples by their possession in some degree or other of some of the following (World Bank, 2001):

- close attachment to ancestral territories and the natural resources in them
- presence of customary social and political institutions
- economic systems primarily oriented to subsistence production
- an indigenous language, often different from the predominant language
- self-identification and identification by others as members of a distinct cultural group.

Depending on the definition employed, estimates of the indigenous world population vary. At the high end, it is estimated that the total population identified as indigenous ranges from 300 million to 500 million individuals worldwide, and that this population represents as much as 80% of the cultural diversity on this planet (Indigenous Peoples’ Human Rights Project, 2003). The UN estimates that approximately 5,000 different groups fit its definition of indigenous.

One indisputable feature that sharpens the dilemma of indigenous economic development is the widespread and chronic poverty of almost all indigenous people. The World Bank, for example, prefaces its Operational Policy on Indigenous People with the declaration that “indigenous peoples are commonly among the poorest and most vulnerable segments of society” (World Bank, 2001). Confronted with these depressing economic circumstances, many, but certainly not all, modern nation states have recognised the plight of their indigenous communities. For this reason, indigenous people, along with other poor populations of the world, have long been the target of a wide range of initiatives, efforts and programmes to assist in economic development.

Due largely to the leadership of indigenous people themselves, these initiatives have increasingly been focused on more than the simple improvement of socio-economic circumstances. Instead, economic development is seen as part of the larger agenda of rebuilding indigenous peoples' communities and nations and reasserting indigenous control over their traditional territories. The following excerpts from 1993 Draft United Nations Declaration on the Rights of Indigenous Peoples capture a sense of this larger agenda:

“RECOGNISING the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,

Article 21

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.” (Economic and Social Council Commission on Human Rights, 1993)

The presence of this larger agenda is one of the forces that differentiate indigenous economic development from community development in general. It is the major tool by which many indigenous groups are striving “to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities”.

3 Development and indigenous people in Canada

The current socio-economic circumstances of the Aboriginal people in Canada are abysmal. For example, according to the 1991 census (so selected because 1991 is the base year for certain projections made by the Royal Commission on Aboriginal People discussed below), 42% of Aboriginal people living on-reserve received social welfare, as opposed to 8% of the Canadian population as a whole. Housing conditions tell a similar tale with 65% of on-reserve and 49% of off-reserve Aboriginal people living in substandard housing. Not surprisingly, poverty and poor living conditions have had an impact on the health of Aboriginal people. The incidence of tuberculosis is 17 times higher among Aboriginal people than non-Aboriginal people, while the incidence of diabetes is three times higher, and rising rapidly. Beyond physical health, Aboriginal people suffer other consequences of poverty including a suicide rate two and one half times, a murder rate six times and an incarceration rate five times higher than the respective rates for non-Aboriginal people. Relative levels of employment and unemployment are particularly relevant to the subject of this paper. Here, too, Aboriginal levels compare very unfavourably to non-Aboriginal levels. In 1991, unemployment among Aboriginal people stood at 24.6%, almost two and one half times the national rate of 10.2%. The rate among Aboriginal people living on-reserve was even higher; often well above 30% and approaching 90% in isolated communities.

According to the Royal Commission on Aboriginal People (RCAP, 1996), the Aboriginal population will rise by 52% (compared to 22% for non-Aboriginal Canadians) between 1991 and 2016. During the same period, the working age of Aboriginal population will increase by 72%, compared to a 23% non-Aboriginal increase. The RCAP estimated that the total cost to the Canadian economy caused by the dismal socio-economic circumstances of Aboriginal people in 1996 was C\$ 7.5 billion. The commission projects that this cost is to increase to C\$ 11 billion by 2016, if the socio-economic circumstances of indigenous people remain the same relative to the circumstances of other Canadians.

Aboriginal people in Canada are not standing idly by accepting the status quo. They are pursuing a strategy of economic development with entrepreneurship – the identification of unmet or under satisfied need and related opportunities, and the creation of enterprises, products and services in response to these opportunities – at its heart. Through entrepreneurship and business development, they believe that they can attain their socio-economic objectives, including:

- greater control of activities on their traditional lands
- self-determination and an end to dependency through economic self-sufficiency
- the preservation and strengthening of traditional values and their application in economic development and business activities
- improved socio-economic circumstance for individuals, families and communities.

The realisation of rights to lands and resources is recognised as being critical to building the capacity to do economic development and therefore to achieving these objectives. These rights represent a considerable capital that Aboriginal people can bring to the economic bargaining table. Beyond their economic values, these rights give Aboriginal people real control over activities on traditional lands including the right to ‘veto’ resource development projects. It is this more than anything else that is giving rise to a changing attitude on the part of corporations towards their relationship with indigenous people. The Mackenzie Valley Pipeline Inquiry, the Inuvialuit Agreement and the recent resurrection of the Mackenzie Valley Pipeline project examined later in this paper illustrate these forces at work and the resulting change in the relationship between multinational oil and gas corporations and the indigenous people of the valley.

4 Theoretical perspective

Modernisation theory is the core belief that has dominated much of the development paradigm and practice in the middle decades of the 20th century. There are a number of notions that are part of this theory. First, it sees progress as passing through various stages. It implies that in order to progress and develop, traditional societies have to move towards modernity (Crewe and Harrison, 1998). ‘Modernisation’ and ‘development’ came to be used as synonymous terms. Second, monetary income and, therefore, economic growth are regarded as key elements in measuring the quality of life. Third, humans are or should be motivated by self-interest and rational economic behaviour (Crewe and Harrison, 1998; Burkey, 1993). From this point of view, development is measured in Western economic terms, with the expectation that underdeveloped nations

will over time assume the qualities of industrialised nations (Burkey, 1993). One of the underlying assumptions of modernisation is that traditional culture and social structures are barriers to progress. This can be seen in the following quotation:

“Pre-existing social relations ... family, kinship and community, constitute obstacles to business enterprises and achievement ... Successful capitalism involves some rupturing of existing social relations and possibly the diminution of affective relations to leave more space to impersonal, calculating forms of social interaction believed to characterise the market economy.” (Moore, 1997, p.289)

Dependency theory emerged as a critique of the failure of the modernisation agenda to deliver the anticipated development outcomes, but even more fundamentally to draw attention to what was seen as a new form of colonisation. In this analysis, the corporation and/or the developed states (particularly the USA), the World Bank, IMF, and GATT are cast as the villain or villains (Klitgaard, 1990; Hancock, 1989). Rather than leading the underdeveloped to a developed state, the actions of the developed world are seen as the original (through conquest and colonialism) and continuing (through economic exploitation) cause of underdevelopment. According to the dependency critiques, participation by the underdeveloped in the global capitalist economy as it is currently constructed can only exacerbate their circumstances, not improve them. The evidence since the Second World War certainly offers some support for this view. The gap between the rich and the poor within and among states has widened, not closed in spite of six decades of development efforts of various types.

Even as modified in recent years (So, 1990), the modernisation and dependency perspectives present incompatible views of the relationship between a developing people/region and the developed world. In particular circumstances, one or the other of these approaches can often adequately explain *what happened*. However, when applied in any particular circumstance to offer insight into *what might happen*, the two produce conflicting answers, thus providing contradictory guidance to groups searching for a path to development as they perceive it.

