



# Tulo Centre of Indigenous Economics

Working Paper

## **RENEWING INDIGENOUS ECONOMIES THROUGH CREATIVE DESTRUCTION**

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**“We have to replace the colonial structures and renew our governments and economies by creative destruction. Our economic growth is our best weapon to achieve this.”**

—Chief Commissioner of the  
First Nations Tax Commission (FNTC),  
Manny Jules, 2018

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# INTRODUCTION

For the last 40 years Manny Jules and likeminded First Nation and Indigenous <sup>1</sup> leaders <sup>2</sup> have developed an algorithm to creatively destroy the colonial framework represented by the *Indian Act* and the Department of Indian Affairs <sup>3</sup>. Six key elements of their algorithm are:

1. You can't just demand change as Manny and other communities learned firsthand in the spring of 1975 with the rejection of government funds. First Nations didn't have the institutions for an economy or a government, so by the fall of 1975 they had to retreat from their rejection and accept government funding to support their communities. He and other leaders learned the hard way that sustainable proposals for change must focus on renewing First Nation institutions that provide the necessary legal, fiscal, administrative, infrastructure and property framework to generate economic growth, innovation and public revenues.
2. Successful proposals for a better First Nation institutional framework must be First Nation led. There are two strong rationale for this requirement.
  - (a) First Nations and Indigenous people in the Americas created public institutions that supported their economies and innovation pre-contact (and early contact). It is the accepted responsibility of public institution entrepreneurs like Manny and his supporters to renew these institutions in the contemporary context.
  - (b) Colonial history means there is too much mistrust of any proposal from other governments. First Nations were legislated out of the economy by the Canadian Constitution, the *Indian Act*, Indian Affairs and federally-imposed education systems. Their lands, tax powers and innovation capacity were taken.
3. Legislation provides for an orderly transition to renew First Nation jurisdiction. Federal and where necessary provincial legislation is required to create the space for First Nation public institutions. First Nation legislation is required to occupy the room.
4. First Nation institutions are required to ensure jurisdictions are filled efficiently and effectively for interested First Nations. These institutions provide sample laws, administrative templates and training to reduce the costs of switching from old systems to improved ones.
5. The development of proposed First Nation legislation and institutions needs to follow a systematic process to ensure that they support economic growth through continual innovation. There are six parts to this systematic innovation process developed by Manny Jules and other likeminded First Nation leaders.
  - (a) Seize opportunities for change resulting from the rights and title victories in the courts, constitutional amendment, political will, fiscal pressure and technological, environmental and demographic shifts.
  - (b) Develop comprehensive proposals for legislation and institutions based on (a) research of comparable systems and economically successful institutional innovations and (b) thorough institutional financial and implementation planning.

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1 The terms indigenous and First Nations are used throughout this paper. First Nation is a unique Canadian subset of indigenous people and governments. Even in the Canadian context, First Nation does not include Inuit and Metis people and governments. The work cited in this paper is almost exclusively First Nation, but its application could extent to other indigenous people so there are times where indigenous is the more appropriate term.

2 The development of these ideas involves many people over many years. First and foremost, would be Clarence Jules Sr (Manny's father) who discussed the importance of reducing transaction costs in 1968 and always advocated for innovations that supported economic growth. As he was fond of saying, "you can't fix a flat tire (the Indian Act) by yelling at it" Filling in all the names and ideas that led to the strategy discussed here will be a subject of another paper about the "collision of hunches". A very partial list of the contributors to the ideas here include at least: Rick Jules, Ron Ignace, Don Moses, Clarence Joe, Joe Mathias, Mary Leonard, Bob Manual, Wayne Haimila, Phil Fontaine, Matthew Coon Come, Ovide Mercredi, Howard Grant, Robert Louie, Harold Calla, Deanna Hamilton, Leslie Pinder, John McKinnery, Oscar Latholin, Myrtle Bush, John Taylor, Bud Smith, Satsan and Clarence Louie.

3 The legal name is the Department of Indian Affairs, but it has had many operational name changes including Aboriginal Affairs and most recently it has been split into two departments; Indigenous Services and Crown Indigenous Relations. The Department of Indian Affairs is used in this paper unless it is a reference to a specific operational manifestation of this institution.

- (c) Analyze proposals to ensure they support economic growth through lower transaction costs, better access to capital and increased investor certainty. Further study institutional proposals through service delivery process mapping to identify opportunities to increase efficiency and reduce switching costs to new systems.
  - (d) Draft optional legislation and optional institutional frameworks based on research from first above three steps to transfer jurisdiction in an orderly and cost-effective fashion to interested First Nations.
  - (e) Implement institutional frameworks that efficiently provide standards, templates, and training to transfer fiscal, administrative, legal and economic capacity to interested First Nations.
  - (f) Constantly renew the institutional and legislative frameworks in response to evaluations, disruptions and competition by repeating the above process.
6. Proposed legislative and institutional elements must be optional. This not only respects the right of self-determination but also provides the necessary competition in innovations that fuels creative destruction. This is a three-part process:
- (a) First Nations joining the new framework experience superior economic growth or other improvements compared to First Nations who do not join.
  - (b) The number of First Nations choosing to opt out of the colonial system and join the new system increases.
  - (c) Continual improvement means there are more innovations developed within the First Nation institutional framework to support more economic growth and other improvements and this increases the rate of colonial framework destruction.


If this creative destruction process is successful, the *Indian Act* and the Department of Indian Affairs would disappear. It would be replaced with a legislative and institutional framework that would renew the First Nation innovation economy. When the First Nation institutional framework supports continual innovations, then it will provide a necessary condition for a sustainable First Nation economy. In this paper, this is the definition of an innovation economy.

The remainder of this paper explains the elements of this strategy in more detail.<sup>4</sup> Section 1 discusses the importance of public institutional innovation as pre-requisite for economic growth. Sections 2 and 3 summarize the historical evidence for sustainable indigenous economies supported by indigenous institutions and the destruction of these institutions for First Nations in Canada. Sections 4.1 to 4.4 summarize the First Nation legislation and institutional development and renewal process of Manny Jules and other likeminded leaders. A four-part economic model is used to present their strategy:

- (a) The role of public institutions in converting comparative advantages to competitive ones;
- (b) The First Nation public institution innovation process;
- (c) Renewing a First Nation and Indigenous innovation economy; and
- (d) The creative destruction of the colonial framework.

Sections 5 and 6 apply this framework to two important questions:

- (1) If there is so much pressure for First Nation and Indigenous institutional change, why is it occurring so slowly?
- (2) What further institutional innovations are required to speed creative destruction of the colonial framework?



**“Colonialism destroyed the First Nation institutional framework that supported innovation. Public sector entrepreneurs like Manny Jules and other First Nation leaders are renewing it through creative destruction.”**

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4 This paper benefited from the editorial and research support of Tulo staff and faculty, Norm Lavallee, Sarah Jules, Jason Reeves and Marie Potvin.

# 1. CREATIVE DESTRUCTION AND PUBLIC SECTOR ENTREPRENEURS

The concept and processes of creative destruction has been widely applied by theorists ranging from Marx and Engels to Schumpeter and Friedman. Volumes have been written on this subject and many examples, nuances and proposed algorithms have been identified.<sup>5</sup>

For our purposes, individuals engage in two broad forms of creative destruction. In one form, private sector entrepreneurs can innovate and creatively destroy an existing product, service or process. In the other, public sector entrepreneurs creatively destroy the institutional framework (property rights and legal, fiscal, infrastructure and administrative systems) that supports private sector innovation. Sustainable economic growth requires both types of entrepreneurs.

Colonialism destroyed the First Nation institutional framework that supported innovation. Public sector entrepreneurs like Manny Jules and other First Nation leaders are renewing it through creative destruction. Therefore, in this paper, creative destruction is focused on the process of innovation that replaces one public institution with one that better supports inclusive economic growth.

In the institutional economic growth literature there is not much of a chicken and egg debate about which type of creative destruction comes first. Three seminal texts on this subject – *How the West Grew Rich: The Economic Transformation of the Industrial World* (Rosenberg & Birdzell, 1987), *Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (De Soto, 2003), and *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Acemoglu & Robinson, 2012) – conclude it is the public institutions that are the pre-requisite for economic growth.<sup>6</sup>

The theory of *How the West Grew Rich* is that Western European and American public institutional innovations were superior to those in other areas and this facilitated more private sector innovations and Western wealth. The political, economic, historical and “luck” process that led to these economically successful institutions described in this text has some application to the creative destruction of the colonial *Indian Act* and the Department of Indian Affairs described in this paper.

The *Mystery of Capital* demonstrates how the absence or poor design of one institution (property rights) suppresses private sector entrepreneurial access to capital and innovation. Author Hernando De Soto estimates that this missing public institution contributes to the poverty of over 4 billion people which includes Indigenous groups who have poor or absent property rights systems.

In *Why Nations Fail*, which is the most relevant to post-colonial First Nation and Indigenous innovation systems, the difference between national success and failure is designing post-colonial institutions that support inclusive economic growth (success) versus institutions that extract economic resources for the benefit of those in political power (failure). This research is relevant for at least three reasons. First, it demonstrates how the colonial institutional system created an extractive economic system from Indigenous peoples. Second, it provides insights about designing post-colonial First Nation and Indigenous institutions to support inclusive instead of extractive growth. Third, it provides comparative systems and methods for evaluating First Nation and Indigenous public institutional innovations.

The research of these authors and others has informed and inspired the work of Manny Jules and other First Nation public sector entrepreneurs in designing better institutional frameworks to support economic growth in their communities. With the support of these leaders, a 25-year research agenda into how to renew the First Nation innovation economy was

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5 See Schumpeter, (1962) and Friedman, (1957) and consider that it is implicit in many microeconomic innovation and transaction cost models and macroeconomic algorithms for endogenous growth theory.

