
Introduction: Indigenous land claims in New Zealand and Canada, from grievance to enterprise

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This issue of the *International Journal of Entrepreneurship and Small Business* focuses on a special topic – indigenous land rights and enterprise development. Entrepreneurship and small business play a key role in the process. The paragraphs that follow this introduction first address indigenous land rights in general, and in New Zealand and Canada in particular; and then the foundation that these rights are forming for enterprise development.

Worldwide, states, supranational organisation and organisations of the civil sector are recognising the rights of indigenous people to their traditional lands and resources. The following excerpt from 1993 Draft United Nations Declaration on the Rights of Indigenous Peoples captures a sense of this agenda.

RECOGNIZING 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)

Typical of indigenous people around the world, the Maori of New Zealand and the aboriginal people in Canada are struggling to reassert their nationhood within the post-colonial states in which they find themselves. For both, claims to their traditional

lands and the right to use the resources of these lands are central to this drive to nationhood. Land and resources are 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 the Maori and the aboriginal peoples in Canada intend to rebuild the economies of their nations and so improve the socio-economic circumstance of their people – individuals, families, communities and nations.

The struggle to regain control of land and resources has put the Maori and the aboriginal people of Canada in conflict with the policies of the governments of their respective post-colonial states. While differences exist, causes of this conflict are similar and stem from a common British Colonial past. In both cases, the root of the conflict can be traced back to what indigenous people agreed to give up, what they expected to retain and what they expected to receive as a result of the treaties. Neither the Maori nor the aboriginal people in Canada viewed the land and its resources as something they owned, and so neither saw the treaties as a transfer of this ownership. Rather, they saw the treaties as providing a basis upon which the use of the land and its resources could be shared. They would allow the newcomers to use the land and in return receive certain things from these newcomers.

In New Zealand, a single treaty, the Treaty of Waitangi was signed between the Maori and the Crown. Subsequently, the Crown abrogated its treaty responsibilities by supporting military action and compulsory taking of lands where tribes resisted settlement; or passed legislation allowing for the individuation and privatisation of Maori land; or the state purchased land itself, which it usually resold to settlers.

In Canada, the situation has been more complex. Rather than a single treaty, there has been a series of them negotiated as European settlement move westwards. Further, some aboriginal groups never signed treaties, notably the First Nations in BC and the Inuit and Dene in the far north. Where treaties were signed, the aboriginal people involved dispute the Crown's interpretation of what it was intended. As with Maori, the aboriginal sense was one of sharing of the right to use the land and resources, not a transfer of ownership and control. In contrast, in the view of the Crown, it acquired title to the land and resources and it could sell or use it as it saw fit. In return, the Crown's only obligation to the indigenous people was to provide what is specifically promised in the treaties. Similarly under the Treaty of Waitangi, the Maori understood that the British had the right to make laws and maintain order, but that sovereignty remained with them. Furthermore, Maori did not comprehend European concepts of individual property title. For Maori, the treaty involved granting others a right to share the use of their land, while the settlers believed that they were acquiring a right to exclude others (Bourassa and Strong, 2002).

Further, like the Maori, aboriginal people in Canada also claim that governments have not lived up to their treaty obligations. In areas where no treaties were signed, aboriginal people maintain that they have never given up their right to use their traditional lands and resources, as they have 'from time immemorial'. They believe the Crown must negotiate agreements with them (modern treaties) to share the land and resources. The Crown in Canada has only come to accept this in the waning decades of the 20th century.

In summary, indigenous people in both countries always disputed their state governments' interpretation of the treaties and have fought to have their interpretation accepted. Further both claim that these governments have not honoured their commitments under treaty. However, until the 1970s, indigenous protests and claims met

with little success. Then in 1970s two events occurred, one in each place, which were to usher in a new era.

In Canada, the event was the decision of the Supreme Court of Canada in the Calder case, relating to the Nisga'a people in British Columbia. In its decision, the Court 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 of the Calder decision, a federal government policy for the settlement of land claims was adopted in 1973. 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). In New Zealand, the crucial event was the passing of the Treaty of Waitangi Act in 1975, establishing a Commission to hear Maori claims for recent breaches of the Treaty. A further amendment in 1985 allowed claims to be heard back to the original signing of the Treaty of Waitangi in 1840.

