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Toward an understanding of Aboriginal/Indigenous rights and their impact on development: an application of regulation theory

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Abstract

This paper explores the relationship between business, society and the developmental aspirations of Indigenous people¹, whose communities are among the poorest and most marginalized in the world; it explores the emergence, evolution and growing importance of the role that Indigenous rights play in the development of these communities. To do so, the authors examine the interrelationship between Indigenous rights², social capital and entrepreneurial activity. Using regulation theory, we develop several propositions to argue that these conceptual areas can come together to provide insight on how modes of social regulation may be crucial to understanding the pathways available for participation in the global regime of accumulation. The result can be the emergence of a particular mode of development that is aligned with the outcomes sought by the community (see note 1). From these propositions, the authors argue that the modes of development available are dependent upon multiple levels of societal structures where the degree of localization in the modes of social regulation is central in determining the objectives as well as significant to achieving them.

Keywords

Indigenous people, Indigenous rights, regulation theory, social capital, development

Introduction

The purpose of our present paper is to explore the nature of the rights of Indigenous People and the role of these rights in Indigenous peoples' struggle to preserve and strengthen their communities and territories in the modern global socioeconomic system. The Secretariat of the United Nations Permanent Forum on Indigenous issues captures the essence of this struggle saying it is "to preserve, develop and transmit to future generations their ancestral

¹ We will use the term Indigenous people throughout this paper when refer to people who meet the following criteria.

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system. (Secretariat of the Permanent Forum on Indigenous Issues, 2004, p. 2).

² Similarly, we will use the term Indigenous rights to refer to rights exclusively available to particular groups of people meeting the about definition.

territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.” (2004, p. 2).

We propose that rights held by Indigenous People can form an important component of the complex of capitals available to Indigenous communities important to their drive to participate in regional and global economic systems in a manner consistent with their development aspirations while balancing the need to opt in or out of the dominant regimes of accumulation around them (Anderson, Dana & Dana, 2006). Until recently, through the hegemonic process of colonization, the social capital of Indigenous peoples has been critically eroded through a combination of government policies, societal exclusion and a lack of control and participation in the management of their own resources (Foley & O’Connor, 2013). We argue that there is evidence that points to the reversal of this erosion through and increasing regulation and restoration on Indigenous rights on four fronts: (i) individual states; such as Canada and New Zealand among many, (ii) supranational organizations such as the United Nations, the International Labor Organization and the World Bank, (iii) Civil sector organizations, and, perhaps surprisingly (iv) multination corporations, particular in the resources sector. We provide theoretical propositions anchored by regulation theory to provide a better understanding of this process that will also serve to act as guidelines to Indigenous, corporate, government and other multinational stakeholders. To do this, we link regulation theory with social capital and entrepreneurship theory.

As social capital is evidenced as being an important yet intangible resource embedded within social structures that may be drawn upon to drive new venture formation and financial/non financial value creation, the lack of it within Indigenous communities is potentially detrimental to their development activities (Fukuyama, 2001). Ingenbleek wrote, “Social capital theory posits that social network ties contain economic value, in the form of

information and the repayment of social obligation (2014, p. 203).” We therefore propose that the increasing recognition of Indigenous right can have a positive effect of efforts to rebuild Indigenous communities in the manner they wish, by 1) raising the levels and types of social capital available and 2) providing alertness and access to a larger pool of opportunities.

Based on the objectives stated, to accomplish our purpose, we will explore the nature of Indigenous rights and the role these Rights play in the formation of a particular type of capital unique to Indigenous people. Then, we will use a framework based on regulation theory to explore how these rights, as a form of social capital, can and do play an important role in the formation of modes of social regulation that can allow particular groups of Indigenous people to participate in the global economy in a manner which furthers their objectives as described above. The key word is can, rather than will. Nothing in the framework developed from regulation theory suggests that the realization of rights capital will result in success: it may only increase access to opportunities. We go on to argue that success depends on the particular mode of development, which emerges--the path.

We hypothesize that each of these pathways impact the formation of social capital within communities in different and significant ways, which may lead to highly divergent outcomes with respect to entrepreneurship specifically and the overarching goals of self-determination and development generally. The framework presented may be used to explain the relationship between Indigenous rights, the pathways for leveraging them and how these pathways impact the formation of social capital that *may* then be used to create new ventures. We also provide three mini-cases, which have served both to guide us in the development of our arguments and at the same time illustrate the application of the arguments. Our argument, developed at length in subsequent sections, is briefly summarized in the following paragraphs.

One of the key challenges of this research is that there is considerable variation in extant conceptualizations of social capital. Furthermore, very little work has been done in exploring the concept of social capital and its function within Indigenous communities, thus relying on extant definition and operation from radically different philosophical and cultural perspectives. It is most commonly understood as embedded within the networks of a particular social milieu or context that may serve the purpose of enabling access to information, supports and various resources (Adler & Kwon, 2002; Burt, 2000; Coleman, 1988). This view is often associated with individual or team approaches to entrepreneurship (Kim & Aldrich, 2005; Packalen, 2007; Payne, Moore, Griffis, & Autry, 2011). Social capital may also be viewed as a broader societal concept attached to the stocks and flows of goodwill and or cooperation in or between groups or communities (Johannisson & Nilson, 1989; Kwon, Heflin, & Ruef, 2013; Roxas & Azmat, 2014). From the perspective of the latter, the process of social capital formation and utilization is mediated by the systematic establishment, reproduction and transformation through contextualized responses to the global socioeconomic system; that is, modes of social regulation.

Although regulation theory does not provide specific details on the nature of particular modes of regulation, it may be described as involving complex and multiple localized levels of political, societal and economic institutional controls and norms that function across many levels of meso and macro environmental analysis (Hirst & Zeitlen, 2002). Therefore, societal pathways that function to establish modes of social regulation that govern the formation of social capital may be significant to development outcomes in general and the facilitation of entrepreneurship in particular (Johannisson and Monstad, 1997; Peck & Tickell, 1992). Resulting modes of development may be viewed as influenced by these structural pathways and modes of regulation, which may be described as “a very specific articulation of local social conditions with wider coordinates of capitalist development in

general” (Scott 1988, p. 108). O’Callaghan and Corcoran suggested this explains “the unique ways in which supposedly ‘global’ processes are experienced within different geographical, institutional, and cultural contexts” (2012, p. 135). We believe mini cases we have concluded support and illustrate this fact.

Development Theory, Social Capital & Entrepreneurship

In many ways, the circumstances faced by Indigenous people struggling to achieve economic development are similar to those faced in the Third World (Bruton, Ahlstrom, & Obloj, 2008; Welter, 2005). For both, the objective is to improve socioeconomic conditions, by finding a place in the world economy mostly controlled by others with unlike worldviews. This suggests that theories associated with Third World development might provide useful insight into Indigenous economic development, entrepreneurship and joint venture creation (Anderson, 1997; Buckingham & Dana, 2005; Peredo & Anderson, 2006; Peredo & Chrisman, 2006).

