DO CANADIAN POWER-SHARING AGREEMENTS WITH FIRST NATIONS PEOPLES HOLD LESSONS FOR TAIWAN?

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ABSTRACT

On 23 September 2010, the government of Taiwan moved closer to establishing a legislative framework for the negotiation of power sharing agreements with the nation's aboriginal groups when the Cabinet decided to approve the Indigenous Peoples Self-Government Act. Although the Act still awaits passage by the Legislature, many stakeholders in aboriginal self-rule are optimistic about this latest move. Others say the legislation lacks teeth. In many of its policy initiatives, the ROC government has looked abroad for a blueprint, and Canada is the Western country that is often promoted as a viable model to follow in this regard. The purpose of this paper is to contrast the historical and cultural influences of each nation's relationship with its indigenous population and, given these variances, identify potential roadblocks to Taiwan's successful implementation of a viable mechanism for deriving aboriginal self-government agreements based on the Canadian example, as well as to propose policy recommendations on what direction relevant legislation should take.

Keywords: Canada, Taiwan, indigenous, autonomy, self-rule

INTRODUCTION

The advancement of many aboriginal peoples in terms of self-government witnessed in many countries is a relatively new paradigm in terms of the state's relations with those it governs. It reflects a larger shift in ideology concerning the roles of political participation and the role of the state. In the

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West, despite these advancements, the process is far from complete. Indeed, it must be a task without end—an ongoing, ever morphing evolution in political governance. Despite this relative newness, countries like Canada, which in many ways is on the forefront of decolonisation and power-sharing, should not be considered experimental tinkerers, but pioneers that have much to offer by way of experience. In many ways, Taiwan is far behind Western countries in this regard, yet the situation is far from dire; Taiwan is arguably a leader among Asian nations in terms of recognising aboriginal rights, and the country's indigenous population is today on the cusp of greater autonomy. To what degree should policymakers look to the Canadian example is the focus of this paper.

In order to appreciate how the current regimes in Canada and Taiwan operate, a brief examination of the historical forces that led to them must be made. This is followed by an analysis of some of the forces peculiar to the Taiwanese experience that could serve as obstacles to implementation of a Canadian-style procedure, and finally, a discussion of policy recommendations.

The Republic of China (ROC) was the national government of all of China that came into being in 1911 after the fall of the Ch'ing Dynasty (1644–1911). It acquired Taiwan in 1945 after the Japanese defeat in World War II, and it relocated to Taiwan in 1949, becoming at once government in exile and an occupying power. The term "Taiwanese" refers to the people of Han Chinese ethnicity who settled in Taiwan during the steady migration, primarily from the coastal provinces of China, that began about 400 years ago. The term "mainlander" refers to the people, also of Han Chinese ethnicity, who moved to Taiwan in the late 1940s to escape the communists, most accompanying the Kuomintang (KMT) government and ROC. To many Taiwanese, the term "Kuomintang regime" was synonymous with that period of dictatorship and Stalinist-inspired one-party rule and has been likened to a foreign occupation, while its own adherents believed it was the rightful inheritor of the mandate of heaven and therefore the legitimate ruler of all of China. During Taiwan's democratisation, the KMT evolved into what it is today—a bona fide political party in the country's multi-party system.

The liberal opposition to the KMT and its main contender in the nation's elections is the Democratic Progressive Party (DPP), which was in power from 2000 to 2008. Its platform traditionally includes issues such as human rights and anti-corruption, and its adherents generally favour a Taiwanese identity. It has been accused of promoting Taiwanese independence, whereas critics charge that the KMT is bringing the island too quickly into the Chinese sphere of influence.

