Title: The Equality of Sub-Surface Minerals

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THE EQUALITY OF SUB-SURFACE MINERALS: INDIGENOUS PEOPLES' RIGHTS

Abstract

Sub-surface minerals are in most cases considered to be the proprietary right of a country should those minerals be found within its borders. PRO169 (Indigenous Peoples' Rights, International Labour Organization) has recorded instances where the private land of indigenous peoples has been pilfered by a government – often through the sale of a contract to a private company, and without the consent of the people living on that land. Other times, indigenous peoples, the government they find themselves living in, and the company that bought mining rights engage in consultation. But these practices are far from transparent, equitable, or fair as indigenous peoples are often unskilled in contractual law and do not have the same legal resources as the company or government does. This paper argues that the sub-surface minerals found within the territory of indigenous tribes should be legally allocated as theirs.

INTRODUCTION

Indigenous Peoples (IPs) are historically and presently marginalized people. Often times they have cultures that are radically different from the materialist (in the consumerist sense) fuelled lifestyle. In the interest of social justice, cultural heterogeneity, and respect for human life, a great many efforts have spawned from

grass-roots to multinational treaties and programs concerning the protection of IPs. But one area that is critically lacking research is the realpolitik of balancing the scales of equality between IPs, governments, and private industry. It is proposed herein that sub-surface minerals are the key to giving IPs greater power, enabling them to defend their rights to a greater extent.

By legally instituting the sovereign ownership of sub-surface minerals to IPs (that is, those minerals found in their territories) beyond the reclamation of government, a new realpolitik emerges: that of bargaining power and the right to say 'no'. The automatic effect would place greater pressure on governments and private industry to comply with IPs rather than forcing a way through them via illegitimate legal permission, trickery[1], or violent coercion. O'Fairchaellaigh (1998) shows that IPs throughout the world are profiting through their own taxation schemes regarding sub-surface minerals. She calls for more research to be done in this area as IP taxation records are separate from government or private industry. This information is beneficial as it shows that IPs are already engaging mineral exploitation in the interest of developing their territories. But a series of questions arises: what about IPs that do not wish to engage with the monetary economy as money in their society has no value? And how did these other IPs manage to gain the right to tax industry? Finally, what effect does financial remuneration have on the cultural vibrancy of those IPs engaging in taxation? This paper does not engage those questions, but rather acknowledges that they are in need of further research.

The following is important as it provides a realistic approach to protecting the most marginalized peoples in the world – indigenous people. The simple act of legally appointing the ownership of all sub-surface minerals under the proprietorship of the IP that live on top of them will force government or industry to operate under more egalitarian terms as IPs will have unquestionable ownership. This will prevent government and industry from coercing IPs during their bids for minerals using legal, economic, or violent means.

The aforementioned will be seen firstly by providing some cases where IPs lost control of their sub-surface minerals; then describing some cases where IPs protected their land rights; followed by a discussion of the negative and or positive impacts these instances had; ending with the argument of legally attaching indigenous people as owners of their sub-surface minerals to negate the possibility of further negative impacts derived from mineral exploitation by government or private industry.

LOSING CONTROL OF SUB-SURFACE MINERALS

The Yolngu people, traditional caretakers of Gove Peninsula (Northern Territories, Australia) were among the first IPs in Australia to legally challenge the actions of government and private industry (Hookey, 1972). *Milirrpum v. Nabalco Pty Ltd* (1971) was the case name and Hookey (1972) looks at it in disbelief for two reasons: the first that the Yolngu plaintiffs lost, and the second that they did not choose to appeal to a higher court. Neate (2004:177) showed that the dispute arose over a

[1] In the sense of 'divide and conquer' meaning the strategic fracturing of IP leadership; and fake, or bad contracts. See Langton et al (2004) for further information.

mineral lease to Nabalco Pty Ltd with the Yolngu people feeling this breached their traditional law. The Yolngu people are now in majority displaced from their traditional land.

Going from Gove peninsula to a global perspective, Damien (2008) shows in broad sweeps that during the 18th century many IPs in Canada, the USA, and Australia lost their rights to their land either through trickery or the UK's Colonial Law of *terra nullius*.[2] Although the doctrine of *terra nullius* was only applied in Australia, IPs in North America suffered similar fates at the hands of European encroachment. Furthermore, in the context of the Arawak Peoples of Central America and the Caribbean Islands, they were also displaced, forced into labour, stripped of their land, and murdered.[3]

Returning to specific examples, the Xakmok Kasek people (living within Paraguay) have taken legal action to protect their land rights (Daz, 2009). Although the Inter-American Court of Human Rights (IACHR) has already ruled in favour of two other IP communities found within Paraguay, the country has yet to make reparations.