The modernization and dependency perspectives dominated development thought throughout the middle of the 20th century. During the second half of that century, development theory evolved substantially, generally stating that in order for Third World nations to follow the development pathways of the first world, social, cultural and human capital consistent with mainstream requirements, they must also be developed – largely by means of assimilation.

Conflict between the perspectives led many to conclude that both describe a possible but not inevitable outcome of interaction between a developing region and the global economy, but that they are in essence, historically incomplete. Moving beyond the seemingly polar logics of these perspectives, new contingency theories were developed that emphasized powerful new trends towards human agency and the systematic reproduction and/or transformation of patterns of contextualized social relations (Corbridge, 1989, p. 633). This

perspective allows “for the possibility of incorporating the experience of other peoples, other perspectives and other cultures into the development discourse” (Tucker 1999, p. 16). For scholars interested in the relationship between new venture creation and development, this way of thinking fit with structural agency perspectives emerging within the disciplinary area of entrepreneurship and supported the view that emphasized that successful participation in the global economic system was a highly localized process and that “economic structures, values, cultures, institutions and histories contribute profoundly to that success” (Dicken, 1992, p. 307). This movement toward the importance of social spaces when considering the entrepreneurial process provided much needed alignment with macro-economic theories of development to meso environmental theories of entrepreneurship, especially in regard to the significance of social capital. Storper agreed, “patterns of bonding and bridging (are) likely to determine the capacity of specific institutions for solving economic problems” (2005, p. 40).

Regulation theory is one approach to development that emphasizes contingency and human agency, including the importance of local factors to particular outcomes. It analyses the global economy “in terms of a series of *modes of development* based on the combination of the currently ascendant *regime of accumulation* and a variety of *modes of social regulation*” (Hirst & Zeitlin, 1992, pp. 84-85). The regime of accumulation can be rather simply defined as a historically specific production apparatus through which surplus is generated, appropriated, and redeployed” within a defined economic system (Scott, 1988, p. 8). Scott elaborates that stability in the global economic system is highly dependent upon a second element, social modes of regulation:

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 stabilization ranging from the state through business and labor associations, to modes of socialization which create ingrained habits of behavior... (1988, p. 9).

Given that modes of social regulation are based on such things as “habits and customs, social norms, enforceable laws and state forms” (Peck & Tickell, 1992, p. 349) unique modes “can exist at virtually any territorial level – local, regional, national, global” (Storper & Walker, 1989, p. 215).

The third element of regulation theory is the mode of development. It is the coupling of a particular mode of regulation within the currently dominant global regime of accumulation. Torfing described it as the articulation of “a regime of accumulation with the institutional features of a mode of regulation into a regulatory ensemble capable of generating growth, prosperity and social peace in the context of the international division of labor” (1991, p. 77). Thus, mode of development can be generally defined as the vehicle(s) for creating welfare. According to regulation theory, it should be possible for a people to create a mode of development consistent with the requirements of the regime of accumulation and with their traditions, values and objectives. For some, the mode of social regulation in operation may not allow for much participation – especially in instances of Indigenous peoples and may be a factor in explaining a common pattern of development woes (Bebbington, 1993; Sirolli, 1999).

Yet, the interaction between a particular people, the global economy and their mode of development, need not be as envisaged by the modernization, dependency or other development perspectives; it can be something else entirely, a bridging of the social capital gap in pursuit of successful participation in the mainstream economic system. Boutilier (2009) suggested we are in the midst of such a paradigm change. Sukhdev (2012) agreed,

saying that a new, flexible capitalism is emerging as a result of the actions of governments, communities, the civil sector and corporations in response to these actions and the market; where the old regimes begin to fray at the ends and the importance of sustainable, ethical and socially appropriate modes of production are gaining traction (see: Porter & Kramer, 2011; Sabeti, 2011; Shepherd & Patzelt, 2011). This shift supports the move toward an alliance-based economy and greater importance of joint ventures between Indigenous and non-Indigenous organizations (Corbridge 1989).

In an Indigenous context, the development of modes of social regulation impact the formation of social networks that involve relationships with corporations as well as state governments, civil sector organizations and supranational bodies from which they were previously excluded (Kayseas, Anderson, & Moroz, 2014). A protracted and positive shift in the way that these entities recognize Indigenous rights has provided a stock of previously untapped resources upon which an effective mode of social regulation may be built. Although the recognition of Indigenous rights is posited as one of many factors that have led to a surge in social capital formation, the nature of the general pathways and specific modes of social regulation that limit or encourage social capital formation has yet to be fully and functionally understood. Legislation with exclusionary policies, flowing from a colonial past, have left many Indigenous peoples poorly equipped to take advantage of the opportunities that accompany large investments within the resource sector (Wright & White, 2012). To benefit, communities need to be well positioned (Cherry, 2011; Crowley, 2013).

More broadly, we propose that regulation theory supports the proposition that Indigenous people have the potential to pursue their development objectives, at least in part, on their terms. Further, argue that while Indigenous Rights enhance the prospect of success, they do not make it inevitable or even likely. Again we believe the three mini-case provided

illustrate the complexity of the process and variability of outcomes depending on the path chosen.

Social Capital Theory & Indigenous Rights

In this section, we examine the relationship of social capital with other capitals, and establish the role that social capital plays in the creation of new ventures and further explore the proposition that Indigenous Rights, a specific subset of capital. We argue that these capitals are limited by particular “habits and customs, social norms, enforceable laws and state forms” conceptualized as modes of social regulation (Peck & Tickell, 1992, p. 349) anticipated by regulation theory.

Social capital may be defined as the ability to obtain resources by virtue of social relationships and/or membership. As noted by Fukuyama, “social capital is an instantiated informal norm that promotes co-operation between individuals (2001, p. 7).” Coleman pointed out that social capital “comes about through changes in the relations among persons that facilitate action (1988, p. S100).” Knack and Keefer observed that since the 1990s, “The notion of social capital has attracted great academic and journalistic attention” (1997, p. 1251). Putnam, Leonardi and Nanetti (1993) used social capital to explain differences in the economic and government performance different regions. Krishna (2000) emphasized the difference between relationship social capital and institutional social capital; relationship social capital is the capacity of an individual to obtain valued goods by virtue of relationships and/or memberships, while institutional social capital is the capacity of a group to enjoy benefits of collective action by virtue of participation, trust or commitment. Putnam (2000) suggested that social capital provides information that could become an inclusive bridging lubricant. Putnam (2000), and later Adler & Kwon (2002), suggested that social capital could enhance trust via the bonding of individuals. This trust keeps organizations cohesive.

