

Aboriginal corporations as a response to poverty and land claim settlements

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Key words: aboriginal corporations, indigenous peoples, land claims

SUMMARY

The settlement of aboriginal land claims in Alaska, Canada, and New Zealand has resulted in the transfer of significant real estate assets into the hands of groups of indigenous peoples. The claims arise from forced asset sales, treaties not being honoured, and dispossession of traditional lands. They have tended to be group claims as the traditional lands lost were mainly in collective tenure and governments find it easier to come to a settlement with a representative collective of indigenous peoples rather than to reach individual settlements. The assets form significant units and can produce major enterprises. Indigenous peoples are faced with a number of issues, including poorer life chances than the population as a whole, traditional lifestyles which are under threat from environmental degradation and the migration of their populations from the traditional lands, and cultures which are in danger of disappearing, particularly if the language is lost. The settlements provide the economic means to address these through improved education for the young, support for cultural activities, medical care, and the ability to provide a range of welfare supports for those in the community that need them. The assets can also be used to provide employment opportunities. As the settlements involve the transfer of assets, they can, if well managed, enable indigenous groups to share in the economic growth and prosperity of the country. This requires an entrepreneurial and professional approach to the management of the assets, including developing their potential and reinvesting some of the surpluses in diversification. The examples given in this paper all show how indigenous groups have done this. The settlements have resulted in the growth of a fourth sector of the countries' economies alongside that of the public and private sectors and the voluntary/ mutual sector. The result has been the growth of significant businesses, particularly in the real estate and natural resources sectors, which are under aboriginal control.

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1. INTRODUCTION

Indigenous peoples commonly enjoy lower living standards and have poorer life chances than the rest of the population. One of the principal reasons for their poverty is that they have been deprived of much of their traditional lands. They have tended to be left with the land that no-one else finds worthwhile farming or developing. Without access to the land, their ability to sustain their livelihoods is compromised. The loss of their traditional lands has come about by various means, including warfare, ethnic cleansing, one-sided treaties, expropriation, encroachment, sales without informed consent, and corruption. A further factor has been that treaties guaranteeing rights over traditional lands or reserves were often signed with colonial powers who no longer control the countries of which these lands form a part. The successor states may not consider themselves bound by colonial-era treaties.

The land lost by indigenous peoples includes permanent residences, seasonal and migratory camping sites, farmed land, pastures, hunting grounds, fishing areas, plant gathering areas, burial grounds, sacred places, and land that is exploited on a seasonal basis. Their livelihoods are at risk from developments such as plantations, sovereign and private equity investment in agricultural land, mineral and hydrocarbon exploitation and projects, and tourism. Even if the developments themselves take relatively small amounts of land, their impact can be hugely disruptive by undermining the delicate ecological balance that sustains complex livelihoods. For example, oil and gas pipelines may block animal migration routes or those used in nomadic farming (Yakoleva and Grover, forthcoming, 2014). New roads and infrastructure can have a significant impact on the breeding rates of animals hunted for food or furs (UNEP, 2001). The undermining of the pattern by which seasonally abundant foods and resources are exploited, often through temporary migration, can cause the whole way of life to become unsustainable. The loss of land can therefore result in the culture and way of life coming under threat and the decline of communities into poverty, social stress and despair (York, 1990).

At the heart of the problem has been the unwillingness of governments to recognise that indigenous peoples have rights over their traditional lands. There has been a lack of respect for their human rights so that they have been deprived of their traditional lands without due process or fair compensation. Typically indigenous people have customary or unregistered rights rather than statutory and registered ones. The rights were recorded through oral

¹ It was difficult to decide on the title for this paper. The subject matter was clear – it was about the corporations established by indigenous peoples to exploit real estate and natural resources assets. In the end I opted for the term “aboriginal corporations” because of the practice in Canada for indigenous peoples (First Nations) of different ethnic backgrounds to use the generic term “aboriginal” to describe themselves.

tradition rather than through written documentation. These evolved in territories that were characterised by small populations occupying large areas of land. As Demsetz (1967) argued with respect to Canada’s Labrador Peninsula, land rights only developed with commercialisation, in this case hunting for furs. Controls then became necessary to prevent the over-hunting of animals and excessive use of common property resources. Prior to commercialisation, the impact of hunters on each other was minimal so controls and property rights were unnecessary. As the rights were not traded, there was no necessity for them to be formalised or registered. The rights were communal rather than individual and could not be alienated to third parties.

Table 1 contrasts the approaches to land taken by indigenous peoples and the wider societies of the countries of which their lands form a part.