The notion of looking to an example like that of Canada's to help chart the course of a new relationship between the aboriginal peoples and the central government in Taiwan is not unprecedented. The country has a record of importing policies and systemic developments from developed countries, specifically Western ones. In the economic sphere, the ROC government has always referred to a number of Western economic models. Legislatively, the KMT regime followed the example set by Meiji Japan when it adopted Western, especially German, legal codes in the late 1920s and 1930s, making the ROC's legal canon somewhat Western-oriented with a content influenced greatly by Japanese jurisprudence (Wang 2002: 531). Even the ROC Constitution is modeled after constitutional concepts borrowed from the United States. Moreover, KMT leaders borrowed many methods of social control and administration from the Soviet Union, which was seen as an ideal model, preferable to the formula employed by the Chinese Communists. With the help of Chiang Ching-kuo, who studied communism in Russia and was later held there in exile, the KMT imported Soviet models for the creation of a Stalinist bureaucracy to rule over the ROC. Given this track record, it is not surprising that in tackling the difficult issue of aboriginal self-determination, the government should look abroad for inspiration.

There are many possible sources of guidance from Western countries that have found workable power-sharing agreements with their aboriginal populations. These can be found in the United States, for example, where executive power over the Navajo Reservation is held by a "Tribal Council," or in New Zealand, which has developed a system of biculturalism and sharing of power between its Maori and British-descended ethnic populations. These and other examples from the West are worthy of study, but they are sufficiently different from the situation in Taiwan that their implementation would be problematic at best. The Canadian experience, especially at the territorial level, appears to be an attractive teacher for Taiwanese students of aboriginal self-rule.

There are already considerable, if unofficial, ties between the indigenous populations of Canada and Taiwan. In 1998, the Canadian Trade Office signed a memorandum of understanding with Taiwan's Council of Indigenous Peoples. In May 2002, respected Canadian Native leader Elijah Harper led a delegation of First Nations representatives and performers on a friendship tour of Taiwan, where they were guests of honour at the launch of Taiwan's Aboriginal Media Association.

It must be remembered that any policy recommendation based on the experience of another country cannot be imported wholesale, but must be altered to suit the unique characteristics of the country in question. This is

especially true of the Canadian and Taiwanese examples, whose histories and dominant cultures are still sufficiently different to warrant careful analysis prior to emulation. In the Canadian example, which has a history of treaty negotiations, there was a common conception on both sides of the negotiating table that the power-holders representing the government were the inheritors of the deeds of the oppressors, while those representing aboriginal interests were in the position of aggrieved party. In Taiwan, however, there are various sub-ethnic and ethnic groups including the majority that each, in its way, considers itself to be the oppressed party. This is a perception on not only the individual but also the societal level that can muddy the waters of a true appreciation of the historical relationship that exists between negotiating parties.

One of the two main sub-ethnic groups on Taiwan are the Taiwanese with roots on the island that go back between 300 and 400 years. It is members of this group, and others that sympathise with its conception of history, that are trying to form a Taiwanese consciousness on the island distinct from Chinese consciousness. In their view, they are only recently emerging from a century of oppression: first at the hands of the Japanese colonisers, and then at the hands of another "foreign" occupying force, the KMT. It was during the Japanese colonial period that a sense of Taiwanese identity first emerged in its infancy—as distinct from the people's view of themselves as Chinese. For one thing, Taiwanese people were being assimilated into Japanese culture by the policies of the day, and there was an ever-present cognition of the distinction between the ruled and the rulers. Identifying themselves in opposition to their oppressors, the Taiwanese people could have chosen to embrace the notion of Chinese identity, but it was also well known that their predicament of being under Japanese control was a direct result of having been cast aside by China when the Ch'ing Court ceded the island in perpetuity to the Japanese empire in 1895. This, plus the distinct cultural differences that had evolved over the centuries of their separation from China, was forged into a sense of Taiwanese identity in the fire of Japanese occupation.

In terms of nation building, there is a definite contrast between areas where aboriginal populations form a regional minority of the population and areas where they are in the majority. The examples in Canada of this dichotomy are Yukon's First Nations in the former case, and Nunavut in the latter. The development of nation building in Arctic Canada followed the conventional pattern experienced in Europe, with a period of state formation and consolidation of territory followed by cultural integration and standardisation (Rokkan 1999: 58). In the modern era, the concept of human rights and the precepts of democracy have contributed to deviations from

this pattern, with differing results depending on political systems and historical forces. In the far north, nation building was a process by which diffused populations became connected through the institution of new political structures. This process can lead to closer ties between a political system and the people it serves. In today's world, with advanced communications and transportation systems, this relation is an even closer one, with the center of federal power even more closely integrated with the far-flung populations whose lives its actions and decisions affect. The process can also lead to greater communication within communities in vast territories the likes of which are seen in Canada's north, and hence to greater social cohesion (Bakvis 1981: 45).