In the closing three decades of the 20th century, the conflict between the modernisation and dependency perspectives led many to conclude that both are incomplete (as opposed to wrong) with each describing a possible but not inevitable outcome of interaction between local regions seeking what they regard as a better form of life, and the global economy. In this vein, Corbridge says that there has been a powerful trend towards

“theories of capitalist development which emphasise contingency ... a new emphasis on human agency and the provisional and highly skilled task of reproducing social relations.” (Corbridge, 1989, p.633)

As Tucker states, this allows “for the possibility of incorporating the experience of other peoples, other perspectives and other cultures into the development discourse (Tucker, 1999, p.16)”. Development need not be as defined by the ‘developed world’ and the interaction between a particular people and the global economy need not be as envisaged by the modernisation or dependency perspectives; it can be something else entirely. Why not that which is being sought by indigenous people – development as they define it?

Regulation theory is one of the new approaches to development that emphasises contingency and human agency.¹ Hirst and Zeitlin say that it executes

“A slalom between the orthodoxies of neo-classical equilibrium theory and classical Marxism to produce a rigorous but nondeterministic account of the phases of capitalist development that leaves considerable scope for historical variation and national diversity.” (Hirst and Zeitlin, 1992, p.84)

Expanding on this notion of variation and diversity, Elam says that on one hand, national and regional units are constantly in a state of flux as they adjust to the influences of the global economy. All must accommodate themselves at least to some extent to its hegemony. At the same time, these broader global influences “are seen as having essentially local origins” (Elam, 1994, p.66). This translates into a counter-hegemonic potential in terms of the activities actually undertaken by people as they negotiate their way locally through the global economy. It is not simply a case of conform or fail.

Regulation theory analyses the global economy “in terms of a series of *modes of development* based on combination of the currently ascendant *regime of accumulation* and a variety of *modes of social regulation*” (Hirst and Zeitlin, 1992, pp.84, 85). The regime of accumulation determines the general possibilities for the economy. Scott says it “can be rather simply defined as a historically specific production apparatus ... through which surplus is generated, appropriated, and redeployed” (Scott, 1988, p.8). Importantly, with respect to geographic scale, the regime of accumulation is a “relationship between production and consumption defined at the level of the international economy as a whole” (Hirst and Zeitlin, 1992, p.85); it is what most refer to as the ‘global economy’.

If the world were Adam Smith’s, peopled by the universal perfectly rational ‘economic man’, no regulation of the global economy beyond the ‘invisible hand’ of perfectly functioning markets would be required. But the world is not Smith’s; people are far from perfectly rational, and they are driven by many things not economic. Further, they are far from universal in the nature of their variations from the ‘perfect’. As a result, Scott says that stability in the global economic system is

“Dependent on the emergence of a further set of social relations that preserve it, for a time at least, from catastrophic internal collisions and breakdowns. These relations constitute a mode of social regulation. They are made up of a series of formal and informal structures of governance and stabilisation ranging from the state through business and labor associations, to modes of socialisation which create ingrained habits of behaviour, and so on.” (Scott, 1988, p.9)

Hirst and Zeitlin agree saying that a mode of social regulation (MSR)

“is a complex of institutions and norms which secure, at least for a certain period, the adjustment of individual agents and social groups to the over arching principle of the accumulation regime.” (Hirst and Zeitlin, 1992, p.85)

While regulation theory does not prescribe the exact nature of a particular mode of social regulation, it is generally agreed that:

- a regime of accumulation does not create or require a particular mode of social regulation, “each regime, in short, may be regulated in a multiplicity of ways” (Scott, 1988, p.9)
- because modes of social regulation are based on such things as “habits and customs, social norms, enforceable laws and state forms” (Peck and Tickell, 1992, p.349) unique modes “can exist at virtually any territorial level – local, regional, national, global” (Storper and Walker, 1989, p.215).

Another aspect of regulation theory – its historicity – adds further strength to the argument that modes of social regulation, and therefore modes of development differing considerably one from another, can and do emerge at every geographic scale. Corbridge (1989) says regulation theory indicates that the global economic system has gone through four stages in the 20th century. In stage one, the system was in equilibrium. Stage two was a period of crisis or disequilibrium resulting from a shift from the extensive to the Fordist regime of accumulation. Equilibrium returned in stage three when suitable modes of social regulation emerged. The fourth (current) stage is also one of crisis caused by a failure of the monopolistic mode of social regulation (in all its variants) to accommodate a “selective move from mass production [the Fordist regime accumulation] to various forms of flexible production” (Norcliffe, 1994, p.2).

Forces resulting in the shift to the new flexible regime of accumulation include:

- technical limits to rigid fixed capital production techniques
- working class resistance to Taylorist and Fordist forms of work organisation (Jessop 1989)
- a change in consumption patterns “toward a greater variety of use values ... [that] cannot be easily satisfied through mass production” (Amin and Malmberg, 1994, p.12)
- the increasing mobility of capital and the resulting ability of transnational corporations (TNCs) to move among spatially bounded regulatory jurisdictions in the pursuit of greater profits (Leyshon, 1992)
- in the face of this internationalisation of capital, the inability of national Keynesian policies [all variants of the of the monopolistic mode of social regulation] to avert crisis (Kominos, 1989).

Everywhere and at every geographic scale – community, subnational region, national, supra-national regions and globally – indigenous or not, people are struggling to develop modes of social regulation that will allow them to interact with this new flexible regime of accumulation on their terms. While it is a ‘work in process’, the nature of the flexible regime of accumulation is becoming clearer and multiple overlapping modes of social regulation are emerging. Both are briefly described in the paragraphs that follow.

First, the flexible regime of accumulation. Storper and Walker (1989, p.152), compare it to Fordism, saying that flexible production systems have:

- more general purpose equipment and machinery, especially machines based around variable labour processes and/or programmable computerised equipment
- smaller, more specialised workplaces and firms and greater reliance on subcontracting
- greater attention to demand variations, to which the quantity of inputs and outputs can be rapidly adjusted by altering the procedures or the mix of participants
- collective social and institutional order in place of hierarchical control exercised by the mass production corporation
- more temporary and part-time hiring and more relaxed internal rules for assigning workers and managers to various tasks.

Expanding on this, Steven Goldman says the flexible regime exhibits

“A distinct set of relationships, interdependencies, and forms of interaction among suppliers, producers, distributors, and customers. It demands new approaches to organising, operating, and measuring the performance of both individual companies and clusters of cooperating companies.” (Goldman, 1995, p.1).

He goes on to say that in “a competitive environment of continuous and unanticipated change”, companies are finding it “advantageous on the grounds of cost, speed, or market penetration, to utilise only some company-owned resources, combining them with others available in other companies.” (Goldman, 1995, pp.6, 7)

Dunning agrees saying

We are moving out of an age of hierarchical capitalism and into an age of alliance capitalism. This is placing a premium on the virtues needed for fruitful and sustainable coalitions and partnerships (be they within or among institutions), such as trust, reciprocity, and due diligence. (Dunning, 2003, p.24)

As a result of these features of the flexible regime of accumulation, there has been a shift in the ‘who’ companies consider to be stakeholders and how they behave towards these groups. Nowhere is this truer than in the relationship between companies and the communities where their customers and employees live and where they conduct their activities. In spite of globalisation, everything a company does it does somewhere, every employee and every customer lives somewhere and inputs of raw material and capital goods come from somewhere; and all these somewheres are located in communities of some sort. Because of this, as companies forge networks of suppliers, subcontractors and marketing channel partners and seek to control them through “collective social and institutional order in place of hierarchical control” (Storper and Walker, 1989, p.152), they are much more likely to see communities as valued members of networks as opposed something external to them. This general predisposition applies no less to indigenous communities who increasingly control key resources and/or represent an important component of the labour force in certain areas.

