

# Illegal Tobacco and the Indian Act

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# FRONTIER CENTRE FOR PUBLIC POLICY

- An independent Western Canada based public policy think tank which received charitable status in April 1999.
- Generates a wide range of publications, commentary and outreach across 10 project areas.
- Offices in the 3 prairie provinces
- Core staff of 16 people
- 58 million audience on a regular basis
- Almost \$10 million in PR value in 2008
- University of Pennsylvania/Foreign Policy Magazine (January 2009 edition) ranked FCPP:
  - 22<sup>nd</sup> most influential “Go-To think tank” in North America (non-USA)
  - One of only five of 100 recognized think tanks in Canada to make the “Go-to-Think Tanks” list



# Aboriginal Frontiers Project

- Tremendous increase in federal funding for Aboriginal programs, no improvement in socio-economic indicators
- Solutions lay in individual and community improvement, not govt dependency
- 2006, AGI, Prairies, ranks, transparency & accountability=higher ranking

## Problem

- People can pay \$80 for carton of legal, regulated cigarettes vs. \$15-20 for unregulated contraband
- FN cigarettes manufactured on both sides of Canada/U.S. Border, smuggled throughout Ont. And QC, distributed to other provinces

## Problem (cont'd)

- Mainly ONT, QC problem, but sizeable in Maritimes.
- Growing in West, lowest in AB
- Not necessarily always connected to high tobacco taxes.

## Opponents of illegal tobacco

- Governments— foregone revenue for programs
- Tobacco manufacturers- lost sales, competition
- Non-Aboriginal retailers— lost sales

## Tobacco enforcement perspective

- Cannot regulate safety of tobacco products (ingredients, proportions)
- Problems in ensuring product does not end up in young hands
- Bypasses tobacco health education (warning labels)
- Cheap cigarettes= higher consumption



## Illegal tobacco and youth

- “When you go to the city of Toronto and they talk about vanloads of cigarettes being sold in baggies for \$6, \$8, \$10, and \$12 a bag, I don’t think that’s of great benefit to the Aboriginal community.” (**Dave MacKenzie, Standing Committee on Public Safety and National Security, June 2008**)
- “When we talk about trying to reduce smoking by youngsters when the kids at the high schools are smoking \$8 and \$10 cigarettes from baggies” (Ibid)



## Contraband tobacco and organized crime

- 2008 RCMP Contraband Tobacco study: illegal tobacco connected to drug trafficking, illegal weapons smuggling
- Finances gang activity connected to human trafficking

# Basic Economic Theory

- **1) Incentives matter:** Change in incentives influence human behaviour in predictable manner. Personal benefits and costs influence choices. If benefits derived from option increase, ppl more likely to choose it.
- **2) No such thing as free lunch..** When resources used to produce one good, diverts resources from prod. Of other

## Economics (cont'd)

- 3) Transaction costs are obstacle to exchange.. Physical (oceans, mountains, isolation). Man-made (taxes, licensing requirements, govt regulations).. Higher costs, less likely entrepreneurs will create business, investors invest.

# Douglass North & Institutional Economics

- Mainstream economics, prices changes
- North looked at institutions, incentives embedded in them, adaptations (Economic history)
- North shows institutions as fundamental determinants of poverty, prosperity



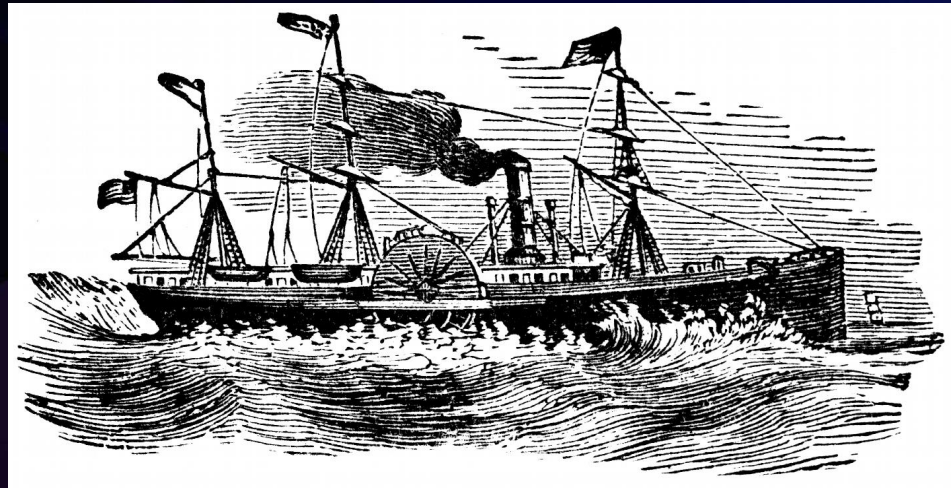
*...if the institutional framework rewards piracy then piratical organizations will come into existence; and if the institutional framework rewards productive activities then organizations - firms - will come into existence to engage in productive activities."*

- Douglass C.

North, Economic  
Performance Through  
Time, the 1993 Economics

## Economic incentives matter

- Douglass North observed :the steam ship did not replace sailing ship until 100 years after the invention of the steam engine, patented in 1769, because "back then, inventors were not assured of the rewards that would derive from the ownership of their ideas."





# Incentives & Institutional change

- Five propositions about institutional change- North-Washington University, St. Louis
- The institutional matrix defines opportunity set, be it one that makes the highest pay-offs in an economy income redistribution or one that provides the highest pay-offs to productive activity. While every economy provides a mixed set of incentives for both types of activity, the relative weights (as between redistributive and productive incentives) are crucial factors in the performance of economies. The organizations that come into will reflect the pay-off structure.