The conflict of the center versus the periphery takes on especially relevant importance given the geographical characteristics of the Canadian example. As Canada is the world's second-largest nation by territorial holdings and with only a population of some 33 million (most of whom are concentrated near the southern border with the United States), issues such as the strengthening of political citizenship, efficient use of resources and the provision of public welfare take on special urgency.

The official policy toward minorities for much of Canadian history has therefore been one of non-recognition of Indian sovereignty and the state assuming a paternalistic and ward-guardian role (Cote 2001: 15). In reaction to this, minority groups such as aborigines have appropriated the concept of nation building and used it to refer to their struggle for autonomy, which includes efforts to create the institutions of self-rule. The task was a difficult one, as the forces of history can be difficult to overcome. The patterns of governmental responses to calls for self-rule indicate that they are becoming somewhat standardised. For one, areas in which aborigines constitute regional minorities appear to have tended toward favouring the adoption of dual governmental systems. One of the difficulties inherent in negotiating these power-sharing arrangements has been finding appropriate avenues for the expression within the sub-national ruling structure of the unique history and culture of the minority group, and to incorporate these characteristics into their legal status. Because sub-national governmental units are established under laws that follow the Western legal tradition, and are protected under Western constitutional models, they tend to mirror traditional Western governmental structures in their makeup, and the unique aspects of the local cultures may therefore not be reflected therein. Nevertheless, in practice, the operation and use of the political bodies often adopts traditional social patterns of interaction and hierarchical systems, thereby finding an outlet for the expression of the minority group's unique identity. This is true whether or not the self-rule structure adopted

was one following the public-government model or one closer to a self-government arrangement.

Canada encompasses examples of both these paths in the Yukon and Nunavut patterns, which differ in salient ways. Nunavut, for example, is an area where aboriginal persons make up the majority of the population, and a public government arrangement was adopted in the form of the new territory's legislative assembly (Catt and Murphy 2002: 55). In this and similar cases, all persons regardless of ethnicity are eligible to take part in the political life of the territory, including municipal governments and political-party involvement. By contrast, the Yukon is an area in which sub-ethnic groups form the minority of the population, and it follows the pattern of adopting a self-government arrangement, forming dual, often overlapping, governmental authority within the territory. The Yukon First Nations arrangements include the mandate to enact laws and adjudicate disputes in ways that respect the cultural beliefs and values held by the members of the governed population. It is significant that arrangements like the latter generally take the form of flexible governmental structures that can develop and evolve in such a way that they come, over time, to better mirror that culture's values and identity. Because the Yukon's demographic factors more closely approximate the Taiwanese experience, it is this latter model that has more direct relevance.

In the example of the Yukon First Nations arrangement, the self-governmental unit is empowered to pass laws that apply throughout the geographical boundary of the Yukon Territory to all First Nations persons, as well as laws that apply to all persons regardless of ethnicity in settlement areas that come exclusively under the territorial jurisdiction of the First Nations government structure. In cases where First Nations laws and federal laws may conflict, extensive negotiation is required to determine which shall take precedence, lest jurisdictional conflicts threaten the efficient operation of what has been created.

What is important for policymakers to keep in mind when examining the system that led to the Yukon agreements, or indeed any other Canadian system, for clues to their own institution building is that they must not, as in the previous cases cited, import entire systems while making only cosmetic changes. Rather, it is the spirit of the process that could be emulated, allowing the details to assume a distinctly Taiwanese flavour. It is the mechanism and process by which power-sharing agreements are reached between the federal and provincial governments and First Nations political organisations that may hold the key to how to proceed, and not the contents of those agreements themselves. Moreover, no legislation or government initiative exists in a vacuum. Policymakers must develop an appreciation for

the differences as well as the similarities of the Canadian and Taiwanese examples. They must also look at the historical and social forces that have led to the current situations in order to understand not only why they work, but in some cases, why they do not.