Table 1 Contrasting views of land rights between indigenous peoples and the wider society

Perspective of Indigenous Peoples	Perspective of Wider Society
Land given through creation story	Grant of land from state
Custodianship	Ownership
Customary rights through long usage	Formal/ statutory rights set out in law
Oral tradition	Written record of rights recorded in land/ deed registers
Inalienable patrimony	Commodification of land
Guardians and users of traditional lands	Indigenous peoples as customary occupiers of state land
Spiritual and cultural values	Economic value

As nation states extended their control over the traditional territories of indigenous peoples, they tended to regard these areas as empty lands belonging to no-one. There were no systems of agriculture or cultivation in the sense that the colonising powers were familiar with and no apparent records of property rights. The peoples were not regarded as having any ownership rights over their traditional lands that would entitle them to compensation for loss of development potential. Any tenure rights were regarded as having been extinguished when sovereignty passed to the colonising state. Indigenous peoples were thereby denied the opportunity to use their traditional lands as capital that could have been used to raise living standards and to protect their cultural heritage. Governments captured the rising values of the traditional lands of indigenous peoples, thereby depriving them of a capital base from which to escape poverty or to cope with social transformation (Wily, 2006). The development rights over this land, which was seen as public land, could be allocated by governments to outsiders and investors in the interests of generating revenue or economic development for the country as a whole (Royal Commission on Aboriginal Peoples, 1996). The livelihoods of indigenous peoples seemed capable of being carried out elsewhere in another piece of wilderness. Therefore if indigenous peoples stood in the way of development, they could be relocated elsewhere. In practice, the land provided might be inferior quality and be less suitable for

housing, hunting, fishing or farming, and the promised compensation might never be paid. Whilst the wider society benefitted from the development of their traditional lands, the indigenous populations paid the price.

The loss of their traditional lands has resulted in attempts by indigenous peoples to reclaim all or part of these. The methods vary between countries and include insurgency, the renegotiation of treaties, and litigation. In some countries in which there is generally respect for human rights and a fair and open legal system, indigenous peoples have had some success in achieving the restitution of at least some of the land previously taken, or else securing compensation for losses being paid. This paper focuses on three countries where this has been the case: Alaska (USA), Canada, and New Zealand. The detailed processes for restitution differ between the three countries.

In each of these countries, resolution of land claims has led to significant real estate assets being transferred from the government to indigenous peoples. This in turn has resulted in the emergence of corporations belonging collectively to a group of indigenous people. They manage and exploit land resources and undertake investments on behalf of their community. Some of the corporations are significant resource-based enterprises with substantial real estate and investment portfolios. By exploiting and developing the compensation they have received as an endowment, indigenous peoples can enable their communities to share in future economic growth and to tackle poverty, deprivation, and the causes of despair within communities. They have the potential to provide the resources to enable their distinctive culture to survive, for example, through the teaching of the language. For the indigenous peoples themselves, the restitution of land is not just been about gaining economic assets but also about the righting of what they consider to be historic wrongs. It is also about providing the means by which a degree of autonomy and self-determination can be maintained and their culture protected.

The questions posed by the paper is whether the development of aboriginal corporations is a valuable means of underpinning the economic viability of aboriginal communities and their cultures, what issues are raised by their creation, and whether the models developed in the three countries would be worth seeking to replicate elsewhere.

2. ALASKA

The USA purchased Alaska from Russia in 1867. The resulting treaty provided for the transfer of all the land that was state owned from the Russian Government to the USA. Land in private ownership and that occupied by the Orthodox Church was not affected. The inhabitants, with the exception of the “uncivilized native tribes” could become citizens of the USA and “be maintained and protected in the free enjoyment of their liberty, property and religion (Treaty, Article III).” The issue of who was meant in the Treaty by the “uncivilised native tribes” lies at the centre of subsequent land claims (Jones, 1981). The Russian America Company Charter of 1844, which was in force in 1867, distinguished between three types of indigenous inhabitants: "dependent" or "settled" tribes, "not wholly dependent" tribes, and "independent" tribes. Thus, there were settled indigenous peoples in areas of Russian control

as well as nomadic ones, who periodically passed in and out of the territory. The indigenous peoples in the south and west of the country came mainly into contact with Russian rule, principally the Tlingits living around Sitka (New Archangel) and the Aleuts recruited (or impressed) for fur harvesting expeditions (Chevigny, 1965). It is not clear which groups could claim protection under Article III on the basis of the 1844 Charter. The US interpretation of who were “uncivilised native tribes” may well have been different from the Russian one.

The Treaty does not seem to have extinguished native land rights, but neither did it prevent the taking or encroachment on traditional lands. The indigenous population were unable to acquire land rights, though the Native Allotment Act of 1906 and the Native Townsite Act of 1926 did permit individuals to acquire title to plots. During the early years of US control over Alaska, there was little by way of colonisation, though by 1900 the indigenous population had come to be outnumbered by immigrants. By 1960, only one-fifth of the population were indigenous. During the twentieth century, following the founding of the Alaska Native Brotherhood in 1912, and particularly after 1950, there were claims made for lost lands. The issue of land claims by indigenous peoples had not been resolved when Alaska became a state in 1959 (Arnold, 1976).

The situation changed with large-scale oil production. The Prudhoe Bay oilfield came on stream in 1968, followed by the North Slope field. Oil production was made viable by the substantial rise in oil prices which resulted from the creation of OPEC and increasing demand. The problem was how to export the oil. Sea ice meant that export by tanker was not feasible. A proposal for a pipeline through Canada’s Mackenzie Valley, which would also serve Canada’s oil fields, ran into strong opposition from the indigenous peoples living along its route, who feared its impact on their communities and livelihoods (Berger, 1977). The alternative was to export the oil by pipeline to the ice-free port of Valdez. The pipeline had to pass over traditional lands claimed and used by the indigenous peoples and could only be built if the US government resolved the land claims of Alaska’s indigenous peoples, which it did with the 1971 Alaska Native Claims Settlement Act (ANCSA).