The Xakmok Kasek people told Daz (2009) how their land claim was not acted upon by Paraguayan officials which prompted the Xakmok Kasek community to seek legal action. In that time, the land that is theirs had changed hands privately on several occasions with portions of its forest being cleared for cattle grazing. In this context, sub-surface mineral rights becomes almost redundant as Paraguayan land is not particularly abundant in minerals (Velasco, 2001) which leads to the argument that the soil itself and that which grows on it should also be considered with equal importance. Although many IPs have the right to whatever lies on top of the soil, and some have the right to what lies beneath, the Xakmok Kasek have neither.

Similar to the Xakmok Kasek of Paraguay in situation, are the San of Namibia. These sub-Saharan hunter gatherers have had their land slowly taken from them since colonial times due to the steady enclosure of their territory by individuals or industry buying their land (Wynberg, Schroeder, and Chennels, 2009). However, Namibia is one of the world's richest countries in terms of precious stones and minerals (Ministry of Trade and Industry, Namibia) such as diamonds, gold, and uranium. The Bushmen (San) are losing their capacity to tax or protect their land due to their lack of legal rights which is a threat to their existence.

Lee (1986) shows how the South African government applied its policies towards the San of Namibia (and some in Botswana). He referred to the San being adopted as "mascots" (Lee, 1986:91) after they were exterminated in South Africa. A major difficulty, which can be inferred from Banda (2009), Mnisi (2007), Yakubu (2005), as well as Debussman & Arnold (1996), is that colonial law was often adopted by southern African governments gaining independence. In other words, the legal outlook concerning IPs such as the San did not change much from the apartheid period. This correlates with an indigenous African perception commonly heard whilst working and training with the United Nations in Geneva, Switzerland. A

[2] *Terra nullius*, as explained by Damien (2008), is the concept derived from John Locke that for ownership to be staked over a land the people must be shown to have industry over it (such as tilling, growing crops, etc).
[3] Such is common knowledge derived from Christopher Columbus' explorations of the region.

colleague, an indigenous woman from Uganda, lamented that her people have been the traditional caretakers of a land segment in Uganda but are not recognized as IPs. This is due to the argument the Ugandan government uses, which is common in the continent, that there are no such things as IPs in Africa as all Africans are indigenous to the continent. This is a contentious argument gaining a lot of attention within the UN, especially within the PRO169 committee at the International Labour Organization.

Banner (2008) argues, as Igler (2009) confirms, that in the case of the Pacific Islands from Australia to Alaska, there was a distinct level of differences in the way colonial powers approached Natives. Banner (2008) argued that the outcome of land claims depended rather largely on which official was interacting with the natives. Some IPs experienced an inclusive system of discussion, others were cheated and lied to, whilst still others were overrun and murdered. This argument also fits well with the point made by Damien (2008). Two cases exemplify this dichotomy. Since Australia's inception, 65 instances of 'Land Trusts'[4], the most recent involving the Ngunda-Joondoburri lands on Bribie Island, have been awarded (Caboolture, 2009); whilst the Indigenous Land Corporation (also in Australia) has been criticized for amassing land and wealth and not distributing either to the IPs the corporation is meant to help "achieve economic independence" (The Australian, 2009).

Protests have recently erupted in the Amazon by a variety of IPs as oil and mineral extraction plans are underway (Jagirdar, 2009). The Permanent Forum on Indigenous Issues called for governments to carry out their "obligations under international human rights accords" of which the ILO Convention 169 is one of the most effective.

The Convention states that:

> This Convention applies to:
>
> (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
> (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
>
> Article 2
>
> 1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
> 2. Such action shall include measures for:

[4] The act of returning land to IPs.

> (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
> (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
> (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life. (International Labour Organisation, Convention 169, 1989)

It is clear that a legal obligation rests with member states that have ratified the Convention. Within this context, the reality of providing IPs with the legal ownership of sub-surface minerals commensurate with the rest of their land is plausible. However, as Jagirdar (2009) shares, there are still many difficulties facing IPs despite Convention 169 and other bodies. “Patricia Cochran, President of the Inuit Circumpolar Council,” stated that “…industry, shipping countries, and tourism operators were eyeing its seas and other natural resources. Heavy metals, mercury and others were in the air, water and food chain” (Jagirdard, 2009). Handaine Mohamed from the French Caucus similarly stated the difficulties facing French speaking IPs around the world; whilst Tomasa Yauri (Bolivian Indigenous Senator) stated that indigenous women in her country were also facing hardships (Jagirdar, 2009). The ILO shares that to be female and indigenous is double-discrimination, especially in Latin America.