Davidson & Honig (2003) found that bridging and bonding social capital was a robust predictor of who became an entrepreneur. Baron & Markman (2003) confirmed the view that a high level of social capital assisted entrepreneurs in gaining access to important persons, but once such access is attained outcome was influenced by social competence (e.g., Bauernschuster, Falck, & Heblich, 2010). Payne, Moore, Griffis, & Autry (2011) observed that although social capital was being utilized extensively in research, researchers were not yet embracing social capital as a multilevel theoretical perspective with the potential to bridge domains. Light & Dana (2013) distinguished between social capital as catalyst for entrepreneurship and suppressive social capital; they suggested that social capital promotes entrepreneurship only when supportive cultural capital is in place; they argued that social capital only helps entrepreneurship in the presence of a business supportive habitus and commensurate cultural capital or the necessary bridging ties to either external markets or resources. To date, no studies focused on the relationship between modes of regulation and social capital as a means to fill the gaps in understanding the meso-environmental milieu that encompasses cultural, political, social and economic controls.

While the concept of social capital has been applied to many community/group perspectives to explore business and development questions, surprisingly, few have attempted to apply it to Indigenous communities. We do so below.

Social capital in Indigenous communities

Communities suffering from depleted stocks of social capital are more prone to long-term impacts upon their wealth (Flanagan & Beauregard, 2013). The colonization of Canada, as in other areas of the world, was a process wherein peoples came to be dominated by a hegemony that imposed its worldview, laws and values. In some instances, this was accompanied by efforts to modernize, while in others instances conquest, suppression and even genocide. Regardless, the result has been the systematic depletion of the social capital

upon which much of the socioeconomic systems of Indigenous people were based. As the basis of all freedom is economic at its root (De Soto, 2000), the outcomes of this process were catastrophic and enduring (Canada Royal Commission on Aboriginal Peoples, 1993), creating a state of underdevelopment and dependency.

The process of entrepreneurship in pursuit of development is viewed by Indigenous people as a means to rebuild their communities and economies on their own terms (Anderson, MacAulay, Kayseas & Hindle, 2008). Hindle & Moroz wrote, “All Indigenous people, long suppressed as minority stakeholders in what were once, and they regard still, as their own lands, seek a higher degree of autonomy than the mainstream state is often willing to convey. There is also a growing awareness by many Indigenous leaders around the world that economic independence is an obvious path towards preserving all aspects of community integrity including lifestyle, heritage and culture. (2010, p. 8)”

Although social capital has been an important and growing area of research for scholars of Indigenous entrepreneurship (Foley & O’Connor, 2013; Light & Dana, 2013), it has only recently been explored as a means for exploring the relationship between Indigenous rights, corporate partnerships, new venture creation and the attainment of development objectives (Flanagan & Beauregard, 2013; Kayseas, et al., 2014). In the following section we will explore the state of social and other capitals. Our intention is to chart the general pathways available to Indigenous peoples that are applicable to the recognition and conversion of rights and title into the formation of social capital and its impact on a particular mode of development: the new venture. As the scope of regulation theory includes the coordination of economies, both national territories and societies, it is an appropriate means for analyzing the historic and emergent pathways available (Jessop, 1995).

Indigenous Rights as Capital

In this sub-section, we focus on three transnational statements pertaining to the rights of Indigenous peoples: (i) ILO 169 of 1989 of the International Labor Organization; (ii) the UN Declaration on the Rights of Indigenous People that went before the General Assembly in the fall of 2006 for a ratification vote; and (iii) and the policy of the World Bank toward Indigenous people revised in 2005. We then examine in more detail Indigenous Rights in Canada. Internationally and in Canada in particular, these Rights address four areas: the right to control over own land and resources; the right to economic benefit from traditional lands; the right to self-determination in development; and the right to maintain and strengthen institutions, cultures and traditions. We argue that the level of participation allowed by each pathway is most adequately represented by the above sets of principles. From these principles, we posit that the mode of social regulation observed and the level of participation afforded Indigenous people in its establishment is linked to social capital formation (converted from rights and title), and the desired goal of new or joint ventures as the key mode of development.

Events during the final decades of the 20th century and the opening decades of the 21st resulted in Indigenous people emerging as a group of some consequence. ILO 169 Article 14 called for the recognition of Indigenous peoples' ownership rights over the lands, which they have traditionally occupied and usage rights over lands "to which they have traditionally had access for their subsistence and traditional activities." It also called upon governments to identify these traditional lands and effectively protect Indigenous peoples' rights of ownership and possession. Article 15 addressed the rights of Indigenous people to control over the natural resources associated with their lands, including participation in the use, management and conservation of these resources. Where the State retains ownership of

resources, Indigenous peoples have the rights to consultation over the use of these, to participate in the benefits from these activities, and to be compensated for damages.

Similarly, the United Nations Declaration on the Rights of Indigenous People recognized the importance of lands and resources to Indigenous people, that they have the right to develop in their own way, that these rights are inherent to their existence as Peoples, and that these rights are essential rebuilding Indigenous communities as Indigenous people wish to rebuild them. Finally, the World Bank required that borrowers develop an Indigenous Peoples Plan, incorporating a framework for ensuring free, prior, and informed consultation during project implementation. Participation and more localized control in the modes of social regulation that impact the modes of development under a specific regime of accumulation is thus well evidenced as a key aspect of development from a supranational perspective.

Moving to Canada specifically, Section 35(1) of *The Constitution Act, 1982*, provides recognition of Aboriginal People's rights and affirms their interests in traditional lands (Wright & White, 2012). The Act states: "The existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed."

Berger wrote, "the rights of Indigenous people in Canada are founded upon Aboriginal title...treaties, reserves, hunting and fishing rights that all spring from Aboriginal title" (1972). Inherent rights based on Aboriginal title exist "independently of any form of legislation or executive recognition" and are based on notions of joint rights and jurisdictional-based legal concepts and ideas that existed before colonial contact (Berger, 1972). They are collective rights based on Indigenous peoples' original occupation of territory lands and pre-existing institutions of private property and Indigenous rights (Alcantara, 2003). Although the constitution secures Aboriginal rights over common law, federal legislation, or provincial legislation, "it does not create them; Aboriginal rights are

inherent, collective rights based on their original occupancy of the land” (Wright & White, 2012). Yet, colonial powers have pursued policies rooted in a modernization approach, including: (i) treaties extinguishing Indigenous rights to traditional lands and resources in return for specific rights; (ii) land claims agreements; (ii) resettlement in fixed communities to facilitate access to modern services; and (iii) residential schools intended to replace traditional customs and languages and prepare people for the modern world. The intent of these policy pathways was to modernize Indigenous people so as to make them the same as all others in Canada.

More recently, there has been a drive towards privatization of Indigenous property rights. The Canadian Taxpayers Federation argues that the “ban on individual ownership of reserve property” is the “real root cause of Indian poverty” (Truscott, 2002). Yet, history has shown that rather than fostering development, the government sponsored and controlled pathway has reduced once self-reliant, healthy communities that operated as members of a prosperous, sustainable socioeconomic system, to a state of dependency with dismal social pathologies and poor living conditions (Alcantara & Flanagan, 2002), as predicted by the dependency perspective.