DIFFERENCES AS OBSTACLES

Historically, governmental relations with aboriginal or other ethnic minorities have been characterised by a raft of distasteful mechanisms, including genocide, deportation, oppression and assimilation. These responses are increasingly seen as illegitimate in today's modern democracies. Indeed, part and parcel of this change of policy on the part of Western governments with regards to dealing with aboriginal claims has been a wholesale acceptance of the majority's culpability in these inappropriate actions on the part of the state, and a desire to redress past wrongs on the basis that the marginalisation of aboriginal peoples is no longer considered acceptable (Young 1995: 260).

In Canada, serious effort is being made to popularise the understanding that the First Nations were oppressed as a matter of course for much of the nation's existence. This widespread acknowledgement of the sins of the past has led to the emergence among the mainstream population of a culture of restitution, which has in no small part paved the way for a desire to redress historical wrongs *vis-à-vis* the treatment of aboriginal people by the government. The question remains, however, whether such a culture could arise in Taiwan, and if so, whether it would lead to similar results.

One of the obstacles to this is the differing conception on the continuity of power held by the people of Taiwan compared to the mainstream in Canada. In Canada, there is a multiparty system that nevertheless is part of a continuity of government. In contrast, the conception in Taiwan seems to be one of a change of regimes. That is to say, in Western democracies, there is an acceptance of the alternation of power-holding on the part of two or more parties, whereas in Taiwan, the 2000 presidential election was widely seen by both sides of Taiwan's unique political spectrum as the end of one era and the beginning of another, rather than a placeholder arrangement. The same occurred in 2008, with another transfer of power, and yet another popular conception of the end of one regime and beginning of another. This is largely the result of China's history of dynastic succession and inexperience with the ebb and flow of democratic power-holding arrangements.

As a result, a party taking power may not feel responsible for the historical policies of the power recently dethroned, and may therefore not attempt to redress many of its wrongs with the same zeal that would come if it were complicit in them. Indigenous groups initiating negotiations with a DPP government, for example, might find that the government, while eager to be seen as doing something constructive and rights-driven, does not approach the problem from the point of view of a former oppressor, as the sub-ethnic group from which the DPP derives its main support do not conceive of themselves as former oppressors, but as former members of an oppressed population.

That is not to say that the KMT is solely responsible for the state of aboriginal affairs in Taiwan today. Much had to do with the Japanese colonial government, and even further back in history with the reign of Koxinga and the subsequent period of Ch'ing domination. Political forces during the DPP's 8-year tenure have arguably done more to destigmatise the aboriginal identity than any regime in the past 400 years, but if the average ROC citizen does not feel obligated to make good on past wrongs to the island's aboriginal inhabitants, then there will be little political currency or widespread grassroots impetus for such actions. As a result, the form that Taiwan's aboriginal renaissance took during the Chen years was not one of restitution or equalisation borne of a sense of culpability and equality, but one of increased attention based on a feeling of shared deprivation at the hands of a common oppressor.

This conception is no less valid, however, but it would make the Canadian model harder to follow because certain motivating factors are absent, or at the very least, different. It is also potentially problematic because the concept of the power holders (that of a common history of oppression) may not be shared by the indigenous minority. Many members of the latter group, far from seeing the ethnic Taiwanese as cousins in oppression by the KMT, sees them as their erstwhile opponents going back to the initial period of the settlement of Taiwan. The first wave of Han Chinese immigrants that arrived on the island 400 years ago, and the subsequent waves that have arrived since, were the ones who appropriated aboriginal land, assimilated the people of the low-lying areas, and pushed surviving groups into territories previously unfamiliar to them, uprooting groups and creating an imbalance of the tribe-based political delineation of the island's geography that had developed over thousands of years.