## Diversion of resources

- Diversion of resources affects allocation of talent
- Individuals would might have become entrepreneurs, rent-seeking, other diversions
- Invest in skills, technology to become better (contraband tobacco, etc).

## Incentives and piracy

- Gains from elimination of piracy between 1814 and 1860 ( Shipping costs declined by more than 80%)
- Shipping industry's productivity increased by 500%. Ships no longer needed cannons, that much manpower and resources could be used elsewhere, in building ships better designed for carrying cargo. Decline in piracy directly correlated with explosion in international trade in 19th and 20th centuries.



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## Somali piracy

- Recognized as intl threat, raises cost of shipping food
- Illegal foreign trawling off Somali coast (Somalia lost \$100 M revenue due illegal tuna & shrimp fishing), foreign dumping, absence of strong coast guard=rise in piracy& local support (pirates improve inland towns by buying)
- Poorest countries, millions depend on food aid

## First Nation economic development

- Treaties ratified between 1860s and 1921
- Reserve lands preserved for FNs in exchange for surrendering large tracts
- Reserve land governed by Indian Act
- From Indian Act for next 75 yrs, thought was reserves would disappear and integration
- Indian Act did not anticipate on-reserve economics

## Economic devt (cont'd)

- Decline of hunting, trapping and fishing and transition to industrial economy caught reserves in poverty
- Relief and later social assistance came to dominate reserves.
- Many urbanized, but many stayed behind.
- Band govts sought employment, revenues began to turn to gaming, casinos

## First Nation sovereignty

- 1960s-1970s- FNs have “inherent” right to govern themselves
- “Indians and lands reserved for the Indians” – s. 91 (24)
- Courts carved out sphere of autonomy for FN govts.
- Jurisdiction & smoking– 2005- South Beach Casino. 7 partner FNs.



## Sovereignty and smoking

- MB had passed anti-smoking legislation. Doer criticized for losing resolve. Chief and council jurisdiction to pass bylaws. Feds can regulate gambling under Criminal Code, but prov. May not behaviour on FN communities
- FN casino smoke-free debate acrimony in ONT, SK, AB.

## Sovereignty

- 1995, Liberals recognize inherent right of self govt, increasingly less prone to intervene in FN affairs
- INAC Minister Andy Scott, refuse to block bylaw permitting smoking in casinos
- Oka, Ipperwash, *Gustafsen Lake* Standoff, Caledonia
- 2008 RCMP Contraband Tobacco Strategy

## Illegal 'smoke shacks'

- Community leaders argue restrictions imposed on them by the federal Indian Act have forced them to get creative in money-making ventures since they can't attract typical businesses like Wal-Mart and Tim Hortons.
- "We believe it's a legitimate industry," says Mohawk Council of Kahnawake Grand Chief Mike Delisle. He notes outsiders benefit from the low prices on so-called  
entrepreneur

## Illegal First Nation Gambling

- Similar phenomenon with illegal gambling on Mohawk territory (pokers dens, Mohawk Internet Technologies in Kahnawake- 470 global internet gambling sites)
- Violates Canadian law, but govt, police hands-off approach
- Gambling enjoys community support, revenue for social services, community facilities, cultural retention

# Normalization of illegal tobacco



“I know that the government of Canada takes a very particular position – and a very specific position – on the legality of the creation of tobacco products and their distribution certainly within the Canadian state. There is a framework of applications, processes and approvals that govern when and how a manufacturing company can exist, so I don’t disagree that the government assessment of what we do as not being legal. But that is not the same position that we’ve taken.” ... “The tobacco industry within Tyendinaga is such that it’s the largest employer within our community now, that most of the new opportunities that are coming forward are being made available to younger people, who are paid a decent living wage – not a minimum wage ...”

## Indian Act (institutional matrix)

- Nobel laureate Ronald Coase: Transaction costs.
- Any actions, information and perceptions that impedes the definition, monitoring and enforcing of an economic transaction.
  - enforceable property rights.
- Sec. 89 of Indian Act- real and personal property of FN on-reserve cannot be alienated, pledged, or mortgaged except to band or Crown.



## Economic Problems on-reserve

- "You don't have to travel to Zambia or Peru to see dead capital. All you need to do is visit a reserve in Canada. First Nation people own assets, but not with the same instruments as other Canadians. They're frozen into an Indian Act of the 1870s so they can't easily trade their valuable resources."

- Hernando de Soto





## First Nation economic potential

- Study, Fiscal Realities, presented to INAC last spring, measured land value for select BC bands. On 68 bands, value at \$4 billion, or \$60 million per reserve.

## Indian Act business hurdles

- 4 times as long for development plan on reserve land to come to fruition than it does off-reserve, estimates André Le Dressay, director of Fiscal Realities Economists, a B.C.-based firm that works with First Nations to get them through the process.



■ “It is still considerably more difficult to invest and conduct business on First Nations lands than elsewhere in Canada. Both FNs and investors have to spend considerably more time and professional, administrative resources to overcome this. Transaction costs to complete investment are four to six times higher than off reserve lands.”

- Andre Le Dressay

## Land rights and economy

- De Soto, formalizing land titles creates assets, unlocks capital
- Access to capital by new title holders, increase loans 280%
- Without land title certainty= economic disparities, higher costs of doing business, losses of potential investments

## Solutions

- Mix of poverty, serious business obstacles, belief in sovereignty=opportunity for illegal tobacco to flourish & operators to become heroes
- Re-aligning of incentives may curb it. Turn communities against it/no need
- Amend/repeal Indian Act, build infrastructure, work with FN enforcement authorities