To address this, Aboriginal leaders across Canada consistently and repeatedly declared their desire to participate in the mainstream economy, capitalize on the abundance of natural resources on their traditional lands and create long-term sustainable and distributional social and economic development opportunities within their communities. They believe that enhanced control of their lands and resources will allow them to develop a mode of social regulation that will end dependency and foster development without sacrificing distinct Aboriginal cultures, values and practices, an idea consistent with the emerging contingent perspectives on development, including regulation theory. For example, Anderson, Dana & Dana (2006) found that Aboriginal leaders believe that by participating in

the mainstream economy through effective control over and use of their traditional lands and resources, they can attain their socioeconomic objectives, including: (i) greater control of activities on their traditional lands; (ii) self-determination and an end to dependency through economic self-sufficiency; (iii) the preservation and strengthening of traditional values and their application in economic development and business activities, and of course; and (iv) improved socioeconomic circumstance for individuals, families, and communities (Anderson, et al., 2006, p. 47). However, a reluctance to acknowledge the validity of traditional Indigenous approaches to the exercise of these rights has been the essence of the government-controlled mode of social regulation. Effective participation by Aboriginal people in the mainstream economy has been difficult. While details differ, Indigenous peoples around the world have similar objectives and face similar obstacles.

Since the occupation and settlement of non-treaty territories, constituting what Berger (1972) describes as, expropriation without compensation, the concept of Indigenous rights and Indigenous access to land and resources has both evolved and continued to create practical difficulties and legal uncertainty in Canada. The recognition and affirmation of Indigenous rights in Section 35 of the Constitution prompted the reconceptualization of Indigenous rights in economic, legal and political discourses (Bell & Asch, 2002) This has resulted in judicial consideration of Indigenous rights claims, which have fundamentally altered the legal status and potential scope of Indigenous claims to rights, land and resources. In order to illustrate the precedents of critical issues in the existence and scope of Indigenous rights, this section will focus on seven relevant Supreme Court cases that demonstrate the evolution of Indigenous rights within the last fifty years.

The Constitution Act, 1982 is the supreme law of Canada and cannot be overridden by any other form of legislation. As stated in the previous section, Section 35 of the Constitution Act guarantees Aboriginal rights and treaty rights which is supported by Section 25 of the

Charter guaranteeing the “rights and freedoms contained within are not to construed as to abrogate or derogate from Aboriginal, treaty, or other right and freedoms” (Wright and White, 2012). Aboriginal title, a specific class of Aboriginal rights based on inherent collective original occupancy of the land, also exists independent of Canadian legislation, which is evident in *Calder v. British Columbia* (1973). *Calder v. British Columbia* legally confirmed that Aboriginal title is a legal right derived from “traditional occupation and use of tribal lands” (Wright & White, 2012). According to Bell and Asch (2002), the *Calder v. British Columbia* case and other subsequent Indigenous rights landmark decisions represented the changing social values within the confines of traditional legal analysis.

In 1996 the Court released the *R. v. Van der Peet* decision (1996). The decision was important in that it established a relatively clear test for establishing Indigenous rights. The Court devised a structured test around the cultures and practices of Aboriginal peoples in the pre-colonial period. The Court restricted these rights to those “practices, customs or traditions” that were deemed “integral to the distinctive culture” during the pre-contact period (Keay & Mecalf, 2011). The *R. v. Van der Peet*’s focus on reconciliation also had significance in the *R. v. Gladstone* decision (1997). The courts used the reconciliation ruling in the *R. v. Van der Peet* decision to structure a more “flexible test for constitutionally permitted limits to aboriginal rights” (Keay & Mecalf, 2011). These tests were significant in that they departed from any common-law precedent and presented much more restrictive examinations than possible alternatives. This ruling resulted in a decreased in legal uncertainty associated with Indigenous rights and for economic development within the resource sector as a whole (Keay & Mecalf, 2011).

The next landmark decision we consider is *Delgamuukw v. British Columbia* (1996). This case set out new legal principles and represented the beginning of an effective forum for the realization of Aboriginal autonomy in Canada. In *Delgamuukw v. British Columbia*

(1997) the court identified and further defined the Aboriginal title to land. Defined as a *sui generis* interest in the land, the basic characteristics of this interest were characterized as: (i) The inalienability of title, except to the Crown in right of Canada; (ii) the origin of that interest originating from prior occupation; and (iii) the collective, not individual, Aboriginal interest in land (Wright & White, 2012). The court held that title to the land must incorporate aspects of both Aboriginal and non-Aboriginal culture which according to Keay and Metcalf meant that the key concept of “exclusive occupancy would not be defined by application of either exclusively common-law or Aboriginal-law concepts” (Keay & Metcalf, 2011). The decision also acknowledged the validity and legal use of oral history as evidence of historic use of land and occupation. If established with evidence, the title would give Aboriginal people the exclusive rights to occupy the land.

In *Haida Nation v. British Columbia/Taku* (2004) the Supreme Court further defined the legal duty to consult when there existed a “contemplated Crown conduct and a possible adverse impact on a potential or established Aboriginal or treaty right” (Wright & White, 2012). Subsequent court decisions on the legal duty to consult have provided further clarification to the changing scope and significance of the legal duty to consultation and accommodation however this case illustrates the legislative complexity of Aboriginal title claims and development to lands.

In *Tsilhqot'in Nation v. British Columbia* (2014) the Supreme Court recognized for the first time that an Aboriginal group has title to a large block of its ancestral lands. The court found that such title confers a right to 1) possess the land, 2) the economic benefits of the land, and 3) use and manage the land (Sayers 2014). Also in 2014, in *Grassy Narrows First Nation* the court found that while provinces have the exclusive power to manage natural resources on Crown lands, this right is subject to the prior duty to consult the Aboriginal group concerned and accommodate its interests (Labeau 2014, p. 8).

These decisions are indicative of the evolutionary process that is resulting in a hybrid mode of social regulation and resulting modes of development, based upon Indigenous rights and the extent to which Indigenous rights “holders need to be directly involved in decision making” (Keay & Metcalf, 2011). This approach is much more comprehensive and legally binding than the supranational treatment of this issue. These cases are part of an ongoing and still incomplete attempt to move the obviously invalid and inappropriate Indigenous rights legislation towards a fairer, equitable, balanced and level state.

The recognition of Indigenous rights has practical implications for economic development and growth within First Nations communities and also involves other important social and economic objectives such as distributional and social justice (Keay & Metcalf, 2011). What has emerged is a new pathway for supporting modes of social regulation by Aboriginal peoples who have long been pursuing the recognition of their rights through negotiation (*e.g.*, Inuvialuit, Sechelt and other comprehensive lands claims agreement, specific claims regarding treaty rights), protest and other forms of civil action (*e.g.*, protest at Burnt Church, Oka, and others) and legal challenges. One of the outcomes of this more localized mode of social regulation has the emergence of a mode of development that has resulted in an increase in the number of MBAs, including contractual agreements or Impact and Benefit Agreements, between corporations and First Nation communities. However, in other instances efforts to assert control of rights and title continue to result in resistance to through blockades and litigation often involving alliances with non-Indigenous civil sector organization. An example of this is the negative reaction of Indigenous people and others to the Northern Gateway Pipeline (McCreary & Milligan 2014).