ANCSA extinguished all native land claims. The US government allocated 44 million acres (17.8 million hectares) of land to native corporations and paid them \$962.5 million. There are two types of the native corporations: 13 regional native corporations (RNC), which included one for those of the indigenous populations who had moved out of Alaska since 1971, and 229 village native corporations. The regional corporations are mainly ethnically based though the Cook Inlet Region, Inc. is mixed, reflecting the migration to the Anchorage area of members of different indigenous groups as well as the Dena’ina, who have lived in the area for over a millennium. Sealaska in south-east Alaska is owned by Tlingit, Haida and Tsimshian. The village corporations received land around their villages from the RNC according to their populations. They own the surface rights to the lands they selected. The regional corporations own the surface and sub-surface rights of their land and the sub-surface rights of the village corporations’ land. The lands are not reservations but are owned in fee simple and can be sold, mortgaged, or developed like any private land (Simpson, 2007). Since 1989 there cannot be foreclosure on the land.

The Alaskan Native Corporations are for-profit organizations that can, in principle, go bankrupt, as some nearly did in the early days of their existence (Simpson, 2007). Each Alaskan Native in 1971 was issued with 100 shares in the appropriate regional corporation and a further 100 in a village corporation if he or she lived in one of the areas in which these were established. Stockholders cannot sell their shares but only transfer them through inheritance or to close family.

As E B Simpson (2007), who has been an adviser to Sealaska has noted, the regional corporations have become big businesses with global investments and subsidiary companies. The RNCs have different types of endowment with natural resources. They must share 70% of the revenue from natural resources development - timber, minerals and oil - with the other RNCs on a per capita basis. *Alaska Business Monthly's* 2009 survey of the Top 49 companies based in Alaska found that all 12 Alaskan-based RNCs were on the list together with nine other Alaskan Native organisations (ANCSA Regional Association, 2010).

Some examples illustrate the range and scale of the RNCs' activities. The Arctic Slope Regional Corporation had revenues of \$1,945 million in 2009 and generated \$163.5 million for its shareholders². It employs over 10,000 people, including over 3,000 Alaskans, in companies engaged in construction, energy services, government contracting, financial services, hotels, and petroleum refining. It is owned by 11,000 Iñupiat Eskimo shareholders, living mainly in eight villages on Alaska's North Slope. ASRC states that it is committed to preserving the Iñupiat culture and traditions, which include protecting the land and the environment.

Sealaska in south-east Alaska has approximately 21,000 members. It had an income in 2010 of \$224 million and a net profit of \$15 million³. Some 50% of the revenue came from services, 24% from manufacturing, and 18% from natural resources. The services businesses were in environmental services, business services systems (including selling its shareholder management systems to other aboriginal corporations), security services, and construction. These businesses operate in other parts of the US, Canada and Mexico. The manufacturing centres on packaging. It has natural resources, mainly in the form of timber. It had total assets of \$361 million, including investments of \$117 million, but its land and timber resources are carried at zero value in the accounts, so the valuation of the asset is a significant underestimate. Central to the management philosophy is the Tlingit phrase, *Haa Shagoon*, which means the need to honour the past while preparing a better future for their children's children. This is interpreted to mean caring for, managing and protecting the land and natural resources needed today, whilst developing those resources for future generations. A key policy is to provide employment for its shareholders. Eighty per cent of the staff in its Juneau headquarters are Sealaska shareholders and it is seeking to employ its shareholders in its Seattle office and in its subsidiaries.

² Arctic Slope Regional Corporation Annual Report, 2009.

³ Sealaska Corporation Annual Report, 2010.

Cook Inlet Region, Inc. has 8,100 shareholders of Athabascan, Tlingit, Haida, Tsimshian, Inupiat, Yup'ik, Alutiiq/Sugpiaq and Aleut/Unangax descent⁴. In 2012 it had total assets of \$934 million, producing a net profit of \$16 million. It has developed business in construction, energy (including wind turbines and coal gasification, as well as oil and gas leasing), and tourism. Unlike other RNCs, it has the advantage of not being in a relatively remote location, but is centred on Anchorage, which has a population of 292,000. Whilst some of the CIRI shareholders live a traditional subsistence lifestyle or live in traditional villages, others are part of the urban community of Anchorage following the variety of occupations found in the wider society. The challenge is to meet the very different expectations of each and an aspect of the policy is to exploit real estate. The location has meant that CIRI has been able to invest in property development and establish property management and brokerage services. It manages on behalf of clients a portfolio of 53 commercial properties with a gross building area of approximately 4.5 million square feet. It has developed Tikahtnu Commons, Alaska's largest shopping and entertainment centre, in conjunction with a partner, on a 95-acre parcel in north-east Anchorage. The project is expected to have a value in excess of \$100 million, 12 – 15 major retail stores and 60 – 75 businesses with restaurants and cinemas. Development was started in 2007.