6 A fourth book should be mentioned here as well, Deirdre McCloskey's, *Bourgeois Equality: How Ideas not Capital or Institutions Enriched the World* (2016). Her book demonstrates that in addition to institutions that it was only when the pursuit of profit became morally acceptable (in the Adam Smith Moral Sentiments sense) and was promoted in literature and other arts that Western economic growth accelerated. The lessons from this book are (a) Clarence Jules Sr was particularly profound when he would ask his son Manny after every meeting he attended, “do they think like us” and (b) a follow up paper discussing the origin of these indigenous institutional ideas and strategies is necessary if they are to be successfully implemented as part of a sustainable economic growth strategy.

launched. An early finding in this research agenda was that the transaction costs for investment on First Nations lands were at least 4 to 6 times higher than they were off First Nations lands.<sup>7</sup>

Much of the rest of the research agenda investigates practical ways to reduce these transaction costs. It encompasses many studies<sup>8</sup> that have informed the design of the *First Nations Fiscal Management Act* (FMA), has supported curriculum development for 22 original courses at the Tulo Centre of Indigenous Economics<sup>9</sup> and has been cited by the Auditor General and Senate of Canada to support their work.

This research also supported the Tulo Centre of Indigenous Economics textbook, *Building a Competitive First Nation Investment Climate*. In sum, this research represents a unique First Nation case study in the broader work of Acemoglu, Robinson, De Soto, Rosenberg and Birdzell.

First Nations and many other Indigenous nations are emerging from colonialism within nation states, many of which are federalist in nature. First Nations have been described as islands of poverty in a sea of wealth that is the rest of Canada. They have been colonized and made wards of the state. Many First Nation and Indigenous lives have been run by a government department. They have been the victims of an extractive economy. Their institutional framework has been either destroyed or frozen.

During this time, the existing nation states have developed inclusive and innovative economic frameworks. Assimilation efforts to bring First Nations into this system have been rejected and have ultimately failed. Moreover, the courts have supported First Nation rights and title creating a legal imperative to renew First Nation governments. In addition, the fiscal costs of First Nation poverty are high and rising for all governments, creating a fiscal imperative to renew First Nation governments. As one wise observer stated, Canada cannot afford to run the lives of First Nation people much longer.

There is First Nation, provincial, federal and public political support to develop First Nation governments that are self-sustaining and support economic growth.<sup>10</sup> There are many initiatives and programs to support change. However, this begs the question, with so much interest in change, why is it occurring so slowly?

This question is addressed in more detail later, but, in part, it is relatively slow moving because the type of change in question represents both a unique and common challenge. The unique challenge is finding how First Nations peoples and communities effectively move from 150 years of colonial institutions to innovative First Nations institutions that support inclusive economic growth. At the same time, it is a common challenge because it could just as easily be asked (in a slightly different context) of any developing jurisdiction, whether a nation state, region or community. The question is pervasive in developmental economics.



**“A general theory among new institutional economists is that economies that have a private and public institutional framework that facilitates efficient investments to advance and adopt innovations are more successful than economies that don’t.”**

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7 See Fiscal Realities, (1999) at [http://www.fiscalrealities.com/uploads/1/0/7/1/10716604/expanding\\_commercial\\_activity.pdf](http://www.fiscalrealities.com/uploads/1/0/7/1/10716604/expanding_commercial_activity.pdf)

8 See [www.fntc.ca](http://www.fntc.ca), [www.tulo.ca](http://www.tulo.ca), [www.fnii.ca](http://www.fnii.ca), [www.ilti.ca](http://www.ilti.ca) and [www.fiscalrealities.com](http://www.fiscalrealities.com) for summaries of many of these studies.

9 The Tulo Centre of Indigenous Economics is a Canadian charitable organization whose mission is to assist interested First Nations in building legal and administrative frameworks that support markets on their lands. Incorporated on January 31, 2008, the Tulo Centre was established to deliver education programs and conduct research in the areas of First Nation public administration. For more information visit [www.tulo.ca](http://www.tulo.ca).

10 To put this in perspective consider that the Canadian federal government has committed to recognize First Nation rights and title, dismantle the *Indian Act* and Indian Affairs and improve socioeconomic outcomes of Indigenous populations. They have proposed to realize these commitments through a series of previously established or new initiatives including: self-government; modern treaties; treaty land entitlements (TLE) and addition to reserve (ATR) negotiations; proposed recognition legislation; proposed institutional support; promised additional resources for education, infrastructure, housing and other services; and, most recently, a 10-year grant as an element of an interim new fiscal relationship. This does not even consider the numerous provincially-led initiatives and proposals.

## 2. THE PRE AND EARLY CONTACT INDIGENOUS INNOVATION ECONOMY

Before and during early contact First Nations and Indigenous groups had the necessary land, resources and jurisdiction to support their communities and economies. There is abundant historical and archeological evidence that they were able to develop and adopt innovations that increased trade, productivity and wealth. The most successful of these innovations were those that reduced the transaction costs of trade and investment. There is a vast literature to support this premise. Here we present only a few examples of public institution innovations and product, service and math innovations.

### 2.1 PUBLIC INSTITUTION INNOVATIONS

**Norte Chico civilization in modern day Peru** – The Norte Chico or Caral-Supe civilization of north-central Peru is the oldest known civilization in the Americas and represents one of the first instances of modern government in the world. After analyzing their ancient sites for years, researchers determined that the Norte Chico civilization came together for the purpose of trade and that a number of goods and implements were directly traded all the way up to current-day Ecuador and into the highland jungle. This civilization was also recognized for developing valuable scientific knowledge related to agricultural techniques, irrigation through the building of canals and terraces, genetics, textiles, natural medicine, measurement of time, climatic prediction and engineering.<sup>11</sup>

**Mayan infrastructure for trade** – The Mayan people built public infrastructure such as warehouses, trade routes (roads made of stone) and rest houses for goods carriers to help facilitate trade and generate wealth. The scale of Mayan public infrastructure supports theories of centralized government and a taxation (tribute) system.<sup>12</sup>

**Aztec commercial codes** – The Aztec operated an innovative legal and market system centred around the concept of taxation and the utilization of contracts. A group, known as the Pochteca, worked for the Aztec government to regulate the marketplace, collect market taxes from sellers within the market and enforce the Aztec commercial law system. They also worked with inspectors who frequented the markets to ensure product quality and uphold exchange rate standards.<sup>13</sup>

**Oolichan grease trails** – Coastal First Nations in British Columbia (such as the Haisla and Nisga'a Nations) became adept at catching Oolichan fish and extracting a highly diverse and subsequently valuable grease/oil in tradable quantities. Over time, a comprehensive network of trails developed to facilitate trade between coastal and inland First Nations, across Vancouver Island, from Yukon to northern California and east to central Montana and Alberta. The functionality of these trails would not stop there; the trails were also used between 1821–1846 to support the fur trade.<sup>14</sup>

**Mediums of exchange** – There are several examples of Indigenous groups establishing mediums of exchange to facilitate the occurrence of indirect transactions within their economies. Indigenous groups understood the importance of reducing the prevalence of the double coincidence of wants inherent in a barter system, incentivizing specialization and facilitating trade, and consequently reducing transaction costs. Some examples include dentalium shells, made beaver, and blankets.<sup>15</sup>

**Chinook trading language** – After contact, the Pacific Northwest became one of the most linguistically diverse regions in North America which presented communications and trade challenges. The adaptation of the Chinook jargon into a more universal, easier to learn Chinook trading language, enabled greater interaction and commerce among diverse groups of people all the way from present-day Alaska to California.<sup>16</sup>

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11 Mann, C., (2006) & BBC Horizon, (2002).

12 Mann, A., (1973).

13 Andrade, (2004) & Avalos, (1994).

14 Hirsch, (2003).

15 For more information on Indigenous mediums of exchange, see Belanger, (2004); Binus, (2003); Kapoun & Lohrmann, (2006); Stearns, (1869); and Warburton & Scott, (1985).

16 Chinook is the language from which tulo (profit) and taksis (taxes) are drawn.



## 2.2 PRODUCE, SERVICE AND MATH INNOVATIONS

**First Nation specialization** – Many pre-contact Indigenous groups understood the importance of specialization and comparative advantage. There is a significant amount of evidence to suggest Indigenous groups throughout the Americas recognized their comparative advantages and organized their economic systems around these specialties. Where specializations were maintained for a long duration of time, significant capacity was developed to enhance production efficiency and/or quality.<sup>17</sup>

**Agriculture** – Prior to contact, agriculture for sustenance and trade based on the cultivation of maize, peppers and beans existed across the southwestern and southeastern United States as well as the northeast, including what is now New England, New York and southern Ontario and Quebec. Indigenous people developed and employed not only innovative and advantageous sustainable farming techniques through specialization, but also developed effective property rights systems related to their agriculture.

**Concept of zero** – Mesoamerican societies have long been recognized as proficient astrologers and mathematicians. When studying ancient Indigenous calendars, archeologists discovered that Indigenous peoples, such as the Olmec, Maya and Zapotec, used zero much like we do in our base-10 system, as a placeholder. “Tentatively, therefore, archeologists assign the invention of zero to sometime before 32 B.C., centuries ahead of its invention in India.”<sup>18</sup>

The relative success of the pre and early contact Indigenous innovation economy to others existing at that time is perhaps best summarized in this quote from Jared Diamond’s book, *Guns, Germs, and Steel: The Fates of Human Societies*, “[it was as if the] greater part of humanity was in the Americas ... at time of contact.”<sup>19</sup>



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<sup>17</sup> A brief review of resources within the American Museum of Natural History digital research library at <http://digitallibrary.amnh.org/handle/2246/8> and those within the Edward S. Curtis digital library collection at Northwestern University (<http://curtis.library.northwestern.edu/>) reveals specializations related to fisheries, hunting, meat preservation, precious stones, agriculture, materials, baskets and agriculture to name a few.