Framing the Pathways: Indigenous Rights & Social Regulation

In this section, we build a framework for understanding the relationship between Indigenous rights, social capital formation and new venture creation using regulation theory

as a structural foundation. We propose three pathways that are available to First Nations communities in pursuit of development. The framework thus provides a generalization of processes and outcomes that represent patterns that are theorized based upon regulation theory, with supporting help from social capital, development and entrepreneurship theory. All forms of rights are contestable and require actionable processes to be realized, activated, transferred and/or converted (Demsetz, 1967; Schlager & Ostrum, 2002). Indigenous rights differ from property rights in that they are not directly convertible into economic capital. Furthermore, Indigenous worldviews and laws are continually interpreted in national and international court decisions and therefore do not easily present static or easily reliable foundations. Thus the exercise and conversion of Indigenous rights are highly determined by modes of social regulation. We limit the present study to the consideration of the three presented above: (i) legislative; (ii) hybrid; and (iii) constitutional (see Figure 1).

1. Legislative modes of social regulation

The legislative, or government driven pathway is based on government agents or legislative mechanisms that have been put in place to deal with the rights attributed to Indigenous Peoples, including First Nations in Canada. Within this pathway, two potential modes of social regulation significant to leveraging Indigenous rights are proposed: (A) *Terra Nullus* (extinguishment); and (B) Paternalism (government agencies) with a greater level of localized control moving from the former to latter.

We propose that the first mode of social regulation (MSR) under pathway 1a) involves the extinguishment of Indigenous rights through government action. In some jurisdictions, the rights of Indigenous people have been abrogated through various means employed by dominant societies. In this case, the collective social capital of Indigenous peoples is depleted through the mode of social regulation established. This results in assimilation within the socioeconomic system, continued dependence upon social programs

and fewer Indigenous (and joint) ventures (Foley, 2008); social capital is often individual and not collective and found to be weak in terms of bridging into the mainstream (Kayseas, et al., 2014). This exclusion from the dominant society creates bonding capital amongst Indigenous peoples but that may also have a negative relationship with the creation of new ventures (Light & Dana, 2013).

The second mode of MSR denoted by pathway 1b) seeks to provide *de facto* protection of Indigenous rights under laws established by the state much in line with modernization perspectives of development. Government agencies are thus placed in a controlling position with respect to the formulation and monitoring of the processes for capital conversion linked to Indigenous rights. These policy-based controls are often highly influential (and often constrain) on how First Nations communities interact with the marketplace, form partnerships and direct resources. In almost all instances, this MSR has led to greater dependency, as the full value of Indigenous rights are sub-optimally converted into economic capital through social programs, trusts and resource investment under partial control of First Nations. Furthermore, the mode of social regulation involved with this pathway does not allow for the optimization of the conversion of Indigenous rights into the social capital formation necessary for greater participation within the marketplace and is thus posited to result in low numbers of new and joint ventures and lower impact from them due to the limited range of opportunities presented under this regime. We propose that this MSR may actually weaken social capital formation in the process as communities struggle to work within constrained budgets that further break down bonding capital within them as struggles for limited resources ensue.

2. *Hybrid modes of social regulation*

The second pathway proposed is hybrid or market-driven, and emerges with several overlapping elements indicated within the legislative pathway. It is derived from a more

localized interaction of Indigenous peoples with the dominant, extant legal infrastructures available to them. The mode of social regulation proposed as 2a) is a process whereby Indigenous peoples exert control over the conversion of rights and title into social capital formation through political, social and institutional mechanisms by denying, blocking or reversing prospects for development. An example of this type of MRS include grass roots movements such as “Idle No More” in Canada. These movements are buoyed by court rulings on the designation and use of traditional lands and the rights to use them and ultimately result in higher levels of social capital formation but fewer enterprises. Instead, social capital is harnessed to promote long standing traditions, rights and sustainable usage of land that amount to alternative modes of development that are more aligned with Indigenous worldviews or that are viewed as non-economic modes of development by western ideologies (Light & Dana, 2013). In effect, this MSR often involves Indigenous communities ‘opting out’ of the current regime of accumulation. The mode of social regulation proposed as 2b) is decidedly more an “opting in” perspective that seeks to assert control over Indigenous rights and by converting the intangible resources into economic, human and social capital through the formation of partnerships and strategic alliances with governments, other Indigenous communities and corporations. Usage of the legal infrastructure forms the basis for leveraging Indigenous rights into social capital formation through agreements and contracts which exert control and define Indigenous rights through the free market process. This involves an overlapping element to the legislative pathway in which the foundation and case law development from court rulings has forced government agencies to legislate new mechanisms for guiding these contractual processes, such as the duty to consult, and also through the development of new legislation to allow for some Indigenous communities to opt

out of paternalistic programs and exert greater control of their own rights and resources, *e.g.*, the *First Nations Land and Money Management Act*³. Although alternative modes of development may be observed through the formation of partnerships and alliances (in which human capital, economic capital and other forms of social capital are created), these partnerships in turn provide for a higher level of social capital formation that may be directly linked to the creation of new and joint ventures. Once again, a greater amount of localized control and participation is afforded from the former to the latter.

3. *Constitutional modes of social regulation*

The third pathway proposed is defined as constitutional and represents a growing movement toward self-determination, equality at the state level and in some instances, the self-government of Indigenous communities as full functional nations alongside that of the dominant society. This pathway overlaps with the other two MSR where instances of government legislation and policy (that under certain situations) return control to Indigenous peoples (Caine & Krogman, 2010). These processes place resources more directly under the control of First Nations and represent increased localized control.

The mode of social regulation proposed as 3a) is based on the culmination of the legal processes utilized in pathway two and that involves the use of the current legal infrastructure provided by the dominant society to force the interpretation of Indigenous rights through legislative, constitutional and international conventions. First Nations communities seek to act on their own behalf and through this process, seek to leverage their rights as their own agents, eschewing state and federal level agencies, programs and ministries (when it is deemed in their best interests) so as to harness greater control over their lands and territories.

³ The *First Nations Land Management Act* ("FNLMA"), allows First Nations to enact and administer their own land codes. Until they enact a land code under the FNLMA, First Nations have to govern their reserve lands according to the *Indian Act*, which can be cumbersome, time consuming, and difficult.

In the instance of this proposed MSR, the objective is equality and shared political, social and economic control with the dominant society and its institutions as part of a greater nation state. This may involve devolution impacting the flow and control of state and federal taxes and royalties and also involve the creation of separate or parallel justice systems. These agreements to self-governance and institutional entrepreneurship, solidify the control over rights and title and leads to more optimal formation of social capital through the leveraging of these agreements to participate in regional economies with and through other corporate partners, governments and/or communities on their own terms and through their own economic organizations or quasi-governmental institutions. Working alongside and within current extant economic systems also provides greater certainty and stability with respect to forming joint ventures extended through the legitimacy of having equal footing, both legally and constitutionally, as the dominant society. While the conversion of Indigenous rights is more optimal under this MSR, it may not always lead to the formation of social capital that may then be used to create new or joint ventures, but instead, be applied toward institutional entrepreneurship. Having access to some powers of taxation and potentially even a share of royalties may be an even more efficient means of generating economic capital. Furthermore, having shared control may be transformative with respect to the operating regime of accumulation.