In another case where IPs were unsuccessful in defending their lands, they were wholly relocated to environments alien to their culture. The Ewenki people from the Mongolian steppes (on the fringe of Siberian forests) were relocated to a city in a newly built estate (AP, 2009). Although officially the Chinese government reasons the relocation was necessary to bring northern hunters better healthcare, in terms of cultural preservation, it should have been the other way around.

As can be seen from investigating the aforementioned cases of IPs losing or battling for their land rights, they are up against government and wealthy industries and can in effect only be helped by international or local efforts. Historical cases have shown that should a government or private industry not seek the consent of IPs living on the land that is sought after, guerrilla warfare is a strong possibility and it is thus in the vested interest of peace that IPs should be protected (see, inter alia, the Naga of India; Mau Mau Rebellion of Kenya; Wayuu of Colombia; Niger Delta Rebellion of Nigeria; the Uyghur opposition in China; and Berber resistance in Algeria).

MAINTAINING CONTROL OF SUB-SURFACE MINERALS

O’Faircheallaigh (1998) shares that,

> In the United States, for example, some Native Americans have long held sub-surface rights to lands they owned and so a legal right to tax resource extraction, but have only recently achieved the political autonomy and the

> economic and legal expertise to exercise that right effectively (Ambler, 1990; Royster, 1994). In other cases (for example New Zealand) judicial decisions have overturned earlier rulings limiting the impact of treaties which might otherwise have placed indigenous people in a position to extract resource taxes (Barclay-Kerr, 1991). In Australia and parts of Canada, legislation introduced during the last 20 years has provided some indigenous groups with the right, for the first time, to tax mineral extraction. Examples are the royalty provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* and of Canadian comprehensive land claim settlements (Stephenson, 1997). In these countries the capacity to tax resources does not usually arise from ownership of sub-surface rights *per se*, as this remains with the Crown, but from specific legislative provisions. In other cases indigenous people achieve a *de facto* right to bargain with resource developers because their consent is required before mineral extraction can proceed or if expensive and time-consuming litigation is to be avoided. The price of cooperation by indigenous people is, increasingly, a willingness on the developer's part to pay them significant resource taxes. (O'Faircheallaigh, 1998:187)

It is clear that any provisions allocated to IPs regarding their control of sub-surface minerals are beneficial. Furthermore, as was seen in the aforementioned quote, the legal circumstances IPs find themselves results in their capacity to gain equality. For example, in the USA, IPs have the legal capacity to tax resource extraction, whilst in Canada they do but only through certain legal provisions made. Finally, in other parts of the globe like Latin America, Africa, Asia, the Arctic, and the Pacific regions, these rights are barely visible.

Wingrove (2009) discusses what is believed to be a "first among treaties." The Nisga'a people of British Columbia recently signed a treaty with the government of the province allowing the Nisga'a to parcel out and sell pieces of their territorial land for economic gain and development. Nelson Leeson, President of the Nisga'a stated "It is important for us to be able to find ways of building capacity for our people so that they can stand on their own" (Wingrove, 2009: ¶4).

Further south, in Guatemala, Agence France-Presse (2009) reported a mass protest of Columbus Day by "tens of thousands of indigenous people." Although this instance does not go toward specifically defending sub-surface minerals, it does however show collective solidarity between the pluralism of IPs in Guatemala. The protest of "Spanish Genocide," as it was called, goes toward raising awareness about the historical crimes IPs were subjugated to. In a conciliatory response, President Alvaro Colom met with 14 poor farmers in a roundtable discussion. One farmer asked the President to "annul mining, hydroelectric and cement concessions" due to the fact that "multinational companies are taking over natural resources, which have long been the source of life for rural families" (Agence France-Presse, 2009: ¶6). Although the farmers were most likely not indigenous people, these kinds of actions and outcomes are important to successfully defend mineral rights. One reader of the online content contributed the thought that protests of Columbus Day were not enough, that reparations were in order.