<sup>18</sup> Mann, C., (2006).

<sup>19</sup> Diamond, (2005).

## 3. THE DESTRUCTION OF THE FIRST NATION INNOVATION ECONOMY

After contact and Confederation, First Nations were shut out of the innovations that built economies for the following 150 years. They lost many comparative land advantages by being placed on reserves whose title is held in trust by the Crown. All their governmental jurisdictions were divided between the provincial and federal governments in the Constitution. Their economic activities were controlled by a centralized bureaucracy that discouraged innovation through the *Indian Act*. They had their revenue raising powers stripped so they couldn't develop and implement innovations. The events summarized in this section represent some of the instances where First Nation institutional development were suppressed from 1830 until 1969.

### 3.1 LOSS OF FIRST NATION TITLE AND JURISDICTION

**The Title Debate (1830s–1840s)** – As Canada was being formed there was a debate about how and who should have the property rights to Indigenous lands. In 1836, Lieutenant Governor Sir Francis Bond Head stated:

*“The greatest kindness we can perform towards these intelligent, simple-minded people is to remove and fortify them as much as possible from all communication with the whites.”<sup>20</sup>*

In 1841, then Governor-General Lord Sydenham (Charles Poulett Thomson), stated,

*“...He [the Indian] occupies valuable land, unprofitably to himself and injurious to the country. He gives infinite trouble to the Government and adds nothing either to the wealth, the industry, or the defense of the Province.”<sup>21</sup>*

**The Gradual Civilization Act (1857)** – This proposed legislation provided for the enfranchisement of First Nation people based on achievement of a “satisfactory” level of civilization.

**The Indian Act (1876)** – A consolidation of various laws concerning Indigenous peoples bringing together the primary goals of federal Indian policy: protection and assimilation. The protective provisions brought forward from previous legislation included the prohibition on the sale of reserve lands except to the Crown; and the protection against taxation and seizure of land and property situated on the reserve.

The assimilation policy was expressed through the election and enfranchisement provisions and transfer of all First Nation government powers to the Superintendent General as defined in the early Indian Act and eventually the Minister of Indian Affairs.

**Reducing Economic Activity (1881)** – The pass and permit system implemented by the Department of Indian Affairs effectively stopped trade, hindered agriculture and diminished other activities that allowed First Nations to be economically independent from the federal government.

**St. Catharines Milling Case (1888)** – The Supreme Court of Canada ruled in the St. Catharines Milling case that First Nation title was vested in the Crown and that although Aboriginal title existed, it could be extinguished at the pleasure of the Crown. This provided the federal and provincial legal rationale for taking First Nation lands and resources.<sup>22</sup>

**Amendment to the Indian Act (1894)** – The amendment allowed the superintendent general to lease reserve lands without surrender or Band approval. In 1918, this power was broadened to allow the superintendent general to lease any reserve lands not under cultivation.

**The White Paper (1969)** – With some similarities to the 1887 *Dawes Act* in the United States, in 1969 the federal government introduced a proposal to eliminate the *Indian Act* by transferring underlying title of Indian lands from the federal government to the provinces and providing fee simple options for First Nation members. It was rejected vigorously by First Nations across Canada.

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<sup>20</sup> Leslie & Macguire, (1978).

<sup>21</sup> Ibid.

<sup>22</sup> St. Catherine's Milling and Lumber Co. v the Queen (1888).

## 3.2 LOSS OF TAX JURISDICTION EVENTS

**Tyendinaga Taxes (1875)** – The Band Council wanted lessees to pay taxes so the Band could provide services and infrastructure. Indian Affairs disallowed Tyendinaga property tax authority and instead instructed the local township to collect the property tax.<sup>23</sup>

**Labour Taxation (1880s)** – Several First Nations in Quebec and Ontario attempted to levy labour taxes to generate revenue to support public services. These were disallowed by the Department of Indian Affairs policy.

**Banning Traditional Revenues (1880s–1890s)** – Beginning in 1881, traditional methods of generating revenues were effectively banned by not allowing First Nation people to leave their reserves or trade outside their communities. In 1884, potlatches were banned. Subsequently, in 1890, sun dances, giveaways, and similar ceremonies were banned.<sup>24</sup>

**Rail Taxes Prohibited (1908)** – Six Nations asked for their share of the rail tax revenues from the lines that traversed their lands, the same as other local governments. The Ontario government and federal government worked together to develop policies to deny this request.

**State of Dependency (1918)** – A 1918 amendment to the *Indian Act* enshrined many of these previous restrictions on First Nation revenue options. The intention of these amendments was clearly evident in the following statement by Calgary MP Thomas Mitchell Tweedie:

*“Well, the Indian may be satisfied and he may not. My personal view with regard to the Indian is that he is a ward of the Government, and being a ward he is bound to accept the treatment given to him.”<sup>25</sup>*

**Outlawing Revenue Generation (1927)** – The *Indian Act* was amended to prevent First Nations from raising revenues to pay for lawyers or pursue land claims and property rights.

The consequences of these efforts were that First Nations had neither the land, nor the resources, nor the jurisdiction and fiscal powers to support innovation. First Nation jurisdictions and administration were replaced by those of the federal and provincial governments. Their remaining lands, resources and people were governed by the Department of Indian Affairs bureaucratic monopoly whose objectives did not include institutional innovation to support economic growth. In sum, it represented a comprehensive destruction of the First Nation innovation economy.

Although this paper focusses on First Nations, a cursory review of the literature suggests similar innovation suppression for Indigenous peoples in the USA, New Zealand and Australia and worse results for Indigenous peoples in the rest of the Americas.



<sup>23</sup> Flanagan, T., LeDressay, A., & Alcantara, C., (2010).

<sup>24</sup> Debates of the House of Commons, (1918).

<sup>25</sup> Ibid.

# 4. A MODEL OF A SUSTAINABLE INNOVATION ECONOMY

A general theory among new institutional economists is that economies that have a private and public institutional framework that facilitates efficient investments to advance and adopt innovations are more successful than economies that don't.<sup>26</sup> The model advanced by Manny Jules and likeminded First Nation public sector entrepreneurs is that building an Indigenous institutional framework that continually improves and supports Indigenous (and non-Indigenous) private sector innovators will, in his words, “unleash the entrepreneurial imagination of our people and creatively destroy colonialism.”

The model proposed by these First Nation leaders is represented in four parts below.

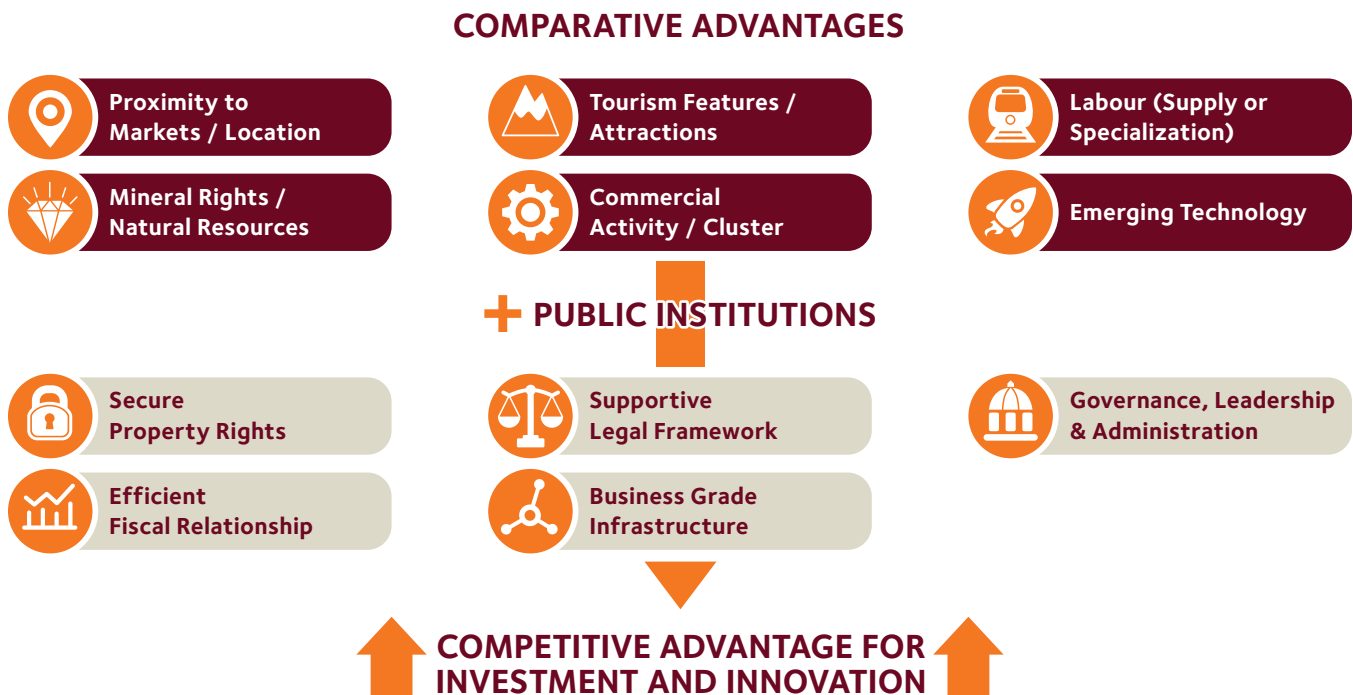
- (a) How are comparative advantages converted to competitive ones?
- (b) What is an efficient process for public sector innovation?
- (c) How do you build a sustainable innovation economy?
- (d) How can an Indigenous innovation economy creatively destroy the colonial framework?

