Draft #1—DO NOT QUOTE WITHOUT PERMISSION OF THE AUTHOR. What follows is a set of notes meant to stimulate discussion and ultimately to provide a framework for how indigenous people might renew their economies.

Prepared for the 2017 Harvard Workshop on "Economics Issues Facing Indigenous People in Canada and the United States"

Renewing Indigenous Economies: A Framework for Independence and Innovation

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In the 1970s, a number of economists, political scientists, lawyers, and a smattering of scholars from other disciplines systematically started focusing on the interface between formal and informal rules and economic performance. Many of the scholars who were part of, what Oliver Williamson in 1975 dubbed, the "New Institutional Economics" won Nobel prizes for their work in this area. The list includes Ronald Coase, Douglass North, Oliver Williamson, and Elinor Ostrom.

The new institutional economics is built on three schools of economic thought:

- Property Rights Economics—Following the work of Nobel laureates Ronald Coase, Douglass North, and Elinor Ostrom, property rights economics focuses on the evolutionary nature of property rights, on incentives of owners to steward resources, and on the transaction costs of defining, enforcing, and trading property rights.
- Political Economy—Building on the ideas of other Nobel laureates Gary Becker and James Buchanan and his co-author Gordon Tullock, political economy challenges the idea that government policies are omniscient and efficient and asks what incentives face government officials and what governance structures could make collective action more effective.

- Entrepreneurial Economics—Led especially by Israel Kirzner, this school of thought highlights the importance of entrepreneurship in dealing with the ever-changing culture, resource endowments, technology, and information flows.

This essay seeks to articulate another revolutionary application of new institutional economics by applying the same principles to indigenous economies. The need for this framework for analyzing the performance of indigenous economies is evident across the globe. Especially in regions colonized by the British in the 19th century, indigenous economies have not performed well under policies based on institutions imposed by aid programs delivered from central governments.

Data from U.S. reservations document the failure of these approaches. On the one hand, as Kalt and Cornell (13) point out, "real Indian household incomes on reservations without gaming grew 33 percent, and grew 24 percent on reservations with gaming," compared to only 4 percent for the United States as a whole, between 1990 and 2000. On the other hand, average household income on Indian reservations was 68 percent below the U.S. average of $53,657 in 2015. Twenty percent of the households made less than $5,000 annually compared to 6 percent for the overall U.S. population, and 25 percent of the population was below the poverty level compared to 15 percent for the nation as a whole. The suicide rate among Native American males aged 15 to 34 is 1.5 times than for the general population, the rate at which Native American females are raped is 2.5 times the national average, and the rate of child abuse on reservations is twice the national average. Similar disparities exist among indigenous populations in Australia, Canada, and New Zealand.

All of this begs the questions: why has the income gap persisted; what accounts for the recent closing of the gap; and what institutional changes would promote independence and innovation in indigenous economies?

Institutional economics provides a lens for better understanding how "old" (pre-European contact) indigenous economies evolved and functioned, how "colonial" indigenous economies usurped indigenous jurisdictions and governance rules, and how "renewed" indigenous economies might help indigenous peoples pull themselves out of dependency and poverty.

The foundation for renewing indigenous economies begins with a growing body of research starting with the Harvard Project on American Indian Economic Development led by Joseph Kalt and Stephen Cornell and continuing most recently with scholarship exemplified in *Unlocking the Wealth of Indian Nations* (2016) and the open textbook from the Tulo Centre, *Building a Competitive First Nation Investment Climate.* The emphasis is on renewing indigenous economies because the historical evidence shows that many indigenous groups had institutions that sustained cultural and economic development. Over the past 150 years, however, those institutions have been eroded mainly by top-down constraints imposed by federal governments. Renewing those institutions is the key to unlocking the wealth of Indian Nations.

Old Indigenous Economies

Thanks to John Marshall, we talk of Indian Nations, but as Walter Goldsmidt puts it, "Though persons were identified by their village or residence and their tribe of origin, neither of these groups had any direct claim upon the actions of the individual. There was no village nor national government, no village or tribal action in wars." Nonetheless, even without strong central or tribal governments, "primitive anarchy does not mean disorder" (Adamson Hoebel, page).

If the "major role of institutions in a society is to reduce uncertainty by establishing a stable structure to human interaction" (North 1990, 6), then American Indian institutions were quite successful. As Richard Posner (page) put it: "It is actually easier to explain why efficiency would have great social survival value in the primitive world than to explain this for our world. . . . Archaic societies sufficiently durable to have left substantial literary or archaeological remains and primitive societies sufficiently durable to have survived into the nineteenth century . . . are likely, therefore to be societies whose customs are efficient."