This leads us to a discussion of the modes of social regulation emerging in response to the demands of the flexible regime of accumulation. The new economy rhetoric has focused on deregulation. But, in fact, what is being touted as deregulation is actually not so; it is re-regulation. In response to the change in the regime of accumulation, the nature of regulation is changing but regulation continues, as it must.

One thing that has occurred is a shift in the locus of regulation from the nation state in two directions – to the supra-national and the local – as a number of authors attest. For example, Amin and Malmberg (1994, p.222) say the crisis in the global economy has resulted in “new opportunities for the location of economic activities” and that “the geography of post-Fordist production is said to be at once local and global”. Scott (1988, p.108) says that new industrial spaces result from “a very specific articulation of local social conditions with wider coordinates of capitalist development in general”. Finally, Dicken (1992, p.307) emphasises that successful participation in the global economic system “is created and sustained through a highly localised process” and that “economic structures, values, cultures, institutions and histories contribute profoundly to that success”. On the face of it, promising circumstance for indigenous people seeking to participate in the global economy on their own terms.

Local modes of social regulation can be, in Gramscian terms, both hegemonic and counter-hegemonic to the extent to which they consent to capitalist global economy, attempt to transform it or dissent from it. These three responses are associated with three different analytical/intuitive starting points that motivate policies and programmes in local modes of social regulation. The first of these starting points is an analysis that claims that peripheral communities have been excluded from capitalism and that the objective is to remedy this through inclusion. The second is an analysis that claims that capitalism is at least in part culturally alien and that it is necessary to transform the 'alien' aspects of it as part of the process of participating in it. The third is an analysis that claims that capitalism is exploitative and beyond redemption and that the need is to exclude or resist it. These analytical/intuitive starting points are not simply abstract concepts. They, and the beliefs about the economy associated with them, are present in varying combinations and varying strengths among the members of indigenous and all other communities.

Figure 1 captures these possibilities by considering a group's response to the global economy on two continua. The first is the degree to which a group opts into the global economy, or opts out. The second addresses the nature of this opting in or opting out. Is the approach to accept the global economy 'as is', or is it to attempt to transform or adapt it in some fashion? A combination of the continua results in four extreme possibilities. The first two occur when a group chooses to opt out of the economy. At one extreme (#1), the opting out can be passive, that is, choosing not to participate and instead seeking isolation and even protection from the impact of the global economy. Or the opting out (#2) can be active and aggressive where a group rejects the global economy and seeks to resist it or even overthrow it through protest, violence and even 'revolution'. The other two extreme positions (#s 3 and 4) occur when a group chooses to 'opt in' and actively participate in the global economy. Again, that participation can be characterised by the degree to which the group passively accommodates itself to the requirements of the global economy, or does not. The approach by indigenous people in Canada has been of the opt-in variety, but it has not been passive. Participation in the economy has been accompanied by an ongoing struggle for land and other rights to allow this participation to be 'on their own terms'. Indigenous responses elsewhere cover the entire spectrum of possibilities from rejection and violent rejection or revolution to passive acceptance and willing assimilation.

People in a particular community do not adopt their perspective on the global economy in isolation or in abstract. It emerges in response to their direct experience with actors in the global economic system. The four groups of actors with whom they are most familiar (and therefore constitute the face of the global economy) are

- the exogenous businesses (henceforth called corporations for simplicity sake) with which they interact as suppliers, customers and/or employees
- the 'state' at local, sub-national, national and international levels
- a myriad groups of the civil sector including non-government agencies (NGOs) of all types and special interest groups such as Amnesty International, the World Council of Indigenous People, the Sierra Club and so on
- global and supra-national bodies, such as the WTO, World Bank, the European Economic Union and NAFTA.

Figure 1 Responses to the global economy

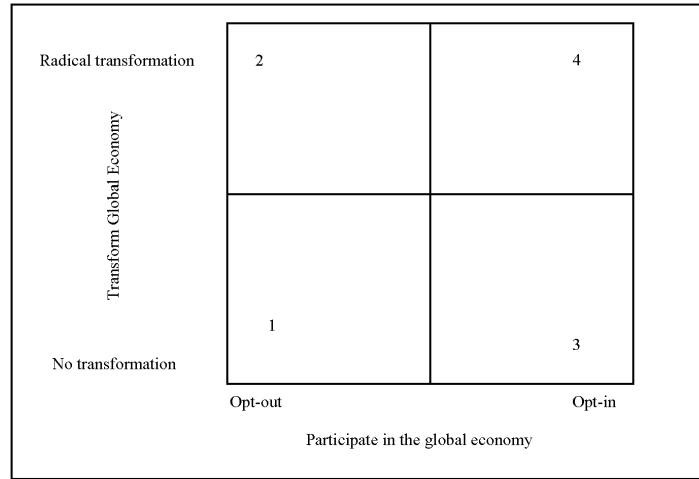
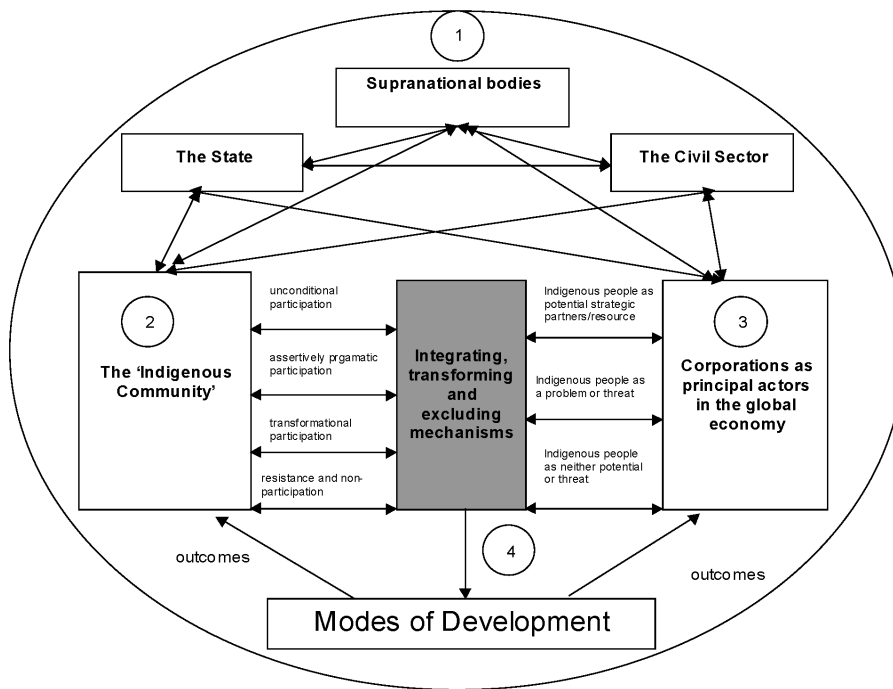


Figure 2 attempts to capture this complex and dynamic relationship.