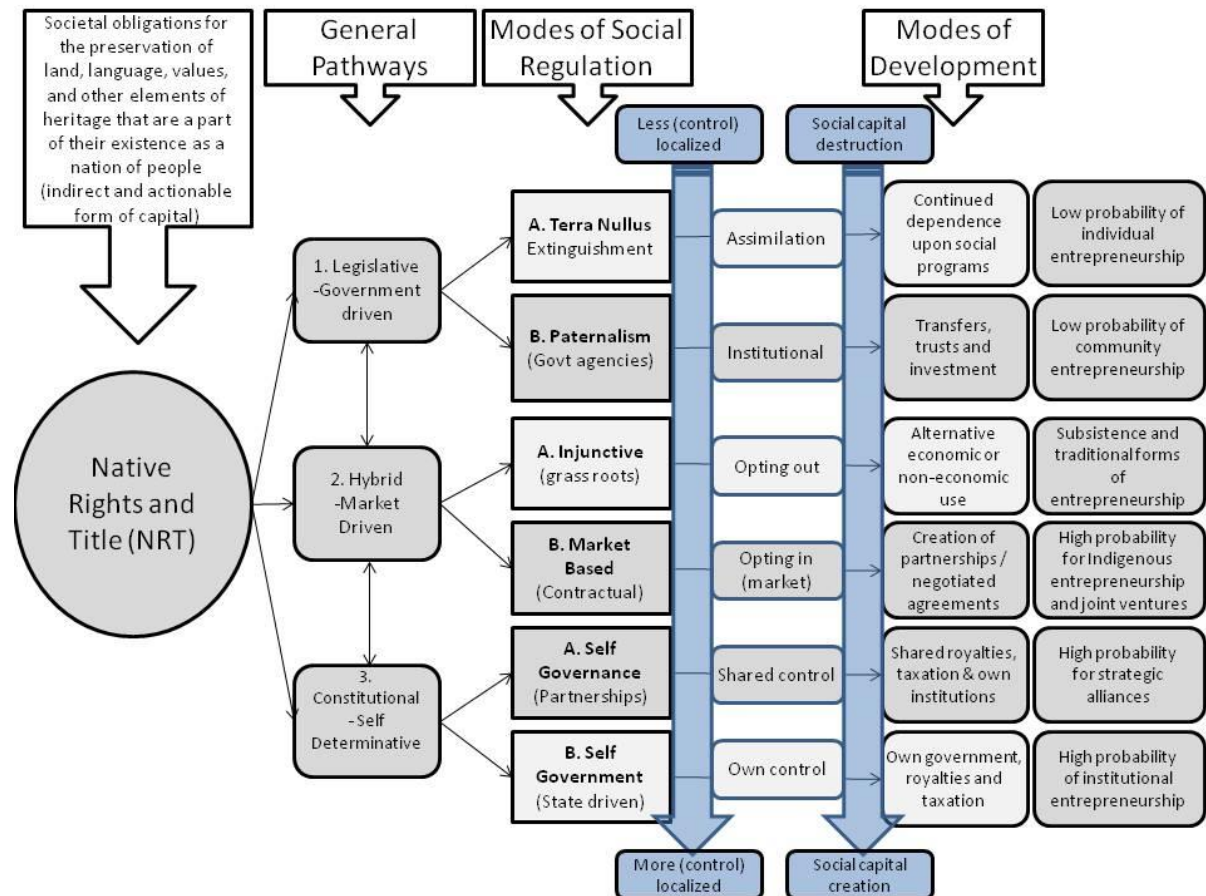
The pathway represented by 3b) represents the return of once colonial lands back to their former Indigenous peoples and is purely theoretical from a nation within nation perspective from an Indigenous context. This represents the highest level of localized control hypothesized and results in the highest level of social capital creation yet does not fully correlate with non institutional forms of enterprise creation, even though, greater instances of individual Indigenous entrepreneurship may occur if a large enough pool of opportunities presents itself. The reasons for this follow much of the theory evolved from development

theory relating to fledgling nations and states whereby new or joint ventures as a mode of development is less optimal in converting Indigenous rights into straight economic capital through the taxation and control of royalty regimes specific to the operation of corporate and multi-national corporate forms under new jurisdictional relationships. This MSR would allow for Indigenous “nations” to selectively opt in or out of regimes of accumulation depending on various considerations.

One important note on this framework is that it is limited to the convertibility of Indigenous rights into different forms of capital. We do not make any normative assessments on the value of the alternative modes of development that may be observed or their outcomes, just their potential forms and why. Our interest is simply on the mode of development that aligns with the probability of (or not) different types of entrepreneurial processes, due to its prolific nature as a topic of study within the natural resource sector and within Indigenous economic development circles. Also, while First Nations may be similar in many respects, their contexts, aspirations and cultures differ, making it difficult to rank the value attributed to each pathway. This extends to Indigenous peoples outside of Canada: similarities and patterns are observed in traditions, culture, worldview and aspirations, but they cannot be treated as homogenous populations. In brief, what we do suggest through this framework and the theoretical perspectives underlying it is that there is a correlation between the degree of localized control with respect to the MSR and the formation of social capital. Moreover, patterns exist where a direct linkage between Indigenous rights, social capital formation and new venture creation may be the preferred mode of development, but that the correlation may not fit across all pathways and MSR. In accordance with Indigenous methodologies (Kayseas, 2010), the next section provides examples in the form of stories that provide insight into two of the proposed pathways using a narrative case form. The third pathway being theoretically derived, is a story in the making.

Figure 1. Framework:

Indigenous rights, social capital formation and joint venture creation



Mini-cases: Three Different Pathways for Leveraging Indigenous Rights

The approach to development of oil and gas resources taken by Onion Lake First Nation (OLCN) in Saskatchewan and four communities of Alberta that for years were collectively known as Hobbema provides examples of how Indigenous communities can effectively leverage their traditional rights and what might occur when they do not. The Onion Lake Cree Nation, a community that straddles the Alberta and Saskatchewan provincial borders is located west of Edmonton. The four Hobbema First Nations are also located in close proximity to Edmonton. The approach that these communities have taken offers a contrast that illustrates the impact of asserting the right to control development based

on their right as owners of the resource versus allowing external government agencies to develop and manage the resource.