The following sections describe each of these elements in more detail.

## 4.1 THE COMPETITIVE INVESTMENT CLIMATE

The graphic below illustrates the theoretical process for converting comparative advantages into competitive advantages.

FIGURE 1 – CONVERTING COMPARATIVE ADVANTAGES TO COMPETITIVE ONES



26 See texts such as (i) Daron Acemoglu, James A. Robinson. (2012). Why Nations Fail: The Origins of Power, Prosperity, and Poverty. (ii) Hernando De Soto. (2000). The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else. (iii) Nathan Rosenberg and L. E. Birdzell. (2007). How the West Grew Rich: The Economic Transformation of the Industrial World. (iv) Terry L. Anderson. (2016). Unlocking the Wealth of Indian Nations.

**Comparative Advantages** – The upper portion of the graphic represents a selection of potential comparative advantages for a jurisdictional area. These include advantages in location related to geography, geology, access to resources, access to labour (over supply or specialized skills), tourism, transportation, business clusters, research, education or an emerging technology. Some jurisdictions have multiple sources of these comparative advantages, others have few, and still others have none.<sup>27</sup>

Entrepreneurs generate a seemingly infinite number of innovations associated with these comparative advantages. The process by which these private sector type innovations emerge for comparative advantages is not considered here but is well covered in the literature.<sup>28</sup>

**Institutional Elements Developed by Public Sector Entrepreneurs** – The next part of the graphic represents the public sector institutional elements responsible for freeing the potential of these comparative advantage innovations. Innovators and entrepreneurs need certainty, infrastructure, public services and access to capital to invest. The work of public sector entrepreneurs is to create this nexus of institutions that provide an inclusive investment climate for comparative advantage innovation. When they are successful, comparative advantages are converted into competitive ones.

Based on our research to date,<sup>29</sup> for First Nations these institutions include at least property rights; a legal framework that supports investor certainty and lower transaction costs; business grade water, road, environmental, energy and communications infrastructure; quality public goods and services at a fair price of taxation;<sup>30</sup> and investment and innovation supportive systems of governance, leadership and administration. Almost all regions, states and nations have comparative advantages, but the absence or poor design of these institutional elements is a significant factor as to why these don't become competitive advantages.

### SOME OBSERVATIONS TO SUPPORT THE MODEL

The importance of having supportive public frameworks for markets is evident in the Westbank First Nation example. They have a clear location comparative advantage between the local governments of Kelowna and West Kelowna overlooking Okanagan Lake.

In the 1980s, they had some mainly lower valued residential lessees on their lands and a few commercial developments. Beginning in 1991 Westbank implemented First Nation property taxation following the necessary changes to the Indian Act and provincial legislation between 1988 and 1991. They utilized those revenues to improve local services and infrastructure and to develop the legal framework to convert their comparative advantage to a competitive one. They negotiated a self-government agreement with the federal government between 1991 and 2005 to obtain the necessary jurisdictions for this purpose.

Upon completion of their agreement they immediately began to create a legal and administrative framework that reduced transaction costs to potential investors. Between 2007 and 2009 their commercial investment growth rates were 145%, 34% and 62%. Their annualized commercial investment growth rates for the five-year period after self-government implementation were 4 times higher than the provincial average over the same time-period. If you were somehow able to have an acre of highway frontage Westbank land in 1991, its value would have increased 100 times in nominal terms by 2014. The most common cited reason for this growth is their improved investment climate.

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27 This absence of comparative advantages is significant for First Nations and other Indigenous groups as the process of colonialization often removed them from the comparative advantages of their territories and placed them in locations with few or no comparative advantages. These are often the First Nations communities that experience the largest economic disparities. A proposal to alleviate this is presented in a later section of this paper.

28 See texts such as (i) Linda Tagliaferro. (2003). Thomas Edison – Inventor of the Age of Electricity. (ii) Michael B. Becraft. (2014). Bill Gates – A Biography. (iii) Walter Isaacson. (2014). The Innovators: How a Group of Hackers, Geniuses, and Geeks Created the Digital Revolution. (iv) Marcus Oppitz and Peter Tomsu. (2018). Inventing the Cloud Century – How Cloudiness Keeps Changing Our Life, Economy and Technology. (v) W. Bernard Carlson. (2013). Tesla – Inventor of the Electric Age. Princeton University Press.

29 See [www.fntc.ca](http://www.fntc.ca), [www.tulo.ca](http://www.tulo.ca), [www.fnii.ca](http://www.fnii.ca), [www.ilti.ca](http://www.ilti.ca) and [www.fiscalrealities.com](http://www.fiscalrealities.com) for some applicable research and publications.

30 This is summarized in the graphic as an efficient fiscal relationship, which itself is the answer to four broad questions that effectively define the public sphere of that government: (1) Which government has which service responsibility? (2) What is the service population? (3) Which government has which revenue source to finance and innovate its service responsibility? (4) How are national service standards maintained through transfers and other mechanisms?

Westbank is not alone among First Nations. There are a few other examples of First Nations communities who have seen significant increases in transactions, property values and revenues by establishing improvements to their institutional framework that convert their comparative advantage to a competitive edge.<sup>31</sup> However, there are many more examples of First Nations who have not.<sup>32</sup>

The importance of these public sector elements is hardly surprising as they are supported by similar comparisons between North and South Korea and border towns between the United States and Mexico. They are also supported by a simple comparison of comparative advantages in resource endowments between a few countries.

Consider that both Russia and Nigeria are well endowed with natural resources; indeed, Russia is also well endowed with technology and human resources. However, neither country provides a particularly high standard of living because they have been unable to offer the supportive public sector inputs that are also required.

By contrast, consider countries such as Singapore and Japan that have achieved very high standards of living with relatively few natural resources. Japan and Singapore have both generated higher standards of living despite being natural resource poor because of their public institutions that lowered the transaction costs for investment in their human and other innovation comparative advantages.



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31 See for example Squamish, Whitecap Dakota, Tzeachten and Tk'emlups. For a spectacular example, recently the FNTC reported that Squiala has had an 18,000% increase in tax revenues in the last 10 years resulting from a successful investment climate ([www.fntc.ca](http://www.fntc.ca)).

32 Instead of listing First Nation without competitive investment climates consider that comparative evaluations examining land title registry systems and infrastructure development systems for First Nations and other Canadians show that First Nations suffer from the worst systems in Canada. See (i) the Tulo open textbook on [www.tulo.ca](http://www.tulo.ca): Building a Competitive First Nation Investment Climate. (2014); (ii) Tom Flanagan, Christopher Alcantara, and Andre Le Dressay. (2010). Beyond the Indian Act – Restoring Aboriginal Property Rights. (iii) Urban Systems Ltd. (2017). Comparative Analysis of Infrastructure Development Processes – First Nations and Local Governments. (iv) The Business Plan and Background Papers on the First Nation Infrastructure Institution's website ([www.fnii.ca](http://www.fnii.ca)).

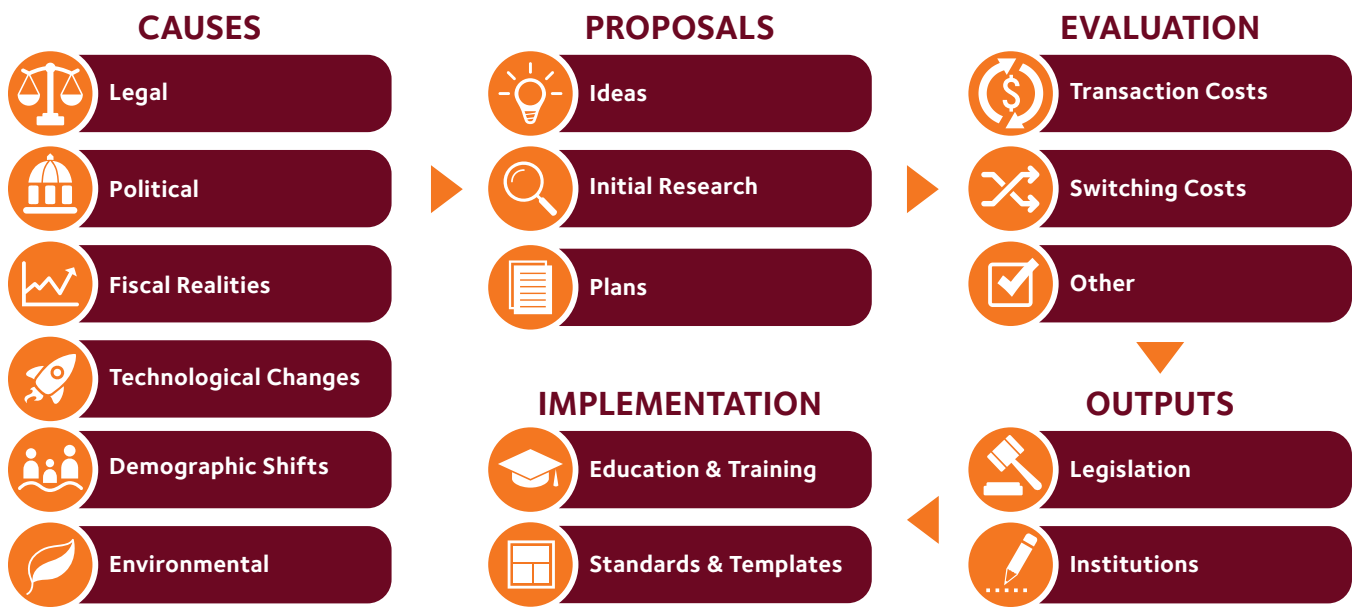
## 4.2 THE INSTITUTIONAL INNOVATION PROCESS

Building and renewing public institutions in a manner that supports inclusive innovation and investment is not only a challenge for First Nations but for many other jurisdictions. It is a primary question in development economics – how to create the best institutional framework for growth or, more poignantly, how to advance from a failed state to a successful one.