Examples

a. Governance rules—buffalo hunts, potlatches, other
b. Property rights
    i. In pre-colonial indigenous economies, property rules were often not formal, but were well established through customs and culture. These rules may have applied to individuals who "owned" resources, but more often were defined in terms of families, clans, and other small, collective units. In some cases, resources, especially personal property such as clothing, hunting equipment, and animals, were transferable meaning that they were traded in markets. Furthermore, as resource endowments (e.g. climate change) and technologies (e.g. the introduction of the horse) changed, the rules governing use of resources evolved.
    ii. Rules governing ownership of assets, i.e. property rights, were anything but inimical to American Indians. In the east where Indians were relatively

sedentary and therefore dependent on agriculture, property rights to land were quite well defined and enforced. In the west where tribes were more nomadic in their pursuit of buffalo, property rights to land were seldom defined, but property rights to capital assets were common because producing them required significant investment of time and effort. Individuals, families, or clans owned their tipis, bows and arrows, nets for catching rabbits and fish, and horses.

iii. Even without central recording systems, American Indians clearly defined their property rights. In the southwest they marked the corners of their fields with stones bearing the symbol of the owning clan. Hunting arrows were marked so it would be clear whose arrow killed the prey, especially buffalo. And fishing streams in the Pacific Northwest were marked with sticks to indicate which clan claimed the fishing rights to that stream. To incentivize a horseman to be more proficient when riding his horse into a buffalo herd to shoot a buffalo with bow and arrow, each hunter marked his arrows or lance in order to determine who killed the buffalo, and the proficient marksman was rewarded for his kill with the choice cuts of meat.

c. Trade was also a hallmark of pre-European contact societies—Mandan villages, story of the L&C trade axe

Huffman nicely summarizes old indigenous economies: “It is not entirely true that Native Americans knew nothing of ownership. The language of the common law of property, like all of the English language, was unfamiliar to them. But the concept of the tenancy in common was not foreign to bands and tribes who claimed and defended entitlement to hunting and fishing grounds. Nor was the concept of fee simple title alien to Native American individuals who possessed implements of war and peace, and even lands from which others could be excluded."

Colonial Indigenous Economies

1. Raid or Trade—unclear jurisdictions, military cost, uncertainty
2. Resource curse—land transfers to non-Indians
3. Incompetence and trusteeship—Dawes Act
4. Expansion of bureaucracies—McChesney on IRA
5. Dependency on aid

[Kalt and Cornell refer to this as "the standard approach," "wherein decision making is short term and nonstrategic, someone else sets the development agenda, development is treated as primarily an economic problem, indigenous culture is viewed as an obstacle to development, and elected leadership serves primarily as a distributor of resources." Jorgensen 2007, 7-8]

Manifestation of colonial indigenous economies

Under colonialism, indigenous economies based on communal institutions of tribal societies were thought to be inimical to private enterprise. Communal ownership supposedly meant that indigenous peoples shared in the use of resources such as fish, buffalo, or land, and shared the outputs from those resources such as food, clothing, and shelter (*Dances with Wolves* image; Chief Seattle). Such "communism" formed the bases for the Dawes Act.

Because land and other resources were taken from Indians, federal policies have focused on rectifying past wrongs in 3 ways.

1. It has emphasized the need for central governments to compensate current generations for wrongs done to earlier generations. The payments have mainly come in the form of services including housing, health care, and police protection, and to a lesser extent, direct payments. Such payments have led to indigenous economies based on dependency.
2. Focusing on takings from past generations—whether those takings were from war, legislation (e.g. the Dawes Act of 1887), or trades—has created a dependence on central governments—often the same governments responsible for takings in the first place—to protect current generations from more takings. Under the banner of trusteeship, indigenous people have become wards of the state and indigenous economies have become colonial economies.
3. The emphasis on past takings and trusteeship has distracted attention for the need to create well-delineated indigenous jurisdictions and indigenous governance institutions consistent with tribal customs and cultures, yet operational in ways that interface with non-tribal governance institutions. Lip service is paid to sovereignty, but indigenous governments lack the jurisdiction of neighboring non-indigenous (local, county, or state) governments.

Government grants to tribes and tribal members are seen as the basis for capital; government projects are seen as the basis for employment; and educational services are seen as the main source of human capital development and use. Hence, there is little need for individual or collective entrepreneurship that can respond to the local culture, resources, and demand.