A small town also known by Hobbema was located on Highway 2a located at the border of the Samson Cree Nation, and Ermineskin Cree Nation with a small portion being a hamlet within Ponoka County; in 2014, the Samson Cree Nation, Ermineskin Cree Nation, Louis Bull Tribe and Montana First Nation changed the name of the community to Maskwacis, the name used by the ancestors of these communities in reference to their traditional territory. These four communities have been home to the largest production of oil and gas on Indian lands in all of Canada. Approximately half a billion barrels of oil have been produced since 1952 from the 290 km² territory that these four communities encompass (Berger, 1994). In 1983, at the height of the oil boom, the four communities were receiving \$185 million a year in royalties (Notzke, 1994, p. 206). York (1990) captured the outcome of the wealth that was realized by the Maskwacis First Nations, explaining that the influx of money at Hobbema was an invasion by a foreign value system into a culture that had been based on hunting and fishing and a subsistence economy for most of its history and the invasion of oil money was the culmination of a century of turmoil, just one more way in which the harmony on an Indian community was destroyed by powerful outside forces. From 1985 to 1987 there was a violent death almost every week within one of the communities; the suicide rate among young men was eighty-three times the national average; there was as many as 300 suicide attempts by 'Hobbema Indians' every year (York, 1990). Constable Richard Huculiak, of the Royal Canadian Mounted Police, has worked in five reserve communities during his career; he, says, "Hobbema is far more violent than any place I've worked in my policing career. The gangs have an arsenal like you wouldn't believe." Not surprisingly, a feeling of hopelessness has overcome some youth. "They'll tell you right out, I expect to be in jail, dead or hooked on drugs," says Huculiak. "These are kids that aren't even

12, and they see their futures as so negative, so depressing, they say, 'Why should I even try?'" (Leung, 2007, pp. 52-57).

Community members continue to fear gang violence throughout the communities (CBC, 2012). The federal government took a "hands-off policy" towards the challenges faced from the newly found wealth by the four Indigenous communities. There was no counselling or training to help the band with investments or budgeting or to assist them with coping with the social changes brought on by the resource funds (Notzke, 1992, p. 206).

The Maskwascis First Nations are part of the 617 bands in Canada that were provided selected lands (Indian reserves) set aside for the exclusive use and possession of 'Indians' – as enshrined in the 1763 *Royal Proclamation*. The 'Indian Reserves' are federal Crown lands set aside for Indigenous communities. Oil and gas assets are considered part of those lands and thus the federal government "retains specific and direct control over the occupation and development of these lands." (Fenwick, 2008). The money from the sale of oil and gas by the producer is collected by Indian Oil and Gas Canada and deposited into a 'capital' account in Ottawa. Fenwick elaborated:

The funds are held quite tightly by the Department of Indian and Northern Affairs Canada (INAC) as capital monies and are (sometimes) very difficult for bands to get their hands on...This rather tight-fisted holding of royalty money has been a source of friction between the bands and the federal government. Not only does the government hang on to the funds tightly, the funds have not historically been segregated into individual trust accounts or administered by professional fund managers, with an eye to market rates on the one hand or the changing and individual needs of the particular individual band on the other hand. The funds went into the federal consolidated revenue fund, paid very low savings bond interest, and represented (according to band pundits) a very low-cost loan from the Indian band to the federal government (2008, p. 1).

Laws regarding the development of resources provide for the federal government's department responsible for First Nations to have a significant and lead role on Canadian reserves. A department within Aboriginal Affairs and Northern Development Canada, the Indian Oil and Gas Canada (previously Indian Minerals West) is responsible for all phases of development, from exploration to well abandonment. In the mid-1980s Indian Minerals West was, "found lacking in even the most fundamental prerequisites necessary to fulfill its mandate for the Indian bands of western Canada by a multi-stakeholder task force" (Notzke, 1994, p. 207). Another report pointed out deficiencies of what was then the Department of Indian Affairs (currently the department of Aboriginal Affairs and Northern Development Canada), it found: (i) the general (Indian) community and most of the leaders are dreadfully ununiformed of regarding how their resources assets can and should be developed; and (ii) with only a few exceptions, the Indian community receives little enduring benefit from development. Technical and managerial learning does not take place." (Notzke, 1994, p. 207).

While the Onion Lake Cree Nation (OLCN) is subject to all of the laws, rules and regulations regarding oil and gas development that the Maskwacis communities had to deal with the leadership there took a very different approach. The OLCN believes they have an inherent right to their land and to govern their affairs as a nation (Fox, 2014). Their community is located approximately 50 km. north of the Lloydminster, Saskatchewan. Oil and gas production has occurred in the region since the first commercial well was drilled in 1943 (Government of Saskatchewan, 2014). OLCN initiated the development of oil and gas on their reserve lands much later than the Maskwacis communities. During the early 1990s a natural gas utility was launched and a decade later the community of approximately 5,000 people negotiated an agreement with a drilling company for the exploration and development of oil resources (Dillon, 2014). Chief Wallace Fox told us:

The typical status quo is Indian Oil and Gas Canada makes the deal with company a, b or c...What we did over 15 years ago was to create an entity called Onion Lake Energy. And we (Onion Lake 'band' government) issued all license, drilling, exploration rights and permits to our own company who then farmed out and called for tenders. We never included them (IOGC) in our deal. And they (AANDC) wouldn't issue the permit to our own company...I had to fly to Ottawa and meet with the Minister of Indian Affairs and present a business case and 20 minutes later he told us, "I have to phone Calgary head office" and then the IOGC issued a permit to Onion Lake Energy."

The OLCN formed the only natural gas utility 100 per cent owned and operated by an Indigenous community with the resource accessed solely on reserve land. Former Councillor George Dillon described how when the federal government told Chief Fox, he could not build a gas utility company without approval. Chief Fox's response was that he would do it anyway. "So in 1994 we developed a business plan and we created Onion Lake Gas Utility. We do not pay to this day, Alberta UEB or EPCO...or SaskEnergy. We did a business plan. We went and got a loan and developed our own gas utility to service our residential and commercial units on reserve. Our own people went and took training. Our own members operate that, install the lines, install the meters, furnaces, everything, we do it ourselves. Three years ago the loan was paid up. So everyone that pays the gas bill, heating bill today is a profit and people are starting to see that because we use our own gas from our own resources (Fox, 2014)."

In 2002, an agreement was signed with a resource company that provided a 12 per cent royalty. This first agreement was described as being the most negative, "they (the resource company) just took advantage of us because they knew we didn't know anything about oil and gas" (Dillon, 2014). A new agreement with Black Pearl Resources led to a joint venture providing a 34.5 per cent royalty on each barrel of oil produced. A percentage of the

royalty still goes to the capital account in Ottawa, and the balance goes to the band-controlled Onion Lake Energy. Revenues are directed into a trust fund to back capital projects or are re-invested into business development (Elliot, 2013). As of February 2013 the First Nation was producing about 14,000 barrels per day from approximately 400 wells. In autumn 2013 Black Pearl was producing about 5,000 barrels per day (Black Pearl, 2013). Another venture with Fogo Energy allows for a 50/50 split on revenues from each barrel of oil. To conclude, a statement made by Chief Fox during an interview with the authors summarizes the outcomes of the development as experienced by him:

“And when you look at the big picture again, the more people are trained, the more they go into employment, the less dependency on the social assistance budget. And then the lifestyles of our people change. The self-esteem, the self-worth, the pride that we once had comes alive again. I see this in Onion Lake. I can name you many families that were on social assistance 5-6 years ago. Today...When you look into their communities and their homes, nice furniture, no more alcohol, no more drugs. The next generation, their children, are now finishing school cause they see they got to work, they got to go to school. They got to work to get these things that they have. And that generation, that mentality slowly changing in our community where you have to get a job, first you have to finish Grade 12, take your vocational technical post-secondary, then you go to work...”