Figure 2 Economic development in the new economy



Corporations are most closely associated with the regime of accumulation; indeed for many they are the face of the regime of accumulation. That it is not to say that corporations are not influenced by and do not influence modes of social regulation; of course they are, and they do. The state at all its levels is most closely tied to the modes of social regulation. Indeed, the sum of the actions of the state at all levels constitutes the

bulk of the modes of social regulation at any particular time and place; the bulk but not the entirety. The organisations of the civil sector also play an important role directly and through their influence on the state and on corporations. Increasingly, supra-national bodies are taking on a powerful role in the economy that is more than the expression of the collective voice of member states. They are becoming a regulatory force unto themselves, with considerable impact on states, corporations and communities. For example, according to Szablowski (2002), the World Bank, through its policy on loans associated with the mining industry, is having considerable impact of the relationships that are emerging among mining corporations, local groups (often indigenous) and nation states.

It follows that the mix of integrating, transforming and excluding mechanisms adopted by a particular community in its approach to the global economy, and therefore the mode of development that emerges, is heavily influenced by the particular face of the state, global and supra-national bodies (e.g., indigenous peoples in Mexico right now are able to appeal to a NAFTA panel on GMO corn), and the faces of civil sector and corporations that a community sees now and has seen in the past. This 'face to face' meeting, while heavily influenced by local circumstance, occurs within the context of the dominant global regime of accumulation and multiple, overlapping and often conflicting modes of social regulation.

In any particular case, a complex set of factors influence the interaction of a group of people (an indigenous community or any other) with the forces of the global economy and the outcomes they experience. These factors include (as numbered in the model):

- 1 the impact of the 'state' at all levels and the 'civil sector' on the multiple overlapping modes of social regulation and therefore on participants in the global economy, and the influence of these participants on the 'state' and the 'civil sector'
- 2 the community-in-question's approach to economic development (in this case indigenous) including its
 - history
 - current circumstances
 - objectives
 - approach to participation in the global economy including strategies for participation, transformation and exclusion
 - actual outcomes.
- 3 corporate (as the usual representative of the regime of accumulation encountered by communities) responses to the community-in-question particularly
 - motivating forces including but not limited to the community's control over the critical natural, human and financial resources and/or community members attractiveness as a market
 - strategies
 - objectives
 - actual outcomes.

And as both an outcome and ongoing feedback to the process.

- 4 the expected mode of development and the actual mode that emerges in a particular circumstance.

If one returns to the examples illustrating the three options – opting-in, opting-out and transforming – the usefulness of this model as analytical tool or organising perspective becomes apparent. Take for instance the U'wa, who have chosen to opt-out, Occidental Petroleum and the Government of Colombia. What has the role of the state been in the past vis-à-vis indigenous rights? What is the state's relationship with multinational oil companies? What is the state's stance today on the ownership of resources on traditional lands? Did the recent resistance of the U'wa have any impact on this stance, or the state's relationship with oil companies? What about the civil sector within the region, the country and internationally? Are there strong pro-development/pro-oil groups capable of exerting influence on the national government? What if any is the relationship between these groups and multinational oil companies? Are there civil groups and forces that support the non-development stance of the U'wa? What influence, if any, do these groups have on the state and on the multinational oil companies? What about the U'wa themselves? Is their approach to the global economy entirely one of resistance to its inroads, or is it more finely textured. For example, where would they stand on sharing their knowledge on medicinal plants for economic gain? What about Occidental Petroleum and the other petroleum companies? Are they sufficiently sensitised to indigenous rights that they are willing to accept a non-development decision? If so, why? If not, what are they likely to do? And so on.

The model is equally effective in analysing the relationship of the Inuit in Northern Canada, the state, and multinational oil companies in the past, the present and continuing in the future. In this ongoing story, we see all the players and forces in action, each influencing one another and the mode of social regulation and hence the mode of development that is emerging.

5 Indigenous land claims in Canada

The events that gave birth to the modern land claims process in Canada began some five centuries ago, with first contact between Europeans and Aboriginal people. The negative impacts on Aboriginal people of colonisation over the succeeding five centuries have been well documented. Once socially cohesive communities have suffered severe dislocation. What receives less attention, but is more important, is the degree of cohesion that remains and the burning desire among Aboriginal people to rebuild their communities on this foundation. Remarkably, they intend to do this by participating in the new global economy, but on their own terms. The question is – Can this be done? Aboriginal people in Canada believe it can. For them, their treaty and Aboriginal rights to their traditional lands and resources are the foundation upon which this re-building will be done.

Their struggle to regain control of their lands and resources has put the Aboriginal people of Canada in conflict with the country's national and provincial governments. The root cause of the conflict can be traced back to what Aboriginal people agreed to give up, what they expected to retain and what they expected to receive because of treaties. In no case did the Aboriginal people involved view the land and resources as something they owned and because of this none saw treaties as a transfer of this ownership. Rather, they saw the treaties as the basis upon which the land and its resources would be shared. They would allow the newcomers to use the land and in return would receive certain items from these newcomers. The view of the Crown

differed; it believed that it acquired title to the land and resources and that it could sell or use both as it saw fit.

However, largely as a result of the efforts of the Aboriginal people involved, over the last 25 years of the 20th century, grudgingly and in fits and starts, the policy of the federal government has shifted from contesting Aboriginal claims to land, resources and some form of 'nationhood', to negotiation. Accompanying this shift to negotiation, there has been another fundamental change. Increasingly, the national government has come to view the settlement of indigenous claims less as a cost and more as a vehicle for improving Aboriginal socio-economic circumstances, a view long held by Aboriginal people. Now entrepreneurship and business development, based on the capacity provided by settled claims, lie at the heart of both government policy and the economic development strategies of Aboriginal people in Canada.

The two events that triggered this change in government policy occurred in the 1970s. The first was the decision of the Supreme Court of Canada in the Calder case in 1973. The second was the Mackenzie Valley Pipeline Inquiry. In both, Aboriginal people successfully contested the actions of governments and businesses demanding that their Aboriginal right to land and resources be respected. The two are discussed in the following subsections.

5.1 The Calder decision

In its 1973 Calder decision, the Supreme Court of Canada recognised that Aboriginal people have an ownership interest in the lands that they and their ancestors have traditionally occupied, and the resources that they have traditionally used. Further, the Court held that this right had not been extinguished unless it was specifically and knowingly surrendered. As a result, the federal government adopted a land claims policy "to exchange claims to undefined Aboriginal rights for a clearly defined package of rights and benefits set out in a settlement agreement" (DIAND, 1997, p.1). Since this decision, there has since been a series of land claims agreements and treaties that have moved the Aboriginal people in Canada a considerable distance towards their goal of control over their traditional lands and resources.