Naval (2009) writes how IPs in Peru banded together to oppose the sale of their Amazon based lands to oil companies:

> They emerged from the thick, green jungle clenching their spears: a long file of barefoot chiefs and elders, their faces painted with their tribal markings and crowns of red, blue and yellow parrot feathers.
>
> They had been summoned by the chief of Washintsa village for a meeting to discuss an oil company's efforts to buy the rights to their land. Most had travelled for hours, padding silently through the dark undergrowth.
>
> They came from Achuar Indian communities scattered along the Pastaza River, one of the most remote parts of the Peruvian Amazon near the border with Ecuador.
>
> These men are part of a growing resistance movement crystallising deep in the jungles of Peru. For the first time isolated indigenous groups are uniting to fight the Government's plans to auction off 75 per cent of the Amazon — which accounts for nearly two thirds of the country's territory — to oil, gas and mining companies. (Naval, 2009: ¶1-4)

These people are trying to oppose eleven presidential "decrees issued by President García, under special legislative powers granted to him by the Peruvian Congress, to enact a free trade agreement with the US. These would allow companies to bypass indigenous communities to obtain permits for exploration and extraction of natural resources, logging and the building of hydroelectric dams" (Naval, 2009: ¶5). The tribal leaders were said to have each taken a turn in speaking against the laws. The defiance they exhibited was accompanied with statements such as "to the death" and "we will never let them in" meaning that should government or private industry try to illegitimately pilfer IP territory, guerrilla warfare is a strong possibility with violence almost certain.

Bell (2005) revealed the victory of the Haida-Gwaii First Nation's People resident of an island off the coast of British Columbia. A previous agreement with the provincial government indicated that any industrial activity to be made on their land would first require consultation with the Haida-Gwaii. This was however not done by Weyerhaeuser (a logging company) which prompted the IP to take action. Twenty-four hour blockages accommodated the forceful seizure of several timber barges as 'payment' from Weyerhaeuser. Eventually the matter was settled when the government of British Columbia agreed to officially protect "40,000 acres of land the Haida deem important" (Bell, 2005: ¶10).

BBC (2009) reports that "President Evo Morales, Bolivia's first indigenous leader, enacted a decree setting out the conditions for Indian [Native Bolivian] communities to hold votes on autonomy. These referendums will take place in December, alongside presidential and parliamentary elections." For Latin America, this piece of news was almost unexpected save for the fact that President Morales is indigenous and many expected him to come through with acts in favor of Bolivian IPs. His example shows how leadership can provide the protection IPs need.

Furthermore, Shiferaw (2009) explains how international aid groups have empowered the poorer rural populations of a village called Rema in Northern Ethiopia. This was done by providing 80% of households with solar powered

electricity which, as reported, is starkly higher than the average Ethiopian rural percentage of 1% of households with electricity. As PRO169 (ILO) detailed in an Indigenous Peoples and Minority Rights Fellowship Training program (June, 2009): the poor are often minorities, and the poorest of the poor are often IPs. In light of that, there is an economic connection (not necessarily based in the cash economy) between IPs and minorities – such as the rural tribespeople in Rema. The point being, notwithstanding any aid from international funding, that should IPs gain sovereignty over their subsurface minerals they are empowered to access their right to development. This could allow IPs to direct the terms of their collective destiny, to protect their culture, language, and traditional lifestyle as even international aid can subvert the aforementioned.

By contrasting the cases of IPs that have lost their rights and those that have gained them, the disparity of realpolitik regarding IPs bargaining power is stark. Those peoples that lost their rights to sub-surface minerals (Yolngu of the Gove Peninsula, Arawak of the Carribean, Xakmok Kasek in Paraguay, the San of Namibia, and the Ewenki in China) suffered from a loss of culture and language as well as dispossession of their heritage and traditional lifestyles. The general accompaniments of these instances are typically heightened instances of substance abuse, HIV/AIDS infection rates, lower life-spans, depression, and suicide although other negative behaviors associated with losing control over sub-surface minerals exist. However, in terms of those peoples that maintained rights over their land and minerals (certain Native Americans in the USA, Canada; Aboriginals in Australia; the Nisga'a and Haida Gwaii; and various tribes of the Peruvian Amazon) it is seen that a determination to strengthen and protect indigenous culture becomes a great priority. The only bargaining chip, apart from appealing to international civil society and multinational pressure, is the power of controlling the resources governments and or industry want. There is the proliferation of bargaining and the notion of Free Prior and Informed Consent (FPIC) that helps in this regard as well. But the bottom line is that if IPs do not fight and band together like those in the Peruvian Amazon of the Nisga'a and Haida Gwaii for sub-surface mineral rights they risk losing their culture and place in this world.