The mechanics of decentralising power to identity groups is more complicated than it might at first seem. Two aspects of this process are of particular importance, especially in the post-war period in the West: those of degrees of territoriality and asymmetry. Basing power-decentralisation

measures entirely on territoriality typically involves regionalisation. Sub-national regions benefit from decentralisation by being accorded certain decision-making powers according to the principle that all the inhabitants of a particular territory have the same rights, regardless of ethnicity. Using an asymmetric mechanism, by contrast, inhabitants of one region may find that they have more or different rights than those in other territorialities, simply because of their ethnic identities or membership in another identity group. The former is an example of the *jus solis* principle, and the latter, the *jus sanguinis* principle. In Canada, the method by which aboriginal claims are dealt with has led to a system that has characteristics of both territoriality and asymmetry, but countries generally operate on a principle that is distinctly either *jus solis* or *jus sanguinis*.

The *jus solis* principle, simply put, means a person's nationality, or identity, is dependent on where he was born. The *jus sanguinis* principle, in contrast, assigns identity on the basis of blood heritage. In most of Europe, for example France, Holland, Sweden and the United Kingdom, they rely on the *jus solis*, as do Canada and the United States. In these nations, citizenship is largely determined by place of birth. Germany, on the other hand, retains even today a philosophy of *jus sanguinis*. This is largely a relic of the creation of the modern German state. Though antiquated, this "law of the blood" is carried on even today, where the German identity is based on race. Those with German ancestry are easily conferred German citizenship regardless of acculturation, whereas second and third-generation descendents of immigrants, though born in Germany, have a difficult task obtaining such citizenship (Pribic 2004: 51).

The prevailing of these two competing philosophies can help predict the mechanism a state will employ in dealing with ethnic minorities. For example, if a state is given to employing a *jus sanguinis* philosophy, it is more likely to employ an asymmetric mechanism of power decentralisation in which inhabitants of an area enjoy different rights or responsibilities than those in other areas due to their ethnicity. This is often divorced from a commitment to multiculturalism as employed, for example, in Canada. The risk being that absent an acceptance of cultural diversity within a single nation, there is a tendency to disregard the cultural pluralism and traditional methods of community governance in favour of one imposed from the top down. In Taiwan's case, this would fail to meet the individual needs of its many different aboriginal groups.

States that are more *jus solis* in nature tend to be ones that have a commitment to multiculturalism, and they tend to institute power-sharing agreements on the basis of territoriality and regionalisation. Using this paradigm, regions are imbued with decision-making powers such that all the

region's inhabitants enjoy the same rights, regardless of ethnicity. The pattern that Taiwan will follow is predictable and depends on whether the society, and therefore by extension the state's policies, follows the *jus sanguinis* or *jus solis* principle. But how do we determine this?

A good indicator of whether a nation operates on a principle of *jus solis* or *jus sanguinis* is its citizenship laws. The legislative codification of who is and is not allowed to be considered a member of the group is directly influenced by the prevailing conception in that society of membership and how it is achieved. According to a study by the US Office of Personnel Management, which compiled information on the citizenship laws of most of the world's countries, the Republic of China confers citizenship according to the principle of *jus sanguinis*. The defining piece of legislation is the Nationality Law of the Republic of China, enacted in 1929, which stipulates that citizenship is based on descent from the father, except in cases where the father is unknown or stateless, but where the mother is an ROC citizen. In other words, being born in Taiwan does not necessarily, in and of itself, automatically confer citizenship rights, but only if the father is an ROC citizen. This applies regardless of the nationality of the mother, or in certain situations whether or not the child is born out of wedlock. The law was amended in 2000 to allow transmission of citizenship through either parent, but a strong patrilineal tendency in Taiwanese society continues to dominate. Clearly, Taiwan is very much a *jus sanguinis* society.

How does this affect aboriginal relations with the government? It suggests that government negotiators will tend to favour an asymmetric power-sharing mechanism, whether or not they would be conscious of this predisposition. Under this sort of arrangement, people living in certain regions may end up possessing more or fewer rights than those in other regions by virtue of their ethnic identities, as decision-making powers would be decentralised based on a conception of asymmetry, characterised by individuals in some areas possessing more rights to self-rule than individuals in other areas. Because this is inconsistent with the Canadian conception of *jus solis*, it suggests that the Canadian experience might be a difficult model to follow, at least insofar as inculcating society-wide acceptance of multiculturalism and acceptance of diversity. It does, however, bolster the argument for examining the process employed to arrive at the Yukon First Nations agreements, which followed an asymmetric model of adopting a dual-government pattern. It is also consistent with the Taiwanese consideration of aboriginal identity as a function of the individual's bloodline, whether or not he is conferred official recognition of this heritage.