In a recent report for the Fraser Institute's Aboriginal Studies Centre, Tom Flanagan perfectly summarizes old indigenous economics:

> Indigenous leaders typically attribute First Nations' low standard of living to the effect of past injustices such as colonialism, violation of treaties, and residential schools. Correspondingly, they demand compensatory remedies such as payment of damages, return of land to aboriginal jurisdiction, aboriginal control of education with revival of native languages, and "nation to nation" dealings with Canada to recognize indigenous sovereignty. (*Why First Nations Succeed,* 1)

Renewing Indigenous Economies

Because colonial indigenous economics has held indigenous people in a type of colonial bondage and stifled integration into modern economies where indigenous people can enjoy the fruits of economic growth, the focus on renewing indigenous economies must be on lowering the transaction costs of coordinating individuals and their resources to enhance individual and group wellbeing. Transaction costs can be broken into two components. The first is the resources used in defining and enforcing individual property rights and collective jurisdictions. This might be everything from surveying and fencing individual land parcels to clarifying tribal territories to maintaining customs and culture that govern behavior. The second component is the costs of engaging in trade between individuals specified through contracts and between individuals and governments specified through governance rules.

The following are some building blocks necessary for renewing indigenous economies.

Property Rights

From the property rights school and especially the work of Elinor Ostrom, we learn that successful societies and economies, meaning those that have survived, which includes many pre-colonial indigenous societies, had well established rules, some communal and some private, regarding the use of both physical and human capital and natural resources. The rules or property rights are an essential basis for providing the incentive for owners to put resources under their control to higher valued uses and are essential for market transactions.

As long as property rights are held in trust by central government, property rights are attenuated and the value of resources is reduced. (see work by Anderson and Lueck, and cite many others) In the vernacular of property rights economics, trusteeship raises the transaction costs of reallocating resources in order to better reap value from their use.

Trust status virtually guarantees that land assets become, what Hernando DeSoto calls, "dead capital" because it cannot be used as collateral to increase investment. DeSoto's focus on informal economies illustrates how insecure property rights in the developing world can be made more secure and therefore more productive. Doing this with trust assets, however, is more complicated precisely because it is firmly ensconced in formal law. Moreover, they are mired in bureaucratic muck that raises the transaction costs of improving their productivity. Hence trusteeship creates a dilemma—leaving land in trusteeship ensures that the asset will not be transferred to non-Indians, but land from trusteeship brings dead capital to life.

The key for new indigenous economies is to find ways of balancing low transaction costs associated with well-defined and enforced private property rights (communal or private) and **unlimited** alienation with costs associated with customs, culture, and **limited** alienation. there may be reasons, other than incompetence, to limit alienation. [Insert discussion of how transferability to people from other cultures can raise the costs of defining and enforcing rules and therefore may call for limits on such transfers within the collective group. Especially focus on Jennifer Roback, "Exchange, Sovereignty, and Indian-Anglo Relations," in Property Rights and Indian Economies.][Insert discussion from Michael Lavoie, UBC Law Review, on "Why Restrain Allienation of Indigenous Lands."]

Politics

The importance of political economy to understanding indigenous governments also can be broken into two components, jurisdiction and governance rules. Jurisdiction generally refers to geographic boundaries such as a county, state, or reservation, but it might also refer to specific resources, such as cultural or religious locations. The economics of jurisdiction can be most easily understood in the context of wildlife (see Lueck, 19xx). For wildlife that does not migrate over a wide range—for example, pheasants—jurisdiction most often resides with the state that can mitigate the potential for the tragedy of the commons that could result from migration from one private land parcel to another. For this reason, states most often impose seasons and bag limits. For migratory waterfowl that nest in the far north and winter nearer the equator, however, state and even national jurisdiction might not be sufficient. In such cases international jurisdiction is called for as in the case of the North American migratory bird treaty in which Canada, the United States, and Mexico jointly have jurisdiction to manage migratory birds.

Clear jurisdictions lower the transaction costs by specifying which individuals or groups have the authority to determine how resources are used. At the most basic level, private property owners have jurisdiction over their property and others must get their consent to alter that use. However, when the use of property or jurisdiction of one person interferes with another person's jurisdiction—private or collective—the overlapping jurisdictions require rules that specify where one jurisdiction ends and another starts.

Jurisdictional examples

- Land ownership—trusteeship gives some jurisdiction to the individual (except insofar as the fractionation problem creates the anti-commons) or tribal beneficiary but raises the transaction costs by giving jurisdiction to a centralized bureaucracy.
- Wildlife—individual jurisdiction has high management costs for wildlife that migrates over many jurisdictions (creating the tragedy of the commons), whereas collective management can reduce the transaction costs through governance rules.
- Water—individual water rights can encourage market exchanges, but downstream jurisdictions may be harmed by upstream uses. (Indian water rights, DAPL, etc.)
- Mineral rights—see Leonard and Parker 2017.

