Institutional Development and Resource Development

The Case of Canada’s Land Claims Agreements (Modern Treaties)

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The Debate

• Ongoing debate around the so-called “resource curse”,
• Resource development corrupts economies and institutions or
• Strong institutions can mediate the impact of resource development.
• 2 questions:
  • With the institutional development created by land claims and self-government agreements, are Indigenous peoples able to choose which resource development can take place on their territory?
  • Are they able to benefit economically from such development?
• Four case studies
Land Claims Agreement in Canada
Indigenous People Institutional Development in Canada

CONSTITUTION
- 1867: Section 91.24 of the British North America Act
- 1982: Constitution Patriation: recognition of existing Aboriginal rights (art 35)

SUPREME COURT OF CANADA
- 1973 Calder Case: Recognition of Aboriginal rights
- 1984: Sparrow: Aboriginal rights and consultation
- 1996: Van der Peet Trilogy: Definition of Aboriginal rights (activities)
- 1997: Delgamuukw: Recognition and definition of Aboriginal title (land)
- 2004 Haida River and Taku Nation: Duty to consult, accommodate and in some case consent but no veto
- 2014 Tsilhqot’in case: First Aboriginal title recognized

FEDERAL POLICIES
- 1969: Trudeau’s White Paper
- 1975: Canada Land Claims Policy
- 1995: Canada Self-government policy

UN Declaration on Indigenous Rights (FPIC)

IBAs
Canadian Land Claims Agreements

• Specific land regime (collective property and additional rights on crown land)

• A share of resource development profits (only recently)

• Specific Impact assessment regime but no veto on resource development

• Since 1995, self-government agreements are negotiated at the same time
Land Claims and Resource Development

• Resource development has been key both to development of land claims policy and to negotiation of land claims agreements (LCAs)
• The LCA policy aims mainly to clarify the government’s right to develop the land. In fact, land claims agreements are often signed in order to facilitate a specific development project.
  • JBNQA was signed so that hydroelectric development could move ahead
  • IFA was signed at a time when companies were pushing for oil and gas drilling in the Beaufort Sea.
  • Voisey’s Bay Project was instrumental for the conclusion of the Labrador Inuit Land Claims Agreement.
Two types of self-government
Public Government (Nunavut, Nunavik)
Ethnic Government (Nunatsiavut, Eeyou Istchee)
The Cree Nation and the JBNQA

• First Canadian treaty signed in 1975
• No share of resource development until 2003
• Co-management of Impact assessment process
• Eeyou Istchee/Baie-James regional government
• Tight control of development projects through IBA and political influence
  • Wemindji Choice: Eleonore vs Azimuth
  • Matoush mine and Quebec moratorium
The Nunavik Inuit and the JBNQA

- Similar agreement to the Cree
- Co-management board with decision-making power on resource development through the Impact assessment regime (but possible veto from Québec)
- Very few development projects
  - One past mine: Asbestos
  - Two active mine: Raglan (1995) and Canadian Royalties (2013)
  - Many active projects: Aupaluk, Lake Otelnuk, Ahrsam, Strange Lake, .....
The Labrador Inuit Land Claim Agreement (Nunatsiavut)

• Signed in 2005
• The agreement was a condition for approval of the Voisey Bay mine by the Inuit
• The Labrador Inuit Ass. has also signed an IBA with the mining company
• The government funding is in part dependent on resource revenues
• A study on the economic impact of the mine on the 5 Nunatsiavut communities has shown that it was neither the main employer nor the main source of revenue
• Lifting the uranium moratorium....
The Nunavut Land Claim Agreement (Inuit)

- Based on a court case on uranium mining in Baker Lake in 1972
- Signed in 1993
- Creation of Nunavut in 1999: Public Government but on a territory with an overwhelming majority of Inuit (88%)
- The Inuit organizations are distinct from the government and are signing the IBA and collecting the royalties
- Two mine in operation: Mary River and Meadow Bank
- A very controversial project for an uranium mine (Kiggavik) in Baker Lake, approved by the GN, the Inuit organisations but with a very divided community.
Conclusion

• Two initial questions
  1. Are Indigenous peoples better able to choose which resource development can take place on their territory?
  2. Are they better able to benefit from such development?

• **IBAs do ensure economic benefits** through job creation, contracts for Indigenous businesses, and a share of the profits. However, **this wealth often fails to contribute to the development of communities** since Arctic villages have little capacity to retain wealth because of intense economic leakage.

• According to the data we have compiled, **resource development does not account for a large proportion of the local economy** for the four-case studies.

• Finally, the four cases presented points out to the importance of having strong **institutional capacity** in order to control better the **IBA process and to choose with development can go ahead**. This is congruent with the idea that institutions are a key variable in the capacity to benefit from resource development.
And if you want a more detailed account