Discussion

The theoretical framework developed and the illustrative examples provided serve to promote discussion on several issues. Firstly, the proposed model reflects the obvious and growing importance of Indigenous rights in Canada and globally, especially when considering the billions of dollars in projected investment in the natural resource sector within the foreseeable future. Indigenous peoples and the lands upon which they have rights and title include some of the richest resource plays in the world (Langton and Longbottom,

2012). We employ regulation theory to outline the relationship between Indigenous rights, modes of social regulation and modes of development as a means for exploring some of the issues of capital convertibility in tandem with the goals/outcomes that may be attributed to these general pathways. We posit the strength of this framework through both theory and cases that provide evidence and support for the correlation between higher levels of localized regulatory control, the formation of social capital and how entrepreneurship, may enhance mutually beneficial development efforts. As the process of entrepreneurship involves the identification, mobilization and recasting of resources into higher forms of value, we argue that development efforts are more efficient when the outcomes of a mode of development is inclusive of Indigenous driven new and joint venture creation.

Secondly, we outline how one mode of social regulation may convert the capital vested in Indigenous rights and title while other modes of social regulation may not, even when assuming the same general pathways: social capital creation is not always positive and not all forms of social regulation may drive new venture creation. Although each successive pathway suggests greater localized control and higher levels of social capital, the goals or 'values' of Indigenous communities may be moderated by the modes of social regulation that exist: from no exclusive collective goals (assimilation), to preference for non-mainstream economic activities or focus on sustainability (opting out) to a movement toward access to revenue streams through own taxation and royalties (nation based own control). Although these pathways do not exclude entirely the probability that Indigenous- controlled new ventures will arise, their frequency is less certain and more dependent upon individualistic and not social mechanisms. As the level of analysis attributed to this framework lies between the macro and meso environmental germane to development, it is constrained by its predictive power with respect to the individual or team level process of entrepreneurship.

Thirdly, this paper sets out a research agenda whereby each of the pathways may be evaluated to determine if the propositional quality may be upheld through further empirical testing. For instance, what are the strengths and weaknesses attributed to the specific types of negotiated agreements being developed and signed with respect to the formation of social capital, access to entrepreneurial opportunities and the provision of resources to pursue them? For instance, a report by the northern development Ministers forum suggest that the number of benefit agreements continues to grow in number and scope, yet there is a large gap in knowledge concerning best practices, and tangible outcomes (Government of Canada, 2013).

There are several limitations to this research, mainly extending from the highly general framework provided. It should be stressed that our theoretical propositions on the convertibility of Indigenous rights to social capital is limited to the potential frequency of new or joint venture creation as a theoretically preferential outcome. It is beyond the scope of this paper to make assumptions on the impact that other outcomes may ultimately have on their communities from a development standpoint. We must also point out that much overlap exists across the three general pathways, the modes of social regulation that occur and the modes of development observed. Thus the creation of a new or joint venture under a specific mode of social regulation can only be viewed theoretically as a pure outcome. For example, paternalistic mechanisms to address non-fulfillment of historical treaties between the Crown and Aboriginal communities may involve transfers, payments and new land purchases through treaty land entitlement processes that require many other antecedent processes to occur before new or joint ventures may arise, while negotiated benefit agreements may only in principal set out terms for new or joint ventures to be created, yet only consist of ‘rent a feather’ token businesses that meet supply chain mandates, involve limited ownership, little Aboriginal control and not much beyond flowing dollars between corporations and

community governments with no direct jobs, capacity or real economic interest created. Through this framework, we suggest only that we expect to see the formation of social capital and the creation of new or joint ventures to be realized at a greater degree from one MSR over another in any given pathway when higher levels of localized control are observed.

We see the importance of a considerable gap in the literature germane to social capital formation and Indigenous entrepreneurship, namely, the conditions under which Indigenous rights and title might be leveraged within a specific community (meso- environmental) and how the process of converting it into social or other forms of capital may be successfully pursued. It does not fill that gap specific gap. Thus future research on the convertibility of Indigenous rights into various forms of capital, their potential impacts and the factors that predict or limit the creation of new ventures require greater attention. This is especially so when considering the relationship between social capital, cultural capital and human capital, as well as the more granular attributes of social capital, such as the importance and significance of bonding and bridging capital within these instances when considering desired entrepreneurial objectives. The same consideration should be given to the discreteness of the convertibility of natural rights in each of the other pathways and the modes of development they may influence. In many instances, trusts, transfers, partnerships and investment will accompany each of the pathways and be concomitant with the creation of new and joint ventures.

Lastly, while the model developed in this paper is focused on the nexus of natural resource sector corporations and Indigenous communities with respect to alternative modes of development, its analytical power should only be extended to all Indigenous communities loosely. These communities may vary in their status with respect to traditional lands, signed agreements and treaties, access to resources, governance systems, socioeconomic positions, capacity, continuity upon lands they now occupy (dislocation) and institutional/state relations

with government. We stress that this research points to the need for investigation of the relationship between Indigenous rights, social capital formation and new or joint venture creation across a diverse set of contexts, both supranational and national perspectives and be open to other social modes of regulation not considered here.

Conclusion

There is a paradigm shift regarding the recognition, importance and strategies for engaging the issue of inalienable rights held by Indigenous peoples. Supranational bodies and court systems have recognized the inherent and traditional rights of Indigenous Canadians.

The examination of how the rights and title of Canadian Indigenous peoples are leveraged to deal with the issues of economic exclusion to rebuild and retarget the social capital destroyed over several centuries of hegemonic domination is an important area of study. How the resources embedded in the social capital being formed may be redirected into formulating effective modes of development to help achieve the goal of self-determined participation within a global system must be balanced against competing issues, and divergent worldviews.

For better or worse, Indigenous groups are being impacted by mining and/or oil and gas projects. In Canada, Aboriginal peoples have some similarities, but are not of one mind. Not all agree whether development requires social and environmental sacrifice. How can win/win arrangements be accomplished within an area that has often left Indigenous peoples feeling left out and ignored? How can these communities engage in practices that can not only heal some of the adverse effects of colonization and exclusion within their communities but also contribute to the re-establishment of economic power, and thus freedom, of their peoples?

Making use of regulation theory as a framework for understanding potential constraints, our contribution is toward the understanding of the pathways that impact the

formation of social capital within a colonial/post-colonial context that is the reality of millions of Indigenous people across the world. In doing so, we shed light on how Indigenous rights may be leveraged to stimulate the creation of new and joint ventures: a critical aspect of establishing socioeconomic independence and self-determination for oppressed groups, communities or nations (Anderson et al., 2006; Welter, 2005, 2011).

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