5.2 The Mackenzie Valley Pipeline Inquiry

In 1974, a consortium of multinational oil companies (called Arctic Gas) made application to the Canadian Government to build a pipeline to carry natural gas from the fields in the Mackenzie Delta and Prudhoe Bay in Alaska to markets in southern Canada and the USA. In March 1974, Justice Thomas Berger was appointed to head an inquiry established to consider issues surrounding the pipeline. The proponents of the pipeline espoused the modernisation perspective on development. Their views were challenged by Aboriginal groups and others arguing from the dependency perspective.

Arctic Gas and other proponents of the pipeline argued that industrialisation in northern Canada was "inevitable, desirable, and beneficial – the more the better" (Usher, 1993, p.105). They did not deny that the process would have negative impacts on traditional Aboriginal society. In fact, in their view development "required the breakdown and eventual replacement of whatever social forms had existed before" (Usher, 1993, p.104). They agreed that the process would be painful for Aboriginal people but from it would emerge a higher standard of living and a better quality of life.

In addition to their views on the desirability of industrialisation and the inevitability of modernisation, proponents of the project held the view that “all Canadians have an equal interest in the North and its resources” (Page, 1986, p.114). This view was based on the ‘colonial’ belief that title to all land and resources had passed from Aboriginal people to the Crown and was ‘at odds’ with the position of Aboriginal people and the recent (at the time of the Inquiry) Calder decision.

Aboriginal groups challenged these views. They agreed that the pipeline project would introduce “massive development with incalculable and irreversible effects like the settlement of the Prairies” (Usher, 1993, p.106). However, unlike the proponents, they did not feel that this was a desirable outcome. Instead, they argued from the dependency perspective that

“This massive assault on the land base of Native northerners threatened their basic economic resources and the way of life that these resources sustained ... when all the riches were taken out from under them by foreign companies, Native land and culture would have been destroyed and people left with nothing.” (Usher, 1993, pp.106, 107)

This alternative view of the development process was accompanied by a different view about the land in question. Far from believing the lands and resources belonged to all Canadians equally, Aboriginal people felt that these were their traditional lands over which they held Aboriginal title, consistent with the Calder decision.

Justice Berger’s report recommended a ten-year moratorium on pipeline construction in the Mackenzie Valley in order to strengthen native society, the native economy and to enable native claims to be settled. In reaching this conclusion, he foreshadowed the contingent perspectives on development recognising the unacceptable nature of the present approach whether the outcome resulted in modernisation or dependency. His decision ushered in a new era in the relationship between Aboriginal people, governments in Canada and corporations that wished to develop resources on traditional Aboriginal lands. A key characteristic of this new era has been the emergence of business development, based on capacity provided by land claim settlements, as an important aspect of the drive by Aboriginal people for self-reliance, self-government and improved socio-economic circumstances, surely an instance of social entrepreneurship.

Following the Calder decision and the Mackenzie Valley Pipeline Inquiry, the Supreme Court of Canada issued additional decisions that further clarified the rights of indigenous people to their traditional lands and resources (Table 1). Responding to the Court’s rulings, the persistent demands on indigenous people, pressure from civil groups and the urging of resource-based corporations for certainty with respect to access to natural resources, the Government of Canada has entered into a series of land claims agreements and treaties that have moved the indigenous people in Canada a considerable distance towards their goal of control over their traditional lands resources. In fact, during the period 1973–1996, ten comprehensive claims were settled. They include: the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement, the Inuvialuit Final Agreement, the Gwich’in Agreement, the Nunavut Land Claims Agreement, the Council of Yukon Indians Umbrella Agreement (presently encompassing four final agreements), Sahtu Dene and Metis Agreement and the Nisga’a Final Agreement. Over this same period, there has been a change in the government’s approach to settling land claims.

Table 1 Recent Supreme Court of Canada decisions

<i>Case</i>	<i>Date</i>	<i>Outcome</i>
Nowegijick	1983	Treaties must be liberally interpreted
Guerin	1984	Ottawa must recognise the existence of inherent Aboriginal title and a fiduciary (trust) relationship based on title
Sioui	1990	Provincial laws cannot over rule rights contained in treaties
Sparrow	1990	Section 35(1) of The Constitution Act 1982 containing the term ‘existing rights’ was defined as anything unextinguished
Delgamukw	1997	Oral history of Indian people must receive equal weight to historical evidence in land claim legal cases
Marshall	1999	Mi’kmaq have the right to catch and sell fish (lobster) to earn a ‘moderate living’

Initially, the view was that such rights were an impediment to development and that agreements were essential to remove this impediment. This view was captured in the policy of extinguishment that was central to the early agreements. The thrust of the policy “was to exchange claims to undefined Aboriginal rights for a clearly defined package of rights and benefits set out in a settlement agreement” (DIAND 1997, p.1). For example, the federal government and the Government of Quebec viewed the money, land and other rights the Cree and Inuit received under the terms of the James Bay and Northern Quebec Agreement of 1975, as compensation²

“for the extinguishment of all aboriginal rights and claims, for renouncing the right to collect royalties or mining duties (past, present and future), and for the forfeiture of the right to block the James bay hydro development project in the courts.” (Ponting, 1991, p.196)

The Cree (and the Inuit) do not take the same view. In his report, Chief Coon Come put the Cree case as follows:

“The Crees have important rights as an Aboriginal people and as residents in Canada and the province of Quebec. These rights exist independently of the Agreement, and are reflected in Canadian law. Including the constitution. The Agreement resulted in the Crees entering into a formal relationship with the two governments, and gave special [additional] rights in favour of the Crees.” (GCC, 1998, p.2)

The view expressed by the Grand Chief on behalf of the Cree is not new. The extinguishment provision was controversial among Aboriginal people at the time of the negotiation and implementation of the JBNQA and remained so. Indeed, subsequent land claims negotiations have been marked by increasingly effective efforts by Aboriginal peoples to have extinguishment dropped as a condition of their settlements. These efforts culminated in a 1986 decision by the federal government to drop its policy “to only negotiate treaties if Aboriginal peoples accepted extinguishment of their Aboriginal rights and title” (DIAND, 1997, p.1). Instead, the federal government expressed a willingness to negotiate alternatives to blanket extinguishment and has done so in subsequent agreements.

This shift in policy on extinguishment did not occur in isolation. It was part of a broader transition from the view that settlement of indigenous claims was a legal burden imposes costs on government that must be borne in order to remove these rights as an

impediment to development, to the view that a just recognition of these rights can be a vehicle for fostering development and improving indigenous socio-economic circumstances; a view long held by the Aboriginal people. In the comprehensive agreements reached in the final two decades of the 20th century, attempts were made to address the twin issues of Aboriginal control over activities on their traditional lands and the building of capacity for economic development. According to Ponting, these agreements were intended to:

“carry Indians forward with both a viable traditional sector for those who chose that way of life, and an adequate share of political-economic power or local influence to be used to protect Indian interests and to create enduring economic opportunity of the non-traditional type.” (Ponting, 1986, p.194)

The Inuvialuit Agreement is one of several indigenous land claim settlements that followed the Berger Inquiry. The agreement and the development activities flowing from it are described in the next section.