The innovation dynamic that has emerged for First Nation institutional development is represented below in five parts with an additional implicit sixth part that this dynamic is continuous.

The five components of this dynamic were identified in the development of two successful First Nation institutional innovations that will be described later. One way of characterizing this process is an efficient public institution innovation process that proceeds from causes to proposals to systematic evaluation to outputs and implementation.

FIGURE 2 – EFFICIENT PUBLIC INSTITUTION INNOVATION PROCESS



Beginning on the left are the common causes of public institutional innovation: technological changes, demographic shifts, legal decisions, politics, environmental factors and fiscal realities. The creation of an innovation can be caused by one, some or all of these. These disruptions start changes, but do not necessarily lead to effective innovations.

The second box in the efficient institutional develop dynamic is the development of proposals to improve the institutional framework. These generally have three elements:

- (e) An idea that can come from anywhere but is best described by Steven Johnson as a “collision of hunches.”<sup>33</sup>
- (f) Preliminary research about that idea that is usually based on comparative system analysis.
- (g) A series of integrated plans associated with the idea which include at least the initial rationale, and design and strategies related to implementation, labour and financing.

33 Watch *Where Good Ideas Come From* by Steven Johnson on Riverhead Books’ YouTube channel (2010).

The systematic evaluation of these proposals is the third element in the efficient public institutional innovation process. This involves more detailed analysis of the proposal through system and process mapping to identify opportunities for efficiencies and innovations. Two economic questions are usually asked along each part of the system map to complete the evaluation:

1. Does the proposed institutional innovation process lead to lower investment and innovation transaction costs?
2. Does the implementation plan for the proposed institutional innovation process have low switching costs?<sup>34</sup>

Efficiency is usually implicit in lower switching costs. There are other elements of the systematic evaluation; but, these two have been the most important for the Indigenous institutional innovations discussed here.

The fourth element in institutional innovation are the tools by which proposed changes are initially implemented: legislation and institutions. These are the products of public institution innovations. This can be a complicated process that can take years owing to legislative timelines and political priorities. There are many innovations and efficiencies to improve the legislative and institutional development process; so many it could be a topic for a subsequent paper.<sup>35</sup>

The final element of the public institutional innovation dynamic are the keys to lower switching costs: standards and templates, and education and training. This is how legal, administrative, technological and fiscal capacity is efficiently generated to effectively implement the legislative and institutional change in a sustainable way.

The implicit sixth part of this process is that the institutional framework undergoes continual change and improvement. Public sector entrepreneurs are constantly responding to disruptions and looking for opportunities to further reduce transaction and switching costs.

### **SOME OBSERVATIONS TO SUPPORT THE INNOVATION MODEL**

In 1988, the original First Nation-led change to the *Indian Act* was passed to enable First Nation property tax authority. Almost immediately after this amendment was passed, participating First Nations realized that, in addition to property taxes, they were missing several other fiscal powers that other governments use to finance local services and infrastructure. This includes at least service taxation, business activity taxes, development charges and taxes, user fees and access to long-term debenture financing.

The absence of these service and infrastructure financing powers meant First Nations were caught in the development trap. They needed business grade infrastructure and other institutional elements discussed earlier to attract investment; but, without development they couldn't generate the revenues necessary to establish a better investment climate.

A common method to break the trap is with longer term, lower cost infrastructure financing loans. The borrowing threshold for most First Nations was too high in the *Indian Act* framework because they could only access shorter term, high interest loans from financial institutions.

After years of research and discussion, a First Nation led proposal emerged to establish the *First Nations Fiscal Management Act* (FMA) in 1998. The purpose of the FMA was to expand First Nation fiscal powers in an orderly fashion, improve financial management systems and raise the credit rating to provide access to debenture financing. Stated differently, two FMA purposes were lower transaction costs to investors through increased taxation and local services

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34 These metrics for successful innovation are drawn from *Information Rules; A Strategic Guide to the Network Economy* by Shapiro and Varian (1999). Lower transaction and switching costs have separated many successful recent information related innovations from unsuccessful ones. Hal Varian has worked as the Chief Economist at Google since 2002.

35 Here are two examples of innovations that proved effective in the legislative and institutional development process. First, communications to parliamentarians, First Nations and the public were aided by evidence demonstrating the legislative initiatives would lower transaction costs and the institutions would lower switching costs. For example, a slogan that emerged for the FMA was 5 times larger and 10 times harder because private sector investment was 5 times larger than public investment, but it was 10 times harder to get private investment on First Nation lands. Second, the loss aversion finding from behavioral economics proved to be an effective communications approach to supportive First Nations and parliamentarians in support of the legislative process. First Nations wanted to avoid losing more jurisdiction to other governments and parliamentarians wanted to avoid losing credit in an election.



certainty and lower transaction costs for long term First Nation infrastructure financing. The legislation created three institutions: the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB) and the First Nations Finance Authority (FNFA) to help interested First Nations implement the necessary legal, fiscal and administrative systems.

The FMA was passed in 2005<sup>36</sup> and the institutions began operations in 2007. The Tulo Centre of Indigenous Economics was established in 2008 to provide accredited training and capacity development to participating First Nations. The theory behind the FMA and its institutions was that the probability of escaping the development trap increases when First Nations are equipped with more fiscal powers, better infrastructure and economic development, taxation and financial administration capacity.

Over the first three or four years, the FNTC, FMB and FNFA worked on several institutional innovations to reduce switching costs to the new framework. The FMB developed a sample financial administration law and a streamlined process to certify the financial capacity of First Nations interested in borrowing from the FNFA. This would provide the FNFA with some early adopters who had achieved a certified level of financial management for potential lenders. This was especially important to the FNFA's credit rating for its initial debenture offer.

The FNTC developed 19 standards and 33 sample laws to help more First Nations efficiently and cost effectively implement a growing number of fiscal powers. It developed a tax administration software system to help communities track and collect taxes. The FNTC operates the First Nations Gazette, a law repository that provides public access to all First Nation tax and other laws. The FNTC developed a model tax-based service agreement that helped more than 20 First Nation and local governments improve service and infrastructure certainty for members and other investors. The Tulo Centre began offering an 8-course accredited First Nation tax administrator's program and an 8-course accredited First Nation applied economics program to help develop First Nation administrative capacity.

The results from this effort to reduce transaction costs for developments on First Nation lands, improve access to infrastructure financing and implement effective fiscal governance systems are impressive. Investment on participating First Nation lands has increased by over \$1 billion. The FNFA received an investment grade credit rating (single A) for its initial debenture offering in 2014. The FNFA developed an innovative revenue intercept clause to provide greater certainty to lenders in 2015. It issued a \$90 million debenture on behalf of 20 First Nations in 2015. The FMB certified the initial First Nations and has certified almost 100 more First Nations since then. The FNTC has helped First Nations develop and pass over 1,000 tax and expenditure laws. Over 200 students have attended the courses offered by the Tulo Centre of Indigenous Economics.

Since 2008, over 250 First Nations have joined or applied to join the FMA framework. There is significant growth in demand for financial management services from the FMB and fiscal power services from the FNTC. The FNFA has issued over \$600 million in debentures. The last FNFA issue in September 2018, sold in 20 minutes and was 100% over subscribed. The FNFA credit rating was recently increased to AA.



**“The Tulo Centre of Indigenous Economics is quickly becoming a focal point in the innovation process. It is conducting original research relating to innovations.”**

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36 The original legislation included a First Nation Statistical Institute (FNSI) and was called the *First Nations Fiscal and Statistical Management Act*.

The FMA is the most successful First Nation led institutional innovation in Canadian history. The FMA institutions have recently partnered with the Lands Advisory Board (LAB) and LAB Research Centre,<sup>37</sup> another successful Indigenous led institutional innovation to advance proposals to further expand the First Nation institutional framework.

Together, these two initiatives represent almost 300 First Nations or almost half of all First Nations in Canada. As is discussed in the next section, there is substantial public and First Nation support to expand the First Nation institutional framework significantly. Their success so far can be contributed to at least six factors.<sup>38</sup>

1. They are indigenous led.
2. They are optional.
3. They have delivered increased First Nation economic growth through lower transaction costs.
4. They have helped interested First Nations convert their comparative location advantages to competitive ones.
5. They have promoted inclusive economic growth through improvements in opportunities, services and infrastructure.
6. They have developed innovations to facilitate cost effective and efficient adoption of the new systems by interested First Nation (low switching costs).