While not apparent at the time, these two events initiated a fundamental change in government policy for both New Zealand and Canada. Subsequently, over the last 25 years of the 20th century, grudgingly and in fits and starts, the policies of both governments shifted from contesting indigenous claims to land, resources and some form of 'nationhood' to negotiation. Accompanying this shift to negotiation was another fundamental change. Increasingly, both state governments saw the settlements of indigenous claims less as a cost and more as a vehicle for addressing indigenous socio-economic circumstances, a view long held by the indigenous people. Consistent with this shift, negotiated agreements in Canada and New Zealand reflect the emergence of an economic development policy objective. This can be seen in the Inuvialuit and other comprehensive agreements in Canada and the Ngai Tahu Agreement and Treaty of Waitangi Fisheries Claims Settlement Act in New Zealand. This policy shift is as a result of decades, even centuries of struggle by the indigenous people involved. And now they are embarking on a development journey based on the foundation these rights provide.

The papers in this special issue explore the struggle by indigenous people in Canada and New Zealand for the recognition of their rights to land and resources and the emergence of entrepreneurship and business development activities built on the foundation. Two papers focus on the situation in Canada, 'Indigenous land rights in Canada: the foundation for development?' and 'Aboriginal land rights and development: corporations and trust'. The first provides an overview of the evolution of land claims and their emerging importance as a foundation for economic development by chronicling events that unfolded in the Mackenzie Valley over the final 3 decades of the 20th century and the early years of the 21st century, key among them the Calder Decision, the Berger Inquiry and the Inuvialuit Landclaim Agreement. The second Canadian paper explores the important role played by indigenous land rights in the formation of mutually beneficial alliances between aboriginal communities and non-aboriginal corporations as the former pursue their development objective and the latter their business objectives.

There are five papers that explore various aspects of Maori land rights. While there is considerable overlap among these five papers, especially the historic material, each offers a different perspective on the realisation of Maori land rights and the role of these rights in enterprise and economic development.

In 'Maori land claims: a historical perspective', Janelle Fowler provides a historical context of NZ land disputes to illustrate that the resolution of indigenous grievances through the return of assets has facilitated Maori economic development and entrepreneurial activity. In doing this, she briefly compares the activities of three tribes: South Island Ngai Tahu, Waikato Tainui, and Northland Muriwhenua. Similarly in 'The role of the Treaty of Waitangi', Ines Katschner addresses the economic development of the Maori population within New Zealand showing the role that Treaty settlements play within this process. To do this, she outlines the socio-economic circumstances of Maori in relation to the non-Maori, discusses the importance of economic development in improving these circumstances, addresses the relationship between Treaty of Waitangi claims and economic development by applying three different theories for understanding this relationship, and finally compares the activities of two tribes, the Ngai Tahu and the Tainui, to provide insight into whether Treaty settlements indeed contribute to the Maori economic development. Stephen Buckingham and Leo Paul Dana look at economic development theory, in particular regulation theory, focusing on how indigenous peoples' rights to land and resources, and the settlements that result, can be utilised to create sustainable economic development in "Focus on regulation theory". Then, foreshore and seabed customary rights and public access issues are discussed from the perspectives of both the indigenous Maori people – specifically the Ngai Tahu tribe, and the New Zealand Government in 'Foreshore and seabed' by Joanna Sibbald and Kirsten Wick. This examination takes place against a framework of modernisation, development and regulation economic theory, with an alternative hybridised paradigm proffered. Finally, Chatlotte Paulin in 'Focus of the Ngai Tahu Tribe' discusses the landmark Maori claim and settlement, 'Te Kereme o Ngai Tahu' in general and then with specific reference to the highly successful Ngai Tahu claim and subsequent tribal development using the later to suggest a framework for economic development of Maori people following Treaty of Waitangi settlement.

To summarise, it is important to emphasise that the issue of indigenous land rights and development is not a marginal one relevant only in a few areas of the world. The United Nations estimates that approximately 5,000 different groups fit its definition of indigenous and between 300 million and 500 million indigenous individuals worldwide represent as much as 80% of the cultural diversity on this planet (Indigenous Peoples' human rights project, 2003). The list of nation states without an included indigenous population is a very small one, while the list of those with such populations is large. Further, according to the World Bank "Indigenous peoples are commonly among the poorest and most vulnerable segments of society" (World Bank, 2001). Wherever indigenous people are found, they are engaged in a struggle to preserve their societies, retain or regain their rights, improve their socio-economic conditions and rebuild their nations, on their terms. Land rights are critical in every instance. How much better for all, indigenous and non-indigenous, if states follow the path grudgingly trod by Canada and New Zealand and negotiate the settlement of land rights as part of a strategy to support indigenous communities' in their pursuit of development as they define it than the alternative, which has been and will continue to be oppression and poverty, and as an indigenous response often violence and even revolution.

References

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