6 The Inuvialuit land claim settlement

In May 1977, the Committee of Original Peoples' Entitlement (COPE) submitted a formal comprehensive land claim on behalf of approximately 4,500 Inuvialuit living in six communities in and around the mouth of the Mackenzie River (see Table 2). Negotiations between the Inuvialuit and the federal government continued through the late 1970s and early 1980s culminating in the Inuvialuit Final Agreements (IFA) in May 1984. Under the terms of the IFA, the Inuvialuit retained title to “91,000 km² of land, 13,000 km² with full surface and subsurface title; 78,000 km² excluding oil and gas and specified mineral rights” (Frideres, 1998, p.118). The Inuvialuit also received C\$ 45 million in cash compensation to be paid out over 13 years (1984–1997), a C\$ 7.5 million Social Development Fund (SDF) and a C\$ 10 million Economic Enhancement Fund (EEF).

In 1984, the Inuvialuit Regional Corporation (IRC) was formed to receive the lands and financial compensation obtained by the Inuvialuit. The corporation was given “the overall responsibility of managing the affairs of the settlement to achieve the objectives in the IFA” (Inuvialuit Corporate Group, 1997, p.4). According to the introduction to the 1997 Annual Report of the Inuvialuit Corporate Group, these objectives are to

Preserve the Inuvialuit culture, identity and values within a changing northern society. Enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society. Protect and preserve the Arctic wildlife, environment and biological productivity. (Inuvialuit Corporate Group, 1997, p.4)

The question is – are the Inuvialuit succeeding? In an attempt to answer this question at least from an economic development perspective, the activities of the major subsidiaries of the IRC, the Inuvialuit Development Corporation (IDC), the Inuvialuit Petroleum Corporation (IPC) and the Inuvialuit Investment Corporation (IIC), are described in the three subsections that follow.

Table 2 Payments by the Inuvialuit Corporate Group to individuals, groups and communities, 2000

Wages and salaries	C\$ 9,000,000
Honorariums	577,000
Student financial support	197,000
Payments to elders	368,000
Dividends to beneficiaries	568,000
Payments to community corporations	390,000
Payments to community organisations and individuals	577,000
Total	C\$ 11,600,000

6.1 *The Inuvialuit Investment Corporation*

According to the 2000 Annual Report of the ICG, the Inuvialuit Investment Corporation (IIC)

“was established to receive the bulk of the financial compensation that came from the IFA. ... invest these funds in low risk investments and to preserve the capital for future generations of Inuvialuit.” (Inuvialuit Corporate Group, 2000, p.39)

The company maintains a conservative and diverse portfolio of investments in national and international securities. In 2000, the IIC recorded a net income of C\$ 6.5 million from interest and dividends on its investments, up from C\$ 5.97 million in 1996.

6.2 *The Inuvialuit Development Corporation*

The Inuvialuit Development Corporation was created to address one of the objectives of the IFA, which is, “to enable the Inuvialuit equal and meaningful participation in the Western Arctic, circumpolar, and national economies” (Inuvialuit Corporate Group, 1998, p.1). In pursuing this objective, IDC says it will “build and protect a diversified asset base, generate financial returns, create employment, and increase skills and development among the Inuvialuit” (IDC, 1998, p.1).

The IDC has created or acquired over 30 companies operating in eight sectors – technology and communications, health and hospital services, environmental services, property management, manufacturing, transportation, northern services and real estate development. These companies operate in the north, throughout southern Canada and internationally. Many are joint ventures often with non-indigenous corporate partners. One of the Inuvialuit Development Corporation’s successful joint ventures is a holding company called NorTerra owned in partnership with the Nunasi Corporation, representing the Inuit of Nunavut. This augurs well for Inuit and Inuvialuit participation in the much anticipated rebirth of the oil and gas industry. Gary Lamphier writing in the *Edmonton Journal* says

“The massive project would, in turn, spur demand for air travel and marine transportation throughout the North – services NorTerra is ideally positioned to provide through its subsidiaries, Canadian North Airlines and Northern Transportation Co. Ltd.” (Lamphier, 2003)

These expectations lead NorTerra president Carmen Loberg to say, "I hate to make projections. But with the opportunities that are out there, we should be a \$300–\$350-million company within five years" (Lamphier, 2003). Revenues in 2002 were C\$ 239 million.

6.3 The Inuvialuit Petroleum Corporation

The Inuvialuit Petroleum Corporation was formed in 1985. The IPC began operations by purchasing shares in two small publicly trade companies. The IPC grew steadily through the late 1980s and early 1990s. In 1994, the IPC sold all its oil and gas assets except for one property in northwestern Alberta.

"IPC received a total price of \$83.4 million which after the deduction of all associated costs, resulted in an extraordinary profit of \$29.5 million. This extraordinary gain is very notable as it was realised for the Inuvialuit on an equity investment of \$11.9 million." (Inuvialuit Corporate Group, 1998, p.2)

As a result of the sale of its oil and gas assets, the company ended 1994 with a C\$ 50 million investment portfolio to be used "to investigate internally generated oil and gas prospects, pursue acquisition opportunities and finance ongoing commitments for Inuvialuit benefits" (Inuvialuit Corporate Group, 1998, p.2). In 1995, IPC purchased of the assets of Omega Hydrocarbons and formed Inuvialuit Energy Inc., a joint venture 60% owned by the IPC.

The IPC's strategy has been successful. In 1997, the company reported a profit of C\$ 5.6 million on revenues of almost C\$ 29.6 million. Profit in 1996 was C\$ 4.2 million. In 1999, the IPC sold its interest in Inuvialuit Energy Inc. Proceeds from this sale were added to those from earlier sales and invested in a portfolio of marketable securities. This portfolio earned C\$ 2.1 million in 2000. IPC's strategy is to "hold the marketable securities in anticipation of opportunities to participate in discoveries on Inuvialuit lands within five years" (Inuvialuit Corporate Group, 2001, p.25). With the resurgence of interest in petroleum and natural gas resources of the Beaufort Sea and the renewed interest in the Mackenzie Valley Pipeline, this strategy is bearing fruit.

6.4 Socio-economic impact of the Inuvialuit Corporate Group

Together the companies of the Inuvialuit Corporate Group made a considerable contribution to the Inuvialuit people in 2000. Building on the foundation provided by the land rights and the C\$ 62.5 million in cash received between 1984 and 1997 under the terms of the land claims agreement, the ICG ended 2000 with total assets of C\$ 384 million up from C\$ 281 million at the end of 1999. Liabilities increased from C\$ 68 million at the end of 1999 to C\$ 114 million at the end of 2000. As a result of the increase in assets and smaller increase in liabilities, beneficiaries' equity rose from C\$ 212 million to C\$ 270 million. The ICG (including its business subsidiaries) earned a combined after tax profit of C\$ 52.5 in 2000 up from C\$ 5.6 million in 1999. The 2000 profit was earned on revenues of C\$ 277.2 million. Revenues in 1999 were C\$ 161.8 million.

In earning its 2000 profits (see Table 2), the ICG paid out a total of C\$ 9.0 million in wages and salaries to Inuvialuit people. In addition to these salaries, the Group paid honorariums of C\$ 577,000, provided student financial support of C\$ 197,000, made

payments to elders of C\$ 368,000, distributed C\$ 568,000 in dividends to beneficiaries, paid C\$ 390,000 to community corporations and made other payments of C\$ 577,000 to various community groups and individuals. As a result of these payments, in 2000 the ICG provided a total of more than C\$ 11.6 million to Inuvialuit individuals, groups and communities. This is a considerable increase over the already impressive C\$ 11.1 million paid out in 1999, and a very respectable annual return on the C\$ 62.5 million compensation received under the IFA. In the case of the Inuvialuit at least, a just settlement of land claims has provided the capital for successful entrepreneurship and business development, and has contributed to a significant improvement in socio-economic conditions.