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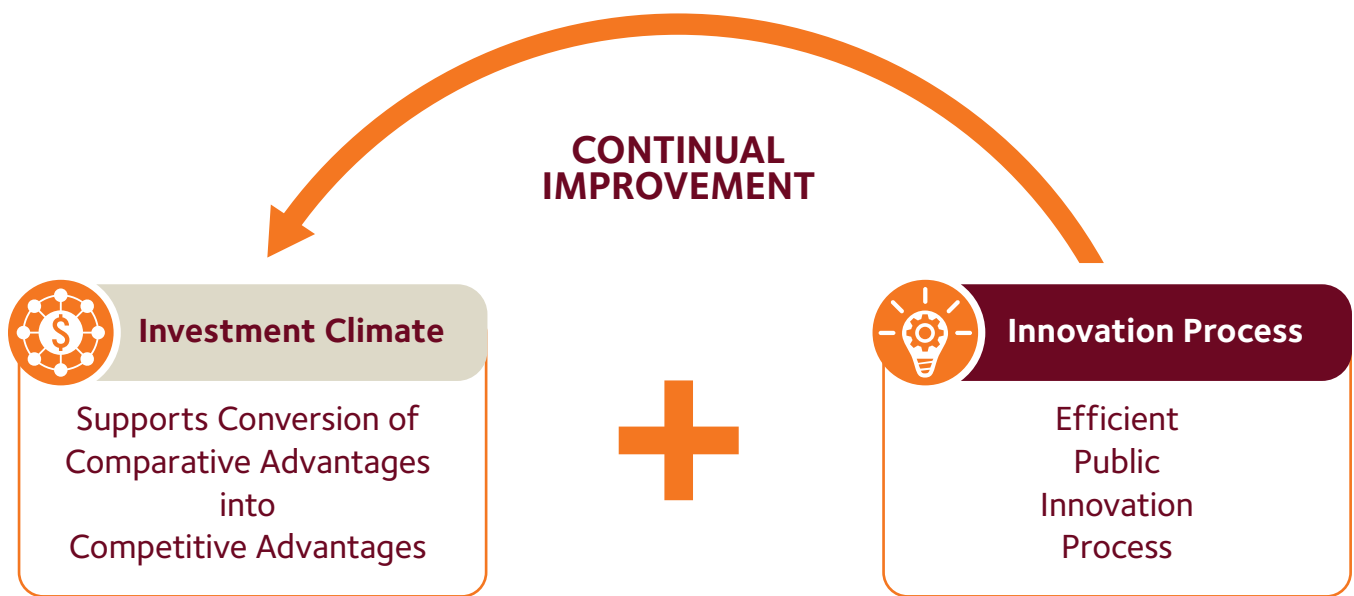
37 Under the Framework Agreement on First Nation Land Management, signatory First Nations established a Lands Advisory Board to assist them in implementing land governance over their reserve lands and resources. The First Nations LAB Resource Centre (LABRC) is the service delivery organization that fulfills the LAB's technical and administrative responsibilities. The FNLMA helps interested First Nations implement their land management jurisdiction and replace INAC. This has been shown to significantly lower land leasing and related transaction costs for participating First Nations. The Tulo Centre online textbook, *Building a Competitive First Nation Investment Climate* (2014), is intended to provide a guide to interested First Nations on how to utilize the FNLMA and FMA frameworks to improve the probability for economic growth success.

38 These factors were identified in a Tulo study of 23 First Nation and federal proposed innovations since 1993.

### 4.3 THE SUSTAINABLE INNOVATION ECONOMY

The graphic below combines the competitive investment climate and public institutional innovation process into the sustainable innovation economy. It is based on a simple premise that is evident in many institutional comparative analysis texts. Comparative advantages and private sector innovations do not explain economic disparity. It is the quality of the institutional frameworks that support these advantages and innovations and facilitate efficient investment that determines economic success.

FIGURE 3 – SUSTAINABLE INNOVATION ECONOMY



This is illustrated in two parts. First, is the effective and efficient institutional framework to convert comparative advantages to competitive advantages. Second, is the public institutional innovation system that constantly improves this framework and preserves competitive advantages in response to disruptions. This is the sustainable innovation economy that Indigenous public sector entrepreneurs hope to build and constantly improve.<sup>39</sup>

39 This innovation framework and economy could have application beyond First Nations. Consider that many Western countries are facing unsustainable fiscal pressures associated with an aging population, technological change from algorithm supported big data analysis and political pressure from populist proposals. This could stimulate federal and provincial/state public institutional innovations related to developing more responsive, transparent smaller governments financed with less tax revenues. Jurisdictions that design and implement innovations for more efficient and responsive government would achieve a competitive advantage over ones that didn't. A similar call for more bold institutional innovation in support to renew the liberal principles of free trade, free thought, free markets and limited government was the subject of a recent essay in the Economist (September 12, 2018).

## SOME OBSERVATIONS TO SUPPORT THE SUSTAINABLE INNOVATION ECONOMY MODEL

The hypothesis of Manny Jules and similarly minded leaders is that First Nations have been shut out from institutional innovations for so long that they never evolved the basic framework to support comparative advantage innovations. In most circumstances the work of these public sector entrepreneurs is difficult to measure;<sup>40</sup> but, for First Nations, historical comparisons make the assessment straightforward. The fourth oldest piece of legislation in Canada is the *Indian Act*. It represents a public institutional framework from 1876. There have been numerous institutional innovations by provincial and federal governments since then that have not occurred for First Nations.<sup>41</sup>

The lack of Indigenous public institution innovation is evident in several evaluations of the current First Nation public framework. Two studies referenced earlier compared the current infrastructure system and land registry system to those of other jurisdictions in Canada. The result of this comparative analysis was that the First Nation system of infrastructure was the slowest, most expensive and least effective in Canada. The Indian Land Registry was the slowest and least reliable land registry in Canada.

Similar studies conducted by the Auditor General, Senate and others have found that First Nation public services developed by the Department of Indian Affairs are almost always the worst in Canada based on efficiency, cost and effectiveness. These studies have concluded this about housing, social services, health, education and many other public services.<sup>42</sup>

Many of the service programs designed and administered by the federal government for First Nation communities are parallel to provincial service responsibilities including health, education, social services, infrastructure, land registration and economic and environmental infrastructure. During the last 150 years, provincial governments have introduced several innovations to these services. The successful ones (effective and efficient) are often copied by other provincial governments. Public institution competition within federations provides an incentive for innovation and encourages the development of effective innovation and evaluation processes.

The hypothesis in this paper is that the provincial innovation systems for their services and institutions are superior to the one used by the federal government for First Nation services and institutions. The results of this poor federal innovation system for First Nations are reflected in the lowest service and infrastructure quality and worst outcomes. A systematic comparative analysis of federal and provincial innovation systems would be required to confirm this hypothesis. Such a study could also be useful for testing the other hypothesis in this section that the First Nation public institutional innovation process presented here is superior to the current federal innovation process for First Nation services and institutions. The results of this proposed study could confirm our assertion that the best way to renew the First Nation innovation economy is to renew the First Nation public institution innovation system.

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40 The emerging literature that provides times series measurements on competitiveness, costs of investment and economic and social indices between national and sub-national governments provides a good proxy for these innovations. A comparative study including First Nation and Indigenous governments would be an invaluable addition to the literature.

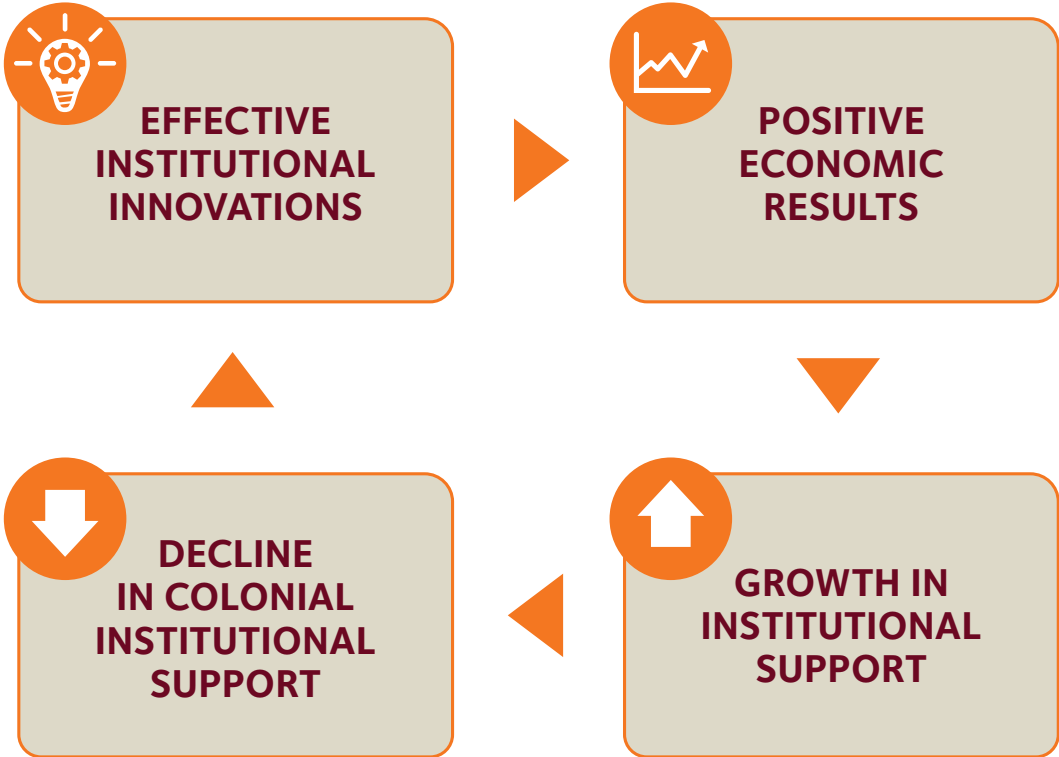
41 To cite one example, the Land Title legislation in provinces is often close to 500 clauses with numerous sub-clauses and is integrated with over 50 other pieces of legislation to create property right certainty, access to capital and transaction efficiency. In contrast, there is a single section in the *Indian Act* – a mere 40 words – to create the Indian Land Registry System (ILRS) and virtually no other legislation is associated with the ILRS.