3. CANADA

The Canadian government historically had a record of relocating aboriginal groups in order to permit commercial or urban development of their land, with minimal compensation and assistance in relocation (Royal Commission, 1996, Vol. 1, Ch. 11; York, 1993). Various groups of indigenous peoples, such as the Mi'kmaq in Maritime Canada, have argued that treaties concluded with the European empires to end hostilities with them have not been honoured by the independent states that succeeded them, resulting in the loss of lands and rights over their exploitation that the treaties would appear to have granted them (Paul 2000). However, starting in the 1970s, a series of watershed legal decisions brought about the reversal of this trend. The Canadian Supreme Court in *Calder v the Attorney General of British Columbia* (1973) ruled that Indian title was a legal right independent of any form of enactment. It had not been extinguished by colonisation and did not depend upon a sovereign grant, but on occupancy (Hurley, 1998, revised 2000). The 1982 Constitution Act recognised and affirmed the existing aboriginal and treaty rights of the indigenous peoples. The case of *Delgamuukw v British Columbia* (1997) set out the protection given to Aboriginal title under the Constitution Act 1982 and how title can be proved, particularly in the absence of documentary evidence. These developments have led to a policy of the Canadian government negotiating final settlements of land claims. These typically include compensation for land wrongfully taken and for non-payment of any sums agreed in treaties. For the aboriginal groups it means the surrender of lands they claim to the Crown. The effect is to change a potentially uncertain claim into one that is precise and enforceable. In the process the groups acquire assets and compensation that can be used to purchase land.

⁴ Cook Inlet Region, Inc (CIRI), <http://www.ciri.com/>

The change in attitudes towards aboriginal land can be seen in the Berger Inquiry into the Mackenzie Valley Pipeline. A wildcat strike had found oil at Fort Norman on the Mackenzie River in 1920, resulting in some commercial production in the 1930s and 1940s (Emmerson, 2011). If the Canadian oil and natural gas deposits were to be exploited commercially, a pipeline would be needed along the Mackenzie Valley to Alberta. Aside from the environmental considerations the construction of the pipeline would pose, there were many public concerns about impact of such a project on Aboriginal communities and their land. The Canadian government set up an inquiry into the Mackenzie Valley pipeline proposals under the then Mr Justice Thomas Berger (Berger, 1977). It identified that there was a conflict of interest between businesses and the aboriginal groups in the region. It concluded that the project would have a huge impact and that it was impossible for conditions to be imposed on its construction to protect the environment and, by implication, the livelihoods of the communities living along the route. Berger proposed a moratorium on development until the aboriginal land claims in the area affected had been resolved, which would put the aboriginal groups in a stronger bargaining position. They could determine whether the benefits for their communities would outweigh the costs. Although negotiations on some of these claims have yet to finalised, a significant outcome has been realised in the form of the aboriginal groups obtaining a financial stake in the development of the pipeline. In 2001 the Mackenzie Valley Aboriginal Pipeline Corporation entered into a memorandum of understanding with the four oil producing companies and in 2003 became a full participant in the project, holding a 33.3% share in the consortium. Its share of the development costs have to be raised through conventional debt markets with backstop finance being provided by the fields' owners. The Mackenzie Valley Aboriginal Pipeline Limited Partnership is owned by organisations under the direction of the Deh Cho, Sahtu, Gwich'in and Inuvialuit. The arrangement gives the indigenous peoples a degree of control over the details of the development but also they stand to benefit financially from the pipeline.

This agreement is not unique to the Mackenzie Valley. Similar agreements have been reached between Manitoba Hydro and aboriginal groups displaced by dams and reservoirs constructed for hydro-electric power. The Grand Rapids scheme, opened in 1964, involved the flooding of thousands of hectares of wilderness. The residents were forced to relocate, fishing and hunting grounds were destroyed, and cattle and muskrat ranches and land for vegetable cultivation lost. Cash compensation was minimal and the resettlement lands were unhealthy as thick limestone prevented proper sanitation as well as being unproductive. The water became contaminated with mercury, probably as a result of the flooding. The relocated communities, deprived of their means of livelihood, became areas of crime, alcohol and substance abuse, and deprivation (Waldram, 1984, 1988; York, 1990). Subsequent negotiations resulted in agreements in 1990 and 2005 to provide more appropriate levels of compensation. More significantly, two recent projects to increase electricity production involve agreements for indigenous peoples to own 33% and 25% of the new generating stations (Manitoba Hydro, 2012). The traditional lifestyles have been destroyed but aboriginal groups are able to share in the benefits that come from the projects and not simply be relocated or receive cash compensation.