As a result of their land claim settlement and their impressive accomplishments since, the dawning of the new millennium saw Inuvialuit well positioned to participate in the petroleum and natural gas development of the north as in partnership with corporations and governments as anticipated by Justice Berger, resulting in a far different interplay among the actors and relationships depicted in Figure 2 (our theoretical perspective on indigenous communities in the global economy) than was present during the Berger Inquiry. The same is true of two other groups along the proposed pipeline route, the Sahtu and the Gwi'chn both with settled land claims. The fourth major group in the region, the Deh Cho, have not signed a land claim agreement. As a result the unfolding relationship and interactions between the Deh Cho and the other actors in the model can be expected to differ from those of the Inuvialuit, Sahtu and the Gwi'chn, as well from the relationship that existed in the 1970s.

7 The Mackenzie Valley Pipeline, Act 2

The end of the 20th century saw a rebirth of interest in the energy resources of Northern Canada and Alaska, and a pipeline to bring these resources south to the American market. The reasons were threefold

- constantly increasing demand and resulting record-breaking prices
- “technological advances in pipeline construction and drilling have significantly reduced the cost of tapping the resource” and, most importantly
- the fact that “native land claims – the main stumbling block to the pipeline dreams of the 1970s – have, for the most part, been resolved” (Bergman, 2000).

The implications of the qualifying phrase ‘for the most part’ will turn out to be significant in the story that unfolds.

Act 2 of the Mackenzie Valley Pipeline saga began in February 2000 when four of Canada’s largest energy companies – Imperial Oil Resources Ltd., Shell Canada Ltd., Mobil Oil Canada and Gulf Canada Resources Ltd. – launched a joint study into the feasibility of developing and transporting Mackenzie Delta gas through a pipeline to southern markets. This prompted proponents of an alternative route – Westcoast Energy Inc. and TransCanada PipeLines Ltd. – to announce that they re-evaluating their Foothills Pipe Lines Ltd. Project, first proposed in the 1970s, to take Alaskan natural gas southward along the Alaska highway route through the Yukon, British Columbia and Alberta to the USA. These two routes have been seen as rivals by many with the proponents of each, particularly governments and communities, seeking to stay ahead of

the other. Interestingly, this is not so for some of the corporations involved, notably TransCanada PipeLines Ltd., as the unfolding events will show. In the remainder of this section, the focus will be on the Mackenzie Valley route but it is important to recognise the role played by the spectre of the competing Alaska Highway route.

Following the announcement of by Imperial Oil Resources Ltd., Shell Canada Ltd., Mobil Oil Canada and Gulf Canada Resources Ltd., 30 Aboriginal leaders (representing the Inuvialuit, the Sahtu, the Gwi'chn and the Deh Cho) met in Fort Laird and Fort Simpson. As a result of these meetings, the Aboriginal Pipeline Group (APG) was formed in June 2000. The first three have signed on as full members of the APG, while the Deh Cho have chosen to sit out until they sort out a land claim and self-government initiative with the federal government (Cattaneo, 2004).

According to the APG's brochure

"The main reason for creating APG was to offer a new model for Aboriginal participation in the developing economy, to maximise ownership and benefits from a proposed Mackenzie Valley pipeline and to support greater independence and self-reliance among Aboriginal people." (APG, 2004, p.1)

In 2000, the APG received C\$ 500,000 from the Government of the North West Territories to develop a business plan for achieving these ends. The central feature of the plan is for the group to acquire a one-third equity interest in the pipeline. Negotiations between the APG and the corporations culminated in an agreement announced on 19th June 2004. According to Claudia Cattaneo writing in the *National Post*

"The deal calls for the APG to receive an annual dividend of \$1.8-million for the next 20 years if no new reserves are found and the pipeline carries 800 million cubic feet of natural gas a day, increasing to \$8.1-million after 20 years, when debt is paid off."

"If significant reserves are found and the pipeline is built to move, for example, 1.5 billion cubic feet a day, the APG would receive an annual dividend of \$21.2-million, increasing to \$125.8- million after 20 years."

"The other major APG goals are to have a say in the way the pipeline is developed, and to have the highest possible aboriginal participation in its construction and operation." (Cattaneo, 2004)

The full cost to APG to secure this one-third interest is expected to be C\$ 1,000,000,000, C\$ 700,000,000 of which they expect to borrow.

While the negotiations went on for almost three years, what is important to note is that the corporations never had any objection to the APG becoming a full partner in the project. Indeed, the companies actively courted them, considering their participation key to a successful project, so very different than the corporate attitude at the time of the Berger Inquiry. All the parties sought a business-to-business relationship of equals. It was the APG's ability, or rather inability, to finance its share of the cost of the first phase of the project that caused the delay in finalising the agreement. The APG needed to raise C\$ 80,000,000.

The way in which the C\$ 80,000,000 was finally secured also serves to further illustrate the fundamental change from the 1970s. TransCanada PipeLines Ltd. a proponent of the Alaska route was and is also a supporter of the Mackenzie Valley route. Gas from the Mackenzie Delta will feed into the company's existing pipeline network and increase utilisation and reduce costs to shippers (Cattaneo and Haggett, 2003).

The company also has a long-standing and sophisticated interest in, and history of, working with Aboriginal groups as captured by Henderson

“With pipeline and power facilities now within 50 km of more than 150 Aboriginal communities, TransCanada realises a significant business advantage by nurturing long-term relationships with its ‘First neighbours.’ In 2001, a Corporate Aboriginal Relations Policy was adopted, which outlines commitments to employment, business opportunities and educational support through scholarships and work experience.” (Henderson, 2003)

Consistent with this approach and in its own interest,

“TransCanada PipeLines Ltd., will lend the aboriginal group [APG] \$80-million so it can pay its share of funding for the project definition phase. The gas producers group, which also includes ConocoPhillips, Shell Canada Ltd. and Exxon Mobil Corp., has agreed to give the pipeline firm an option to buy 5% of their equity stake in the pipeline.” (Cattaneo and Haggett, 2003)

The agreement negotiated between the APG, the pipeline corporations and TransCanada is another reflection of the changing relationship between indigenous communities, corporation and governments in the new economy as captured by in the following

“We’re very excited that this has been done by the private sector and that the corporations have seen that its part of their role to work with the aboriginal community,” said Indian Affairs minister Robert Nault in an interview. “We’ve been in Washington talking about the Alaska line and arguing that market-distorting subsidies aren’t acceptable. This shows that we walk the talk.” (Haggett, 2003)

At the same time as the Aboriginal Pipeline Group and the corporations were negotiating their agreement, the Deh Cho were negotiating their land claim with the federal government. Almost 40% on the proposed pipeline route is on lands claimed by the Deh Cho. On 17th April 2003, the federal government and the Deh Cho reached an interim Resource Development Agreement that will last for five years or until a final agreement is reached. Under the terms of the interim agreement, each year the federal government will set aside on behalf of the Deh Cho a certain percentage of the royalties collected from the Mackenzie Valley. The amount will be paid out to the Deh Cho when a final agreement is concluded. In the interim, the group will be able to access up 50% of the total each year (to a maximum of C\$ 1,000,000/year) for economic development. As part of the agreement, 70,000 square miles of Deh Cho lands will be set aside a part of a system of protected areas, while “50% of the 210,000 square kilometres of Deh Cho territory will remain open to oil, gas and mining development, subject to terms and conditions set out by the aboriginal group” (Canadian Press, 2003). Environmental groups praised the deal. The World Wildlife Federation called it a ‘tremendous achievement’. The group has awarded the Deh Cho and the federal government the Gift to the Earth, an international conservation honour for environmental efforts of global significance.