IMPACTS

In the case of the Yolngu people of Gove Peninsula, Australia, the negative impacts are difficult to quantify. Reynolds (1987) discusses how colonial law (which is still relevant today) was dismissed by Blackburn (the Judge presiding over the Gove Peninsula dispute). Reynolds (1987: ¶8) shares "That nothing in these Letters Patent contained shall effect or be construed to effect the rights of any aboriginal Natives of the said province to the actual occupation or enjoyment in their persons or in the persons of their descendants of any lands now actually occupied or enjoyed by such Natives." Hookey (1972) and Neate (2004) discussed the way the judge reasoned the case and some inferences of negative impacts are perhaps gleaned from there.

> Justice Blackburn, while recognising that the clans on the Gove Peninsula had a recognisable system of law, held that the doctrine of communal native title did not form, and had never formed, part of the law of any part of Australia. He also decided that, given that the plaintiffs' relationship to land

> was spiritual or religious in nature and had little resemblance to ‘property’ as the law understood it, the plaintiffs’ claims were ‘not in the nature of proprietary interests’. (Neate, 2004:177)

It is presumable that this case was a blow to the cultural integrity of the Yolngu. The ignorance the judge showed of the cultural importance societal diversity (Parekh, 2000) plays is exhibited in his comments that spiritual or religious claims to land are inadmissible – as well as the fact that he dismissed the Yolngu legal code. What effect would that have on the way the Yolngu perceived their culture in the Australian arena if their power structure was at once defeated? Furthermore, the sacred guardianship over the land was violated through bauxite mining which is notorious for reshaping land in the effort of obtaining mineral ore content dispersed in soil.

However, Walker (2004) claims that although the Yolngu have been pushed out of their native lands by mining activities (the mine created a town that supports around 4,000 non Aboriginal people) they are compensated at a rate of 9.5 million AUD in royalties each year. She is careful to note that only a portion of that goes toward the “local Aboriginal community” (Walker, 2004: ¶5) with the rest contributing to Aboriginal development plans of the Northern Territory government. But this compensation seems to either be misappropriated or a culturally incorrect form of compensation as Australia is currently embroiled – and has been for some time – about the living conditions many IPs endure. Just as in Canada, the USA, Russia, and Latin America, Australian IPs have problems with substance abuse, violence, teen pregnancy, illiteracy, and hygiene. But what if IPs do not wish to be literate, or have a problem with teen pregnancy, or have their own standards of hygiene? Is it right to apply potentially alien normative values on them? Furthermore, is money the appropriate compensation for IPs? These questions need to be answered through further research.

The positive impact case is exhibited by the Nisga’a and Haida Gwaii of British Columbia, Canada. In the first instance, the Nisga’a Treaty – which as McFeely (2000) shows – has been controversial for the better part of ten years permits not only the parceling out of land for economic development, but other benefits as well. The Nisga’a have the right to make their own laws, however, as their laws may overlap provincial or federal laws, the agreement states that provincial or federal law will prevail in legal conflicts. The Nisga’a have no formal jurisdiction, however, they do have the legal rights to legislate their nation’s affairs. Of utmost importance, the treaty gives the Nisga’a the legal right over their land, resources, and self-government (Nisga’a Treaty, 2009).

The Haida Gwaii were not as fortunate to gain a treaty by the likes of the Nisga’a, but as precedence has now been set in Canadian law concerning treaties with Native American peoples, the opportunity is presented to the Haida Gwaii to seek their rights in similar fashion. However, strictly discussing their opposition and counter-tactics regarding illegitimate logging on their traditional lands, a windfall of benefits occurred and will continue to do so.

It would be unwise to speculate about the benefits arising out of controlling sub-surface minerals, but there is some documented evidence arising from the literature. As was seen, the negatives espoused issues of cultural degradation,

social erosion (such as substance abuse, heightened violence, suicide), loss of language and tradition, as well as in the worst cases a complete dispossession of the land through forceful removal or gradual voluntary retraction (the current situation in Gove Peninsula, Australia). Hence, the obverse of the listed is highly probable commensurate with access to the right of self-development. Thus the realpolitik derived from controlling minerals gives IPs the fighting chance they need to maintain the integrity of their culture, society, traditions, language, and in essence the direction of their collective destiny. Of course that is an ideological argument as no two IPs, and their situations are alike; but it is still the attainable realistic zenith that would actually allow IPs to sort out their own affairs.