Many of Canada's aboriginal communities are faced with a similar demographic problem to

that experienced by Cook Inlet Region, Inc. Whilst some members of their communities continue to pursue traditional subsistence lifestyles or activities like farming, or else live on reserves, many do not. A significant proportion of the registered members of bands live off reserves and may be employed in similar occupations to those from the wider society. The young are likely to have similar aspirations to those of their peer group. Securing traditional lands to support traditional lifestyles or agriculture may therefore have little relevance to many members of a community. The challenge is how to protect the community's culture when this is no longer bound up with a specific place of residence and lifestyle. It may involve the protection of the environment of specific locations, the preservation of values, language and cultural activities, and the provision of welfare, particularly for the elderly. It is likely also to involve supporting education so that the young are able to compete for employment in the wider society and activities that generate employment for community members. Many of the jobs have to be for those who lack formal qualifications, in construction, leisure and the service sector. The implication is that assets belonging to the community need to be exploited to generate revenue to support education, cultural activities, and welfare programmes. Where assets are exploited in partnership with other bodies, community-owned enterprises may need to secure employment for community members through preferential procurement arrangements, for example, in construction, security, and catering. These measures suggest that indigenous groups are likely to need to engage in the wider economy, including that in urban areas. When seeking compensation for lost lands, the compensation in some cases might better take the form of urban assets rather than ones in traditional lands. In other cases, traditional lands which were in rural areas may now be in suburban or peri-urban areas, which provide opportunities for the exploitation of their new-found location.

The Osoyoos Band from Oliver in the south of the Okanagan Valley is an example of a community where peri-urban activities have developed around their traditional lands. The band's reserve is close to the US border in an area of Canada that is mild climatically. It includes sage dessert scrubland, an environment that is rare and under threat. The band has approximately 370 members who live on the reserve and it has 32,200 acres of land. The Oregon Treaty of 1846 placed an international border between the band and its allies in USA. The area was opened up to European settlement in the 1860s. The person credited with being the pioneer was John Carmichael Haynes, a tax collector. In 1861 he was put in charge of customs for the Okanagan, Similkameen, and Boundary areas. He was commissioned county court judge in 1866, which put him in an influential position to determine land claims. He recommended reducing the reserves and in 1869 obtained 560 acres north of Lake Osoyoos. In 1879 he purchased 4,215 acres of the Osoyoos Reserve Lands. Further reserve land went to the Kettle Valley Railway Company for a line that was never built in 1913. These losses have be the subject of land claims by the band. In effect, they reduced the band's access to waterside land, valuable for agriculture, and left it with desert scrub and dependent on government grants. The claim over the Haynes purchase was settled in 1997 with the band receiving \$11 million. Some of the land owned by the band is desert scrub but other parts are valuable agricultural and timber land.

The reserve's position close to the border with USA and on a tourist route confers location

advantages. There are three potential tourism markets – wine, the area being the leading wine-producing area in Canada; aboriginal tourism centred on indigenous culture; and eco-tourism because of the rare desert landscape with endangered species such as rattlesnakes. Competing in each of these markets is challenging but what the Osoyoos Band is able to do is to combine the tourist offering and to exploit their position as being the first winery visitors from USA encounter when they cross the border. In 1980 Vincor International Inc. established a winery on the band's land. In 2002 a new winery, Nk'Mip Cellars, was established as a joint venture with Vincor. Vincor lease vineyards from the band and the band also have its own vineyards (Anderson, McGillvray and Giberson, 2007). They have developed the Spirit Ridge Vineyard Resort and Spa and a recreational vehicle campsite and golf course. In addition to these activities, the band has an industrial and business centre, land leased to other vineyards and leisure businesses, investments in activities off the reserve, such as in the Mount Baldy ski resort, and construction. The stable revenues enable the band to issue bonds to raise finance for capital investment in new facilities as reserve lands cannot be mortgaged since there can be no foreclosure. The businesses that have been created, though, can be used as collateral.

The band's business activities are in the hands of the Osoyoos Indian Band Development Corporation (OIBDC) and much of its success can be attributed to the entrepreneurial instincts of the band's long-servicing chief, Chief Clarence Louis. Its annual revenues are about \$26 million and profits \$2.4 million. At the heart of the band's development policies is the belief that with dependency come a range of social problems and the way to tackle these is through the creation of employment. Since 1995 the band has earned more revenue from its business activities than it has received from government transfers. It aims to achieve self-reliance through economic development and preserve its culture for future generations through the creation of jobs. Funding is provided for a cultural centre and also for habitat conservation. The legacy of the past has meant a need for entry-level jobs for band members in activities such as construction and hospitality management. For the future, investment in education is likely to change the situation. The band has been so successful in creating employment that it has more jobs than band members to fill them, so it is able to offer employment to members from other bands. It has also been willing to hire outsiders as senior managers in order to bring in needed expertise. The transformation during the last 40 years has been outstanding with the band having been virtually bankrupt and has come about as the band has exploited the resources at its disposal.