With the agreement between the APG and the corporations and the interim agreement between the Deh Cho and the federal government, it would seem that the arrangements between the state, the communities and the corporations were in place to permit the pipeline project to move forward to the next stage of the pipeline project, the environmental review. But such has not been the case. By November 2003, only six

months after the signing of the interim Resource Development Agreement, the Deh Cho were threatening to seek a court injunction to halt the review and approval process

“unless the government renegotiates the terms of the process to include Deh Cho representation. “Decisions are being made without us. We should be able to have input just like the rest of the regions,” [those with settled land claims] said Keyna Norwegian, chief of the Liidlii Kue band in Fort Simpson.” (VanderKlippe, 2003)

VanderKlippe goes on to say that there is a strongly held belief among the Deh Cho that “protecting traditional areas is more important than using their land to transport Arctic gas. “We are pretty rich in our own resources”, said Norwegian. “We can live without the pipeline”. In this, they have allies among the environmental groups who have serious concerns about the project including risk to the already threatened Bathurst caribou herd, the stability of the pipeline in permafrost under conditions of global warming, risk to the 500 rivers that the pipeline must cross, and a general resistance to ongoing reliance on petrochemicals.

The dispute remained unresolved as of June 6, 2004 (Weber, 2004) when a seeming solution collapsed. The Deh Cho thought they had reached an agreement in May that would give them a seat on the review board. The federal negotiator’s view of this ‘agreement’ differed. His understanding was that the agreement reached was to examine ways in which the Deh Cho could participate in the process. Chief Norwegian of the Deh Cho accused the regulators of renegeing on an agreement and the impasse continues (Weber, 2004).

As indicated in the preceding paragraphs, the Inuvialuit, Sahtu and the Gwi’chn have become active participants from the outset of Act 2 of the Mackenzie Valley Pipeline saga. Their efforts have been directed at establishing a partnership of equals with the multinational companies that are proponents of the pipeline, something that has been acceptable to the multinational corporations. APG’s major challenge was to acquire the necessary financial resources. TransCanada Pipeline, as part of its general approach to working with indigenous people, provided them with the means to do so. The group’s relationship with government has been similar to that of their non-Aboriginal corporate partners, applicant to regulator.

For the Deh Cho, the emphasis has been different. They, too, are demanding the right to be a full partner in the project but only after their land and other rights have been recognised and entrenched. They are using the threat to delay the project to put pressure on the government during negotiations. The corporations and the other Aboriginal groups are responding by putting pressure on the government and the Deh Cho to settle quickly in order to allow the project to proceed.

The attitude of the corporations to the Aboriginal groups involved has evolved considerably and as anticipated by the theoretical discussion. As the events show, the companies are perfectly prepared to have the Aboriginal groups participate as equal equity partners in the project. Further, they have gone to considerable lengths to make it possible for them to do so. This according to Nellie Cournoyea, chair of the Inuvialuit Regional Corporation, is

“the biggest change since the 1970s is that the oil and gas industry realises aboriginal people are an integral part of development, and that they must receive a fair share of resource revenue and have the opportunity to invest directly in pipelines and offshoot businesses.” (Bergman, 2000)

Finally, it is interesting to note the shift in relationship between the Aboriginal groups, especially the Inuvialuit, Sahtu and the Gwi'chn, and environmental groups, a key player from the civil sector. Aboriginal groups and environmentalists were strong allies during the Berger days. Now three Aboriginal groups are proponents of the project. Most environmental groups are not. The position of the Den Cho is somewhat different. As their interim agreement shows, they are still very focused on environment issues as part of their land claim and still seek the environmental groups as allies. They are also blocking movement of the project forward until they can fully participate in the environmental review process. However, the Den Cho are not opposed in principle to the pipeline project. It will be interesting to see if the end result is an environmentally sustainable pipeline reflecting a convergence of the traditional land use values and practices of the indigenous people, the scientifically grounded environmental concerns of most environmental groups, the regulatory requirements of government and the stakeholder oriented environmental approaches of the corporations.

8 Conclusion

As a result of centuries of struggle by Aboriginal people buttressed by decisions of the Supreme Court of Canada, during the final three decades of the 20th century the Canadian Government's approach to Aboriginal claims has shifted from contention to negotiation and enterprise. No longer does the state contest the existence of Aboriginal rights to land, resources and some form of 'self-government'. Instead, it seeks to negotiate agreements based on these rights that will form the foundation for prosperous indigenous 'nations' within Canada. Aboriginal entrepreneurship and economic development building on this foundation is seen as the key to achieving such prosperity. Based on the experience of the Inuvialuit, this approach seems promising.

This shift in policy of the Canadian Government has resulted in a considerable enhancement of the bargaining position of indigenous communities vis-à-vis corporations that require access to land and resources. As exemplified by TransCanada and the corporate partners in the pipeline project, the relationship is approaching one of equals, and the objective one of mutually beneficial alliances. Other examples abound, including Cameco the world's largest uranium processor and the First Nations in northern Saskatchewan, Millar Western Pulp and the First Nations of the Meadow Lake Tribal Council, Vincor International and the Osoyoos Indian Band to mention a few. Surely a case of government policy resulting in a shift in corporate behaviour.

These circumstances are not limited to Canada. Indigenous people elsewhere are also seeking recognition of their land and other rights. This is particularly true in New Zealand and Australia where the Maori and the Aborigines have rights and aspirations similar to indigenous people in Canada. The experience of the Inuvialuit suggest that the just settlement of indigenous land claims might be a financially effective way for a state to address the unacceptable socio-economic circumstances of its indigenous people while at the same time addressing their land and other claims.

We feel the relevance of the Canadian experience extends further. Everywhere one looks – in Central and South America, Africa, the Near East, the Far East, the North, the Indian subcontinent, the former Soviet Union, and so on—'original peoples' are struggling to regain control of their traditional lands and rebuild their communities. In most locales, they face resistance and even oppression from the 'state' and as a result

are often resorting to violent and revolutionary responses; and the outcomes benefit no one. Perhaps corporations, states and indigenous peoples can learn from the Canadian experience and move to a mutually beneficial approach as opposed to an antagonistic one.

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Notes

- ¹We are not arguing that regulation theory is the only or the best perspective from which to explore indigenous entrepreneurship and economic development, only that it is a useful one.
- ²The James Bay and Northern Quebec Agreement was the first comprehensive claims agreement to be reached following the Calder decision and the federal government's adoption of its comprehensive claims policy.

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