METHODS FOR ATTANINING EQUITY

By comparing case studies, it is possible to reason the realistic possibility for IPs to gain equality through the creation of equity that ownership over sub-surface minerals purports. Are there then some basic and accessible methods, through which IPs can approach this possibility?

A few techniques have been reported in the literature that can be used to attain equity. However, the most crucial in this currently growing international environment of monitory styled democracy (see Keane, 2009) is the proliferation of ICTs within IP societies. This includes the internet, cell phones, digital cameras and video recorders, satellite phones and uplinks, as well as fax, email, and landline telephones. Whichever is most accessible to the circumstances of a particular community should be acquired as soon as possible for the simple reason that it allows IPs to connect with active citizens, civil society, and international governance. Furthermore, it gives indigenous individuals the capacity to document evidence of injustice and instantly proliferate it which can and will be used against industry or governance by those working to protect the vested interests of indigenous peoples.

Hendy (2005) taught that it is in the interest of IPs to pursue self-representation through cultural engagements such as performance art to make other aware of their existence, culture, history, and ultimately ownership of the land. She argued that if IPs are solely represented by museums, movies, and tourist attractions the impression is that they once existed but are now gone or assimilated into materialist culture. What Hendy (2005) neglects to mention is the importance practicing culture through performance art has for preserving the culture, traditions, and language of IPs.

On the more technical side, Bahree (2008) reports that Ory Okolloh established a useful practice whereby crowds, or in the interest of this article, IPs, can share their voices and evidence as events unfold in real-time. Ushahidi, is a free piece of software allowing the user to create a website whereby content such as pictures, videos, or text can be uploaded by a different user to amass evidence. This technology, and awareness of it, may allow IPs to document in quicker fashion any injustices committed against them so as to seek justice and reparations faster.

Another often overlooked aspect of renewable energy (recalling Rema Village, Ethiopia) is that it does not require extensive capital to install. Solar, wind, water, and

to a lesser extent biothermal or geothermal, are in effect self-contained units. Although technology has not advanced to the point of keeping solar panels at peak performance well into the long-term (meaning that costly renewals of solar cells are needed commensurate with the constant cleaning of the membranes cells are contained in), targeted aid money can provide the electricity necessary and training required to give even the most remote IP communities[5] the capacity to protect themselves in non-violent and accountable ways.

CONCLUSION

What has just been seen involves the argument that sub-surface minerals[6] are the key to empowering indigenous people. Unchallengeable ownership of valuable minerals provides realpolitik in the way that it enables IPs to bargain – or simply say no. It removes the coercive capacity governments and industry use (such as illegitimate legal arguments like *terra nullius*) over IPs and corrects the power imbalance.

This was seen firstly by discussing cases where IPs lost control of their land and mineral rights. Secondly, a comparative utility was established by looking into cases where IPs managed to maintain control over minerals; closely followed by an assessment of positive and negative impacts; finishing with the exposure of a few effective methods – baring the obvious[7] – that IPs can use to protect themselves and gain legal domain over their minerals.

Yet IPs cannot do it alone. They often require the help of others that are knowledgeable through the benefit of actually having the opportunity to pursue an education. Civil society, both local and international, as well as the actions of individuals, can put pressure on governments and multinational organizations to give these legal rights over minerals to IPs. If such is not done, if equity is not provided through realpolitik, then the risk of eroding or losing these unique peoples is increasingly real. The morbid thought of a global homogenized materialist society – in the consumerist sense – where each individual pursues the quest of things for the sake of things is confounding. IPs are an outlet of learning[8] concerning a differing telos or multiple realities of existence. They offer the opportunity to break away from the tyranny of money by operating beyond its structured paradigm; or to increasingly focus on human relationships or the depths of the individual rather than to simply waste a life in the pursuit of wealth which invariably becomes meaningless after death.

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[5] A concern arises when helping remote and 'untouched' IPs: if too much contact is made, the risk of contaminating their cultures increases. Thus before even thinking of providing direct support to empower them, FPIC must be obtained in as harmless a manner as possible. Better yet, methods of uninvolving the few cultures that have not been contaminated by materialist culture would be more appropriate.

[6] And land (should minerals not be present) as in the case of the Xakmok Kasek.

[7] Such as formally appealing to local, regional, or international aid, media, governments, individuals, etc.

[8] As can be seen with the recent publicity surrounding the IPs of the Siraf region in Iran and their cost effective ancient water harvesting technologies, there is the potential to learn valuable knowledge from differing cultures (Tahmasebi, 2009).

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