In 1876 the aboriginal groups who signed Treaty 6 with the Canadian government, included the Muskeg Lake Cree, whose reserve lies north of Saskatoon. The Canadian government had taken over control of the area from the Hudson Bay Company and was anxious to avoid Indian wars, whilst the aboriginal groups wanted to secure their interests in a way that would ensure they could not be deprived of them. Smallpox and starvation from the disappearance of the buffalo may also have influenced their decision (Taylor, 1985). There is debate as to whether the implication of cessation of interests in the land was made clear in the discussions about the treaty. The treaty provided for the surrender of lands by the aboriginal groups in return for which they would receive reserves and various payments (Treaty 6). In reality, not all the land promised for reserves appears to have been delivered or the payments promised made. Federal officials sold reserve lands land without aboriginal approval or knowledge or

else at less than their market value. In some cases these officials behaved corruptly. This meant that the federal government failed to fulfil its treaty obligations. In 1992 the Saskatchewan and federal governments signed a Treaty Land Entitlement framework agreement with the aboriginal groups for the implementation of land claim settlements. The result has been cash settlements and also transfers of surplus publicly-owned property at market prices. Much of this real estate was in urban areas with the result that Saskatchewan has the largest concentration of urban reserves in Canada.

The Muskeg Lake Cree were amongst the pioneers of the Land Entitlement framework using settlement sums to acquire urban reserves. Land for this purpose can be bought in the open market but also surplus federal and provincial Crown land can be purchased pre-emptively on a willing buyer/ willing seller basis. The band has a population of 1,848, of whom only 367 actually live on the reserve. Since the 1880s, members of the band had left the reserve to work for settlers in the area so the creation of urban reserves has logic to it if the settlement is to meet the needs of the entire community, and not just those living on the reserve. The land is needed to generate income for community activities and to provide opportunities for urban employment. The Muskeg Lake Cree used the settlement process to acquire a 35 acre site in Saskatoon, formerly in public ownership, now known as the McKnight Commercial Centre. It has 35,000 square feet of leasable space. It is managed by Muskeg Lake Property Management and owned by Creek Investments, which is wholly owned by the Muskeg Lake Cree Nation. The management company also manages Cattail I and II, in partnership with Saskatoon Tribal Council, and these have a further 55,000 square feet of leasable space. All of these are fully let. Many of the occupiers are aboriginal institutions, including the Federation of Saskatchewan Indian Nations, the Saskatchewan Indian Gaming Authority, the Saskatoon Tribal Council, and Saskatchewan Indian Institute of Technologies. Other tenants include a dental practice, law firms, medical practices, and an aboriginal artist studio and shop. There is land available for further development. The businesses employ over 300 people. The band also have two petrol stations in Saskatoon. The settlement was used to purchase Pitihkwakew Lake, which offers camping facilities. There are joint ventures in a casino and golf course. The McKnight Commercial Centre is a designated reserve under the Indian Act. This means that businesses do not pay federal payroll taxes and there is no GST on what customers buy from the businesses (Chartrand, no date). This provides the same type of benefit as is often found in enterprise zones. It is important to recognise that such urban developments help to retain aboriginal expenditure within the community with a corresponding multiplier effect. The McKnight Commercial Centre is held up as an exemplar. It provides business accommodation for aboriginal businesses and institutions, which is valuable, but it has not broken through into offering business premises to non-aboriginal businesses. It is a reserve.

4. NEW ZEALAND

In 1840 the British government signed the Treaty of Waitangi with Maori representatives. By this date many Maori were integrated into the global economy, trading with Europeans, some owning schooners, adopting certain European agricultural practices, and supplying ships. There had been some land sales but concern was beginning to arise about the consequences of

unregulated settlement (Ward, 1999). Issues such as what land had been sold, multiple claims over land, and whether chiefs had merely granted user rights to settlers had begun to surface. There is some controversy over the Treaty and what different parties thought it meant but, on the face of it, the Treaty is clear. Article 2

Confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective individuals and families thereof the full exclusive and undisturbed possession of their Lands and Estates Forests and Fisheries and other properties which they may individually or collectively possess so long as it is their wish and desire to retain the same in their possession.

Since 1844 Maori land can only be sold to the Crown. The problem is that it can be argued that the Treaty was not respected by subsequent New Zealand governments, resulting in Maori land being subject to flawed sales, to agreements that were not fully honoured, and confiscations of land when tribes took up arms to defend what the Treaty had apparently promised them. There is also the issue of defining what rights the Treaty protects due to the complexities of Maori land tenure at the time (Ward, 1999). From the 1870s Maori attempted to bring cases in the courts, for example, claiming that agreements had not been honoured, but these failed as the Treaty was not seen as being part of New Zealand domestic law. By the 1960s there was a significant Maori protest movement arguing for the restoration of the rights that the Treaty had apparently guaranteed and for the return of land lost in controversial circumstances. The result was the creation of the Waitangi Tribunal in 1975 to investigate and resolve claims. In 1985 its jurisdiction was extended to include all claims from 1840. Any Maori can bring a claim but the process involves settlement with communities. There is some controversy as to what level of community the settlement should be with, whether at the level of the iwi or hapū, as well as issues of overlapping claims. The issue is made more complex by the ability of Maori to be members of different hapū and to transfer allegiances (Ward, 1999). This has now resulted in negotiation of claims by region as well as a guarantee that later settlements will not undermine earlier ones. It is recognised that the claims made under the Tribunal process have the potential to bankrupt New Zealand, particularly if accumulated interest on losses from the date of the losses, as well as the property taken, is compensated. Therefore, the government has set a notional cap on the claims, though this will probably rise over time. However, in order not to discourage early settlement by those who hope for a better result if they hold out, some significant early settlements include a guarantee that they will equal a given percentage of the total overall settlement with the Maori. Legislation is used to ensure that the settlements are binding on all parties. Private owners cannot be deprived of their property by the settlements so that the claims are against the Crown. This has resulted in significant transfers of surplus Crown land to Maori groups on pre-emptive purchases with the result that some have become major owners of real estate. The properties, in some cases, have significant redevelopment potential. Two examples illustrate the scale of these activities.