42 See the following reports: (i) 2016 Fall Reports of the Auditor General of Canada; Report 6 – First Nations Specific Claims. (ii) 2013 Fall Report of the Auditor General of Canada; Chapter 1 – Follow-up Audit on Internal Controls Over Financial Reporting. (iii) 2011 June Status Report of the Auditor General of Canada; Chapter 4 – Programs for First Nations on Reserves. (iv) 2011 June Status Report of the Auditor General of Canada; Chapter 1 – Financial Management and Control and Risk Management. (v) 2009 Fall Report of the Auditor General of Canada; Chapter 6 – Land Management and Environmental Protection on Reserves. (vi) 2006 May Status Report of the Auditor General of Canada; Chapter 5 – Management of Programs for First Nations. (vii) 2005 September Report of the Commissioner of the Environment and Sustainable Development; Chapter 5 – Drinking Water in First Nations Communities. (viii) 2005 April Report of the Auditor General of Canada; A Message from the Auditor General of Canada. (ix) 2004 November Report of the Auditor General of Canada; Chapter 5 – Education Program and Post-Secondary Student Support. (x) 2003 November Report of the Auditor General of Canada; Chapter 9 – Economic Development of First Nations Communities: Institutional Arrangements. (xi) 2003 April Report of the Auditor General of Canada; Chapter 6 – Federal Government Support to First Nations – Housing On Reserve.

### 4.4 COLONIAL CREATIVE DESTRUCTION

At the beginning of this paper, we set out to explain what Manny Jules meant when he said, “economics is the weapon to achieve colonial creative destruction.” The illustration below brings all the previous elements together to demonstrate how an effective Indigenous institutional innovation process generates creative destruction.

FIGURE 4 – CREATIVE DESTRUCTION



First, the process begins with the first box (top left) which represents effective Indigenous institutional innovations, which means innovations with lower transaction costs and low switching costs. This should generate increased investment and positive economic results for First Nations using the institutional innovations, as is reflected in the second box (top right). This should generate greater participation by First Nations in the institutional innovations (bottom right). This increased participation will come at the expense of the colonial framework (bottom left). Continual, effective Indigenous institutional innovations will eventually replace the colonial system, moving back up to the first box at the top left.

## SOME OBSERVATIONS TO SUPPORT COLONIAL CREATIVE DESTRUCTION

The FMA and *First Nations Land Management Act* (FNLMA) are part of a growing number of First Nation public sector innovations to support economic growth. They have helped some First Nations close the socio-economic gaps between their members and other Canadians. Accelerating this catch-up depends on continual institutional innovations and expanding their application and utility to more First Nations.

In May 2018, representatives from 150 FMA and FNLMA First Nations met in Richmond, B.C. to discuss their past innovations and demonstrate their support for a proposal that would significantly expand their institutional framework. The proposal included expanded fiscal powers (cannabis, resources, sales and tobacco taxes); new institutions for infrastructure, statistics and a land registry; expanded mandates for the current institutions to advance more tax systems, financing and land, environmental and financial management; and a new fiscal relationship to create a direct relationship between First Nation fiscal powers and expenditure and service responsibilities.<sup>43</sup> It is no coincidence that these proposals fill many of the public institution gaps identified in the innovation economy model presented earlier.

The proposals were enthusiastically supported by participating First Nations. The participants have formed a working group to advance them.<sup>44</sup>

Other governments have begun to support these proposals as well. Recently, the federal government expressed support for expanding the FMA and FNLMA, increasing First Nation fiscal powers, creating an infrastructure institution and working towards an improved fiscal relationship. Some provincial governments have also expressed interest and support for these proposals.

This creates a further opportunity for First Nation institutional innovation. It will be necessary to design and develop these new institutions and jurisdictions, so they reduce transaction costs, promote inclusive economic growth and facilitate low switching costs to new legal, administration and fiscal frameworks.

These innovations will likely come from similar sources as previous ones. First, they will be advanced by First Nation public sector entrepreneurs. Second, they will draw on First Nation and First Nation institutional experience and existing innovation systems. Third, they will rely on systematic research and evaluations to ensure effectiveness and efficiency. Fourth, they will develop samples, templates and trained administrators to lower innovation switching costs.

The Tulo Centre of Indigenous Economics is quickly becoming a focal point in the innovation process. It is conducting original research relating to innovations. It has presented numerous workshops as forums for discussing innovations. It has formed a partnership called the Alliance for Renewing Indigenous Economies, with the Ngāi Tahu in New Zealand, and potential US tribal membership with support from the Hoover Institute, FNTC and FMB. This will provide more capacity for research, evaluation, training, curriculum and more institutional innovations to support indigenous jurisdictions for renewing economic growth.

Taken together, these elements create the foundation for sustainable First Nation and Indigenous economies supported by continual public institutional innovation. The next two sections propose ways to accelerate colonial creative destruction.

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<sup>43</sup> For more information on the proposals and the conference, please visit [www.fnleadingtheway.com](http://www.fnleadingtheway.com) and [www.fntc.ca/meetingsummary2018](http://www.fntc.ca/meetingsummary2018).

<sup>44</sup> It is noteworthy that this working group includes both First Nation political and institutional organizations. Among the potential institutional participants are the First Nations Health Authority, Aboriginal Financial Officers and First Nations public service organization. Their participation could significantly expand the capacity for more institutional innovations and reduce the switching costs to implement these innovations.

## 5. AN ALTERNATIVE EXPLANATION FOR THE SLOW PAGE OF PROGRESS

First Nation leaders have been working since Confederation to restore their land base, jurisdiction, tax powers and innovation economies. Efforts through the courts, Parliament and the federal bureaucracy were largely unsuccessful from Confederation until about 1972. Beginning in the early 70s there have been far more victories than losses in the courts to advance Indigenous rights, title and jurisdiction. In 1997, the Delgamuukw decision confirmed the concept of Aboriginal title and in 2014 the Tsilhqot'in decision confirmed it for a defined area. There have been many other victories related to lands, taxation, resources, hunting, fishing and other rights and jurisdictions.



There was a constitutional change to recognize inherent Aboriginal rights in 1982. In 2010, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as an aspirational document. And in May 2016, Canada officially adopted UNDRIP and committed to implement the declaration in accordance with the Canadian Constitution. There have been numerous commissions, enquires, reports and studies that have concluded that First Nation government should be implemented to improve First Nation socio-economic outcomes. There are many other studies that show that the rising fiscal costs of First Nation poverty coupled with First Nation and non-First Nation demographics are fiscally unsustainable, especially for the Canadian prairie provinces.

First Nation leaders almost all publicly support change. The federal and many provincial governments support change. Virtually no one argues in public to maintain the *Indian Act* and the Department of Indigenous Services. With so much pressure for change, why is it so slow to come to fruition?

There is a long answer and a short answer to this question.

The long answer is that change is hard. There is a long history of mistrust to overcome. Implementing First Nation jurisdiction and expanding their lands require cooperation and support from federal and provincial governments. There are First Nation legal, administrative, fiscal and economic capacity constraints.

Comprehensive agreements to resolve claims of title and jurisdiction are costly and time consuming to negotiate. Early adopters of these agreements have delivered mixed economic results. It is not clear that emerging public institutional frameworks from these agreements have lowered transaction and switching costs.


Bureaucracies are subject to public choice outcomes that increase their size, reduce their efficiency and make them resistant to change.<sup>45</sup> Not surprisingly, bureaucratic proposed solutions are often a series of uncoordinated stove pipes with high transaction costs.

Looking at these explanations for the slow pace of change can be discouraging. The emerging First Nation innovation system discussed here, however, provides some hope. From our perspective, the short answer for the slow pace of change is insufficient effort related to First Nation public institutional innovation.

More effort means more thorough and well-designed institutional proposals that lower transaction and switching costs. These must be supported with systematic research, improved data and evaluations. There needs to be a greater legislative foundation to transfer jurisdiction and fiscal powers to interested First Nations in an orderly fashion. There needs to be more First Nation institutions, standards, templates and training to support First Nations who want to implement these changes.

Fortunately, the elements to expand the First Nation innovation framework and speed progress are in place or evolving quickly. The FMA provides a template for legislative design. The FMA institutions provide experience, expertise and models for future institutions. The Tulo Centre provides research, training and forums to advance specific innovations that implement institutionally supported jurisdictions. The emerging Alliance for Renewing Indigenous Economics further expands research, evaluation and innovation, institution and legislative development capacity.

As was discussed earlier, a proposal to expand the First Nation institutional innovation framework by expanding current FMA and FNLMA institutions and the Tulo Centre, developing a new infrastructure and statistics institute and expanding First Nation fiscal, land and finance powers was well received by 150 First Nations. It has been well received by other governments. The necessary capacity development would be supported by the Tulo Centre. When implemented this expanded innovation framework should speed the pace of progress. In combination with the proposal in the next section, colonial creative destruction should accelerate.



**“The model advanced by Manny Jules and likeminded First Nation public sector entrepreneurs is that building an Indigenous institutional framework that continually improves and supports Indigenous (and non-Indigenous) private sector innovators will unleash the entrepreneurial imagination of our people and creatively destroy colonialism.”**

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45 This is public choice in the Buchanan and Tullock (1962) sense.



## 6. ACCELERATING THE S CURVE TO COLONIAL CREATIVE DESTRUCTION

Successful technological innovation adoption theoretically follows an S curve shape. It is characterized by a few early adapters and slower early growth. Then there is a period of rapid growth (exponential in nature) and finally the limits of growth set in a more logarithmic form.

The First Nation innovation framework could follow a similar path but to effectively realize complete colonial destruction it must overcome its principal limit to growth; some First Nations do not have comparative advantages. These are First Nations who are located on relatively isolated reserves away from markets, resources, technology or other opportunities. The main economic opportunities for these First Nations are advancing or settling claims, rights or title cases, negotiating agreements and utilizing rights and title arguments to generate fiscal and economic benefits from resource and other commercial development in their traditional territories.