Cultural sites—

The tradeoff between low transaction costs accompanying totally decentralized jurisdictions (private property) and higher transaction costs inherent in collective jurisdictions depends on how well governance rules limit the potential for rent seeking. Here North, Wallis, and Weingast's (*Violence and Social Orders* 2013) categorization of governance structures as limited access orders and open access orders is useful. The former uses the political system to limit economic entry to create rents and then using the rents to stabilize the political system and limit violence, while the latter allows entry into economic and political organizations thus sustaining competition rather than rent seeking.

Limited access orders characterize colonial indigenous economies whereas open access orders are necessary for renewing indigenous economies. The challenge is to understand how the transition from one to the other can be brought about.

The problems inherent in creating open access orders is made more difficult on American Indian reservations because of the mosaic of land tenure within those boundaries. This mosaic makes reservations like a piece of Swiss cheese with the holes representing fee simple lands, many of which are owned by non-tribal members. To simply declare reservations as the jurisdiction will not work because owners of fee simple land would not be included in most tribal decision making, especially regarding taxation and regulation.

[MORE—constitutional form, tribal government organization (Kalt and Cornell on nexus between traditional and modern organization and Kalt, "The Role of Constitutions in Native Nation Buildling," in Jorgensen, *Rebuilding Native Nations*), taxation and public good production (Tulo Open Textbook, *Building a Competitive First Nations Investment Climate*), and judicial system (PL280, see Anderson and Parker).]

Contracting and Entrepreneurship

Indigenous economies were never in a state of equilibrium, anymore than modern economies are, therefore creating niches to be filled by entrepreneurs. Indigenous entrepreneurs filled niches by discovering better ways to produce food, organize collective production, and fight battles over territories. Such entrepreneurship allowed indigenous economies to survive and prosper through institutional evolution.

MORE—Robert Miller, *Reservation Capitalism*

[Care must be taken to avoid the "leakage" or "multiplier" trap; that is the notion that any money flowing outside the indigenous economy to non-indigenous producers is a loss. It makes no sense for new indigenous economies to focus on producing everything internally. MORE [see Cornell and Jorgensen, 13-14]

Bill Yellowtail: "Indian sovereignty . . . is founded upon the collective energy of strong, self-sufficient, entrepreneurial, independent, healthful, and therefore powerful, individual persons. . . . The proper economic role for tribal government is to facilitate private enterprise . . with an eye toward building the capacity of individuals and families to be truly independent."

Again quoting Tom Flanagan, successful First Nation economies come from "self-determination: taking control of their own affairs and making the most out of their assets. The most effective government intervention has been legislation to remove roadblocks and create opportunities that First Nations can exploit under their own initiative" (*Why First Nations Succeed,* ii).

Conclusion

Based on this articulation of old, colonial, and renewed indigenous economics, table 1 compares and contrasts the differences. In short, moving out of the colonial era is not so much a matter of creating new indigenous economies, but rather a matter of renewing and adapting old institutions that worked and discovering new ones consistent with the old. If this can be accomplished, renewed indigenous economies will be dynamic, with clear property rights, low transaction costs, clear jurisdictions, and clear and stable governance rules especially for provision of public goods. There is no magic elixir that emerges from the new indigenous economics, but it does offer insights into how those economies operated in the past and how they might be renewed.

Table 1
Comparison of Indigenous Economies

Old	***Colonial***	***Renewed***
Dynamic Institutions	Static Institutions	Dynamic Institutions
Open Access Economies Low transaction costs within but higher between groups	Limited Access Economies High transaction costs within and between	Open Access Economies Low transaction Costs within and between
Property Rights Clear; some private, some common	Property Rights Unclear: subject to trusteeship	Property Rights Clear; some private, some common
Jurisdiction Clear within; ambiguous between	Jurisdiction Ambiguous within and between	Jurisdiction Clear within and between
Rule of Law Strong within; weak between	Rule of Law Weak within and between	Rule of Law Strong within and between
Governance Structure Strong within small groups; weak between (with exceptions)	Governance Structure Weak within; weak between	Governance Structure Strong within and between
Capital Formation Provided within	Capital Formation Provided from without	Capital Formation Provide from within and without
Public Goods Provide within small groups and between in some cases (e.g. potlatch)	Public Goods Provided from federal government	Public Goods Provided within