Ngāi Tahu are the Māori people of the southern islands of New Zealand and claim 80 per cent of South Island. Te Rūnanga o Ngāi Tahu was established by the Te Rūnanga o Ngāi Tahu Act 1996 to administer the settlement agreed under the Waitangi process and is the representative body for Ngāi Tahu. Ngāi Tahu Holdings Corporation Limited manages commercial activities. The claims date from 1849 when Ngāi Tahu claimed that the Crown failed to establish the reserves it had promised under land sale agreements, or to provide the

schools and hospitals it had promised. This had left the tribe unable access traditional food gathering areas or sacred places. Ngāi Tahu's approach to its claims was to seek redress through the courts but, in spite of official acknowledgement of the justice of the claims, no action resulted until the Waitangi Tribunal was established. The Waitangi Tribunal ruled that the Crown had breached the Treaty through its land purchases by failing to deliver what it had agreed to and the price paid for the land. In other words, the land and other resources had been expropriated rather than having been purchased through prior informed consent.

The claim was lodged in 1986 and negotiations began in 1991, with Ngāi Tahu seeking Crown property within their traditional lands as compensation. Ngāi Tahu secured court orders preventing the sale of these assets. The claim was agreed in 1996, with a Deed of Settlement in 1997 and the Ngāi Tahu Claim Settlement Act in 1998. The settlement took the form of a Crown apology and \$170million. The apology was an important part of the settlement since it represents acknowledgement that wrongs had been done to the Maori. The beneficiaries are those who can demonstrate descent from the Ngāi Tahu recorded in the 1848 census. With the economic reparations have also come cultural reparation in the form of lands of significance to Ngāi Tahu, including the Southern Alps and coastline areas. These enable Ngāi Tahu to ensure the protection of the environment whilst gifting back these lands to, or access to them by, the nation. The settlement allowed Ngāi Tahu to buy \$250 million of Crown assets. As the compensation was less than the assets that could be bought, funds had to be raised commercially. The assets acquired included farms in the High Country, which were sought because of the cultural value of the land, but also commercial property in towns and cities like Christchurch. There is also a right of first refusal on the purchase of surplus Crown assets not in the pool. For example, the railway station and sidings at Kaikourra are now the centre for Ngāi Tahu's whale watching activities. The relativity clause guarantees Ngāi Tahu 17% of the national settlement should this exceed \$1 billion.

Ngāi Tahu Holdings produced an operating surplus after finance costs for shareholders of \$55.1million in 2011/12 and had assets of \$809 million. Some 58% of the assets were in property with other interests in fisheries and seafood and tourism. Most of the property assets are investment properties but the group also undertakes development, for example, housing in suburban Christchurch. As well as rural property, the group has significant investments in commercial property in centres like Christchurch, such as the Tower Junction Retail Centre and premises for car showrooms and repair works. Ngāi Tahu has been a significant investor in tourism in South Island, but has also diversified into tourist investments in North Island. It has been keen to employ the best managers to develop its property interests irrespective of their ethnic background.

The Waikato-Tainui Iwi's approach to land claims took a different route from Ngāi Tahu. This took the form of the creation of the Kīngitanga in 1858, which sought to achieve a unified Maori nation under a Maori king. Under the New Zealand Settlements Act 1863 military settlements were to be established on land confiscated from rebels. When British forces entered into the Waikato region and met with resistance, 1.2 million acres of Waikato land was confiscated in 1865. A Deed of Settlement was agreed in 1995 and the Wakaito Raupatu Claims Settlement Act was passed in 1995, though there remain some outstanding

claims. The settlement is administered by Waikato-Tainui Te Kauhananui Incorporated, which owns Tainui Group Holdings Ltd and Waikato-Tainui Fisheries Ltd. In 2013 it had assets worth \$728 million. Activities include residential development and the ownership of the Base, a major out of town shopping and entertainment complex near Hamilton. Its aim is to maximise the resources available to its shareholders. It is willing to undertake equity investments in other businesses to boost this and this has included investments in hotels. It has ambitious plans for a major development, Ruakura, a mixed use development east of Hamilton, which would comprise a major logistics and freight transport interchange, housing, and a knowledge zone. The challenge is how to maintain a strong commercial approach to the development of its assets so as to increase the yield they produce for its shareholders, whilst holding on to traditional values.