A successful innovation for addressing this requirement for more comparative advantages has emerged that if combined with the institutional framework innovations could address this limitation to First Nation economic growth. In the 1990s, First Nations in the provinces of Saskatchewan and Manitoba developed and passed federal treaty land entitlement (TLE) framework legislation to resolve outstanding claims related to the amount of lands First Nations should have received at the time of treaty settlement. The legislation was developed with the support and agreement of Saskatchewan (1992) and Manitoba (1997). This legislation provided impacted First Nations with resources and a legislative process to add lands to their jurisdiction. Many participating First Nations chose to add lands with comparative advantages to generate economic growth.

However, the process of adding lands has proven to be slow for several reasons, two of which are of interest here.

**Missing Frameworks and Lack of Capacity** – Many of these participating First Nations chose lands in or near urban areas and they didn't have the administrative, fiscal and legal frameworks in place to support efficient land use planning, management and tax-based service agreements. This led to protracted negotiations and some animosity with impacted local governments.

**Fiscal Ping-Pong** – The federal and provincial governments view First Nation members as balls in a game of fiscal ping pong. Provincial governments support TLEs because it could move the fiscal costs of First Nation poverty to federal governments if there is residential development on TLE lands. The federal government has an incentive to slow TLEs to reduce its liabilities. This reflects a poorly specified fiscal relationship with perverse incentives that could be addressed by better coordination of fiscal powers between First Nation, provincial and federal governments.

Despite these two constraints and numerous reports showing that TLEs take too long and are too expensive to establish, a recent study demonstrates that the economic results have been impressive. In 2014 and 2015 the National Indigenous Economic Development Board (NIEDB) undertook a study comparing the economic benefits generated from comparative advantage lands acquired by TLE First Nations with those generated from existing comparative advantage lands. The study used per acre of land intended for economic development comparisons and found that the TLE First Nations generated about 18 times more employment benefit and about 10 times more spending related economic benefit per acre than those with pre-existing comparative advantages.

Among the conclusions of these studies is that TLE First Nations develop their additional comparative lands more intensely than other First Nations. This generates more economic benefits for those First Nations and enables the potential for those First Nations to generate more fiscal benefits. Extrapolating the results by assuming better and easier TLEs will result from using the institutional framework innovations suggests that this approach could substantially reduce economic First Nation disparities and support an improved fiscal framework.<sup>46</sup>

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46 The research found the average urban ATR takes 3.4 to 7.8 years longer than a typical municipal boundary expansion. This delay represents about 123 to 280 forgone person years of employment per acre. At the time of the study, there were 117 ATR applications for over 22,000 acres of urban land under active review. If the economic potential of those active applications were consistent with the cases examined in the NIEDB research, the total opportunity costs associated with ATR- and TLE-related delay includes about 2.7 to 6.2 million-person years of employment.

To provide some context to these results, another NIEDB study from 2016 estimated the number of jobs and amount of income required to close disparities. For Manitoba, it is over 22,500 jobs and an almost \$9,000 increase in annual employment income; which is close to what would occur if the TLE and institutional innovations were combined.<sup>47</sup>

The following is a three-part proposal to ensure these innovations are available to all First Nations in Canada. First, enable the TLE innovation for any interested First Nations involved in land claims, title and self-government negotiation processes or other processes that could add to their jurisdiction. This would allow them to choose lands that have comparative advantages. There are strong fiscal, economic and legal rationales for all governments to provide this innovation for First Nations interested in building fiscally and economically sustainable communities.

Second, ensure these First Nations have the option to implement tax, land, finance, infrastructure and service jurisdictions using the institutional innovations. This should accelerate and enhance economic and fiscal benefits for participating First Nations.

Third, expand the elements of the First Nation innovation system that support research, system evaluations, administrative capacity development and knowledge transfer forums. This would support continual development and adoption of innovations that further lower transaction and switching costs.

Taken together this proposal could provide a path for interested First Nations to move away from the *Indian Act* and the Department of Indian Affairs. It could facilitate creative destruction of the colonial framework. It could renew the First Nation and Indigenous innovation economies.



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47 The Tulo Centre recently completed an estimate of how this proposed approach could support economic growth for Manitoba TLE communities. Using several conservative assumptions, the Tulo Centre estimated an increase of \$2.4 billion in investment and over 10,000 person years of employment (after a 3-yr planning phase and a 15-yr development phase). For more information on this estimate, contact the Tulo Centre.

# SUMMARY

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A group of First Nations led by Manny Jules and the FMA and FNLMA institutions have developed a systematic and efficient public institutional innovation system that could eventually replace the existing colonial framework for other interested First Nations. This is evident in the growing voluntary First Nation participation in their current version of their innovation system and the growing First Nation support to expand it.

Their success will depend upon their commitment to continual institutional innovations that achieve two results:

- 1) Innovations must promote economic growth through expanded comparative advantages and lower transaction costs.
- 2) Innovations must be easy to implement because of low switching costs.

Additionally, there should be at least five ways to measure their success:

- The number of First Nations governments using some or all of their framework;
- The economic growth of their proponent First Nations compared to others;
- The number of their proposed legislative and institutionally innovations successfully developed, passed or implemented;
- The decline in the number of First Nations governments relying on some or all the colonial framework; and
- The number of Indigenous governments in other colonial environments adapting this innovation framework to support their decolonization processes.<sup>48</sup>

If all these measurements demonstrate success, then Manny Jules and likeminded Indigenous leaders will have achieved their goal – colonial creative destruction.

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48 One possible measurement for this metric could be growth in membership of the Alliance for Renewing Indigenous Economies.

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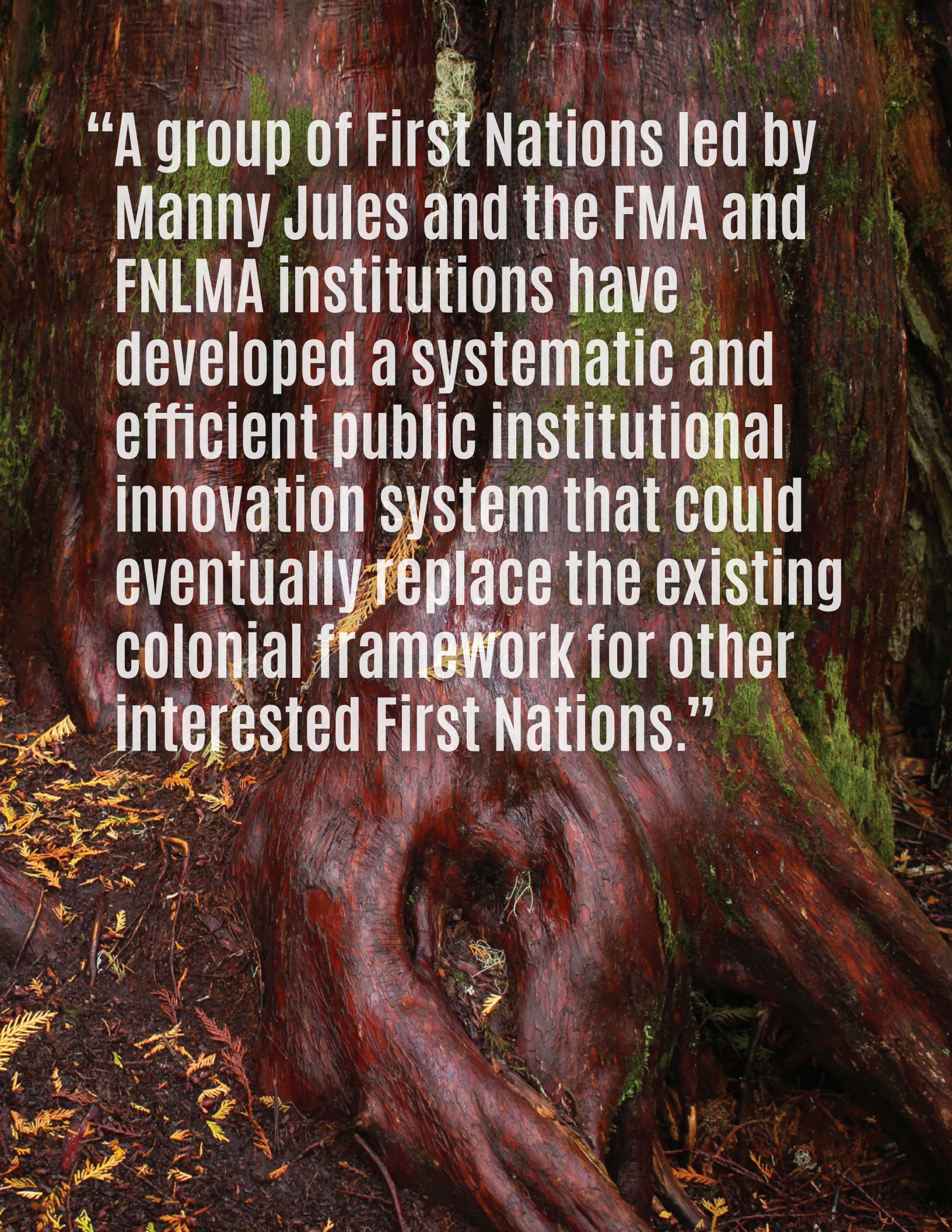
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A close-up photograph of a large, gnarled tree trunk. The bark is dark brown and heavily textured, with patches of green moss growing on it. The tree trunk curves and branches out, creating a complex, organic shape. The background is a dense forest with many smaller trees and ferns, some of which are in the foreground, creating a sense of depth and a natural, somewhat mysterious atmosphere.

**“A group of First Nations led by Manny Jules and the FMA and FNLMA institutions have developed a systematic and efficient public institutional innovation system that could eventually replace the existing colonial framework for other interested First Nations.”**



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