5. CONCLUSIONS

In Alaska, Canada and New Zealand aboriginal land claim resolution processes have resulted in indigenous peoples gaining secure title over traditional lands or lands obtained in compensation for traditional lands that have been lost. This has resulted in land being transferred by governments to collectives controlled by indigenous peoples rather than into individual landownership. Typically, a commercial company owned by the community body manages these assets. There has also been a trend towards diversification of investments in order to enhance the dividend that can be paid for the support of tribal activities. These typically include for education, health care, welfare of the elderly, and activities to support and promote indigenous culture. From the perspective of the governments, it has been easier to negotiate claims made on behalf of a collective and to settle with a body which can be said to represent those who are recognised to be the successors to those whose land was originally taken. An important aspect of the settlements has been recognition by governments of past wrongs done to indigenous peoples. The claims therefore have not just been about money and assets but about securing closure through apology and restorative justice. This has inevitably meant collective negotiations and settlements. One can reasonably argue that if the indigenous peoples had not been deprived of lands, they and their successors would have been able to have taken advantage of the economic benefits that came from European settlement. All the land claim settlements are really doing is to put their descendants in a position that they might have been in had lands not been expropriated. The collective nature of the settlements is in marked contrast to restitution policies in the former Communist countries of Central and Eastern Europe, where claims for restitution of expropriated property have been settled individually even though the recipients may be the heirs or families of the original owners.

There are important questions as to how these assets should be managed on behalf of their co-owners. A commonly adopted solution has been for the assets to be transferred into the hands of corporations that are wholly owned by the tribal council or other collective body charged with the governance of the resources. Such corporations can then be managed to generate profits which are paid to tribal bodies to carry out activities that benefit members of the tribe. There is a distinction between the legal ownership of the assets, which lies with the tribal bodies, and the fruits of beneficial ownership which tribal members enjoy individually or

through collective programmes. The approach raises the question of the extent to which the assets should be managed commercially to maximise income or whether their management should embody the community's cooperative philosophy and of being at one with the environment. Closely related to this are questions of whether the management should be drawn primarily from the community or whether the best managers should be hired with a view to maximising shareholder benefit. There are governance issues that the corporations (and the bodies that technically own them) have to work through concerning how the shareholders can ensure that those running the corporations serve their interests. Achieving consent about the direction of policy may not always be easy. These are not problems unique to aboriginal corporations; one can find them in mutual organisations as well as companies controlled by an extended family descended from a business's founders.

The way these aboriginal corporations have developed should not come as a surprise to anyone familiar with some of the aboriginal corporations that have developed in the USA, such as the Seminole Tribe of Florida, Inc., who have a major gaming operation and own Hard Rock Café International, or the Winnebago Tribe of Nebraska's Ho-Chunk, Inc., which has diversified from gambling into construction, real estate, business services, and retailing, or the variety of entrepreneurship indigenous communities display (Dana and Anderson, 2007). In 1993 Bebbington argued in relation to agricultural production by indigenous people in Ecuador that their approach to globalisation and integration into the world economy was not to resist it but to use it to negotiate relationships and compete in a hostile environment. They sought to control their participation in ways that respect and strengthen their ethnic identity. Anderson (Anderson, Peredo et. al., 2007) has argued that there is an aboriginal approach to economic development which is predominantly a collective one centred on a community or nation that is aimed at ending dependency through self-sufficiency and controlling activities on traditional lands. The approach seeks to strengthen traditional culture and to improve socio-economic circumstances. The means are to create and operate profitable businesses, building capacity, and to form relationships and joint ventures with non-aboriginal economic entities. It is an opting into the modern and global economy in an activist way. The difference between the corporations discussed in this paper and those that have tended to be the focus of previous research is the size, scale and sophistication of the activities, the willingness to take the knowledge, skills and experience gained in a local area and to apply it to other areas or locations, often far removed from traditional lands, and the exploitation of land as real estate assets. This would not have come as any surprise to those who traded with Maori communities in the 1830s or who observed how the aboriginal communities of Canada's west coast and Alaska adapted traditional crafts into trade goods for sale to mariners and who used traditional designs to work new materials like copper and to produce jewellery. The poverty many aboriginal communities found themselves in was more to do with being deprived of the resources they had controlled rather than lack of entrepreneurship. Once they have control over these resources, they can be exploited in ways that support the community and enable the survival of traditional culture.

There is a contrast between the sophistication and commercial acumen of these corporations and the limited compensation other indigenous communities have secured elsewhere in the

world for the loss of communal assets. These corporations exist in an environment in which skilled managers can be hired from outside the community and there is an increasing cadre within the communities who have completed higher education in areas such as accountancy, business management, and law. Restorative justice has the ability to bring the closure of long-standing disputes, both economically and in terms of apologies and redress. They enable indigenous peoples to have an on-going share in the economic growth of the society that simple monetary payments would not achieve.

There is, though, an important caveat. The dispossession of traditional lands took place a long time ago. Since then many of those descended from the indigenous populations have migrated from traditional lands to urban areas or married out of their communities, and their descendants may have lost touch with their origins. They may experience discrimination and worse life chances than the mainstream populations. This group is not likely to be reached by the policies discussed in this paper as they have lost touch with whatever ethnic group their ancestors might have come from.

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