It should be noted in this context that, during the struggle to create a uniquely Taiwanese identity that began in the 1980s, genetic studies were widely cited as proving that up to 80 percent of non-mainlander Taiwanese had some aboriginal blood and therefore, it was claimed, shared in the genetic inheritance of the island (Weller 2000). Former President Lee Teng-hui was among their number. Of course, there was a political component to this claim, deriving from competing visions of group identity in Taiwan, which is a dynamic that cannot be ignored.

IDENTITY

Although there are many commonalities, there are certain conditions that were characteristic of the Canadian example that are not present in the Taiwanese example. Perhaps, the most important of these is the fact that the various levels of government in Canada with which the indigenous negotiators dealt had a firm position with respect to their own autonomy and sovereignty. This political stability does not exist in Taiwan, and although it does not necessarily impact directly the relationship between government and aboriginal groups, it can have a tremendous influence on the substance of negotiations and the conception of whether or not the central government truly has a mandate to forge such agreements.

Taiwan, per se, is not a country as Canada is. The Republic of China on Taiwan is recognised by about a score of countries and is routinely denied accession and association with the world's international organisations as a result of its complicated relationship with the PRC. The vast majority of world policy on the Taiwan question includes adherence to a "one China" policy, which generally recognises Beijing's claim that Taiwan is a province of the PRC. It was only thanks to Taiwan's strong economy that these countries were compelled to find ways to establish unofficial ties with the island in order to trade with it, but political recognition was never part of such arrangements.

Given this precarious arrangement, there is also the ever-present possibility that the government in Taipei will cease to exist if Beijing decides to actively assert its claims over the island. Whether by force of arms or through political manipulation, the manner is irrelevant. What is important is that, given the PRC’s size and ever-growing military and economic might, that possibility is becoming less and less unrealistic. This affects not only the perception of indigenous rights negotiators but the ROC officials with whom they would be negotiating.

For much of the KMT rule over Taiwan, it was an accepted proposition that the seat of the ROC government being located in Taipei was meant to be a short-term state of affairs. The aim, in the early days, was always to retake the mainland and leave as quickly as they had come, leaving the administration of the island in the hands of the provincial government, which operated in parallel with the central government until its dissolution in 1998. Although this is no longer the prevailing worldview, its legacy still permeates much of Taiwanese political culture and its administrative structures.

More than just a political or ideological dichotomy, this phenomenon has given rise to competing views on what it means to be Taiwanese. As mentioned earlier, there are two distinct views of identity that are vying for prominence on the island at the present time. One faction espouses the notion that Taiwanese are a subset of the Chinese identity, and that while politically, Taiwan may or may not be part of China, certainly the majority of people on the island are ethnically Han Chinese. The other prefers to self-identify with an emerging sense of being Taiwanese, divorcing itself from the larger Chinese culture to form a dynamic new conception of Taiwanese identity that, though it borrows heavily from its Chinese heredity, is sufficiently different in substantial ways as to merit its own unique subclass.

Cultural leaders with their own agendas have used different interpretations of Taiwanese history to advance those agendas (Hsiau 2000). Today, these competing visions of national identity play out their expression in the culture war. On one side, the mainlander faction sees Taiwan as part of China and goes to great lengths to organise events and exhibitions that celebrate the images and values of Chinese culture, and to emphasise the line of continuity from the ancient China of thousands of years ago to the Han Chinese people of Taiwan today. This faction, which currently holds power and has been the dominant power broker for much of the post-Japanese-colonial period, is collaborating in this effort with forces across the strait. The PRC does not want to risk alienation in the international community by launching an exercise in military adventurism in order to annex Taiwan. Therefore, it must compel the Taiwanese to willingly give themselves over to the center of the Chinese world: Beijing. To do this, the PRC knows that the emerging sense of Taiwanese identity is a threat, and it spares no expense to help its allies on the island to win the culture war and consolidate a widespread sense of Chinese identity in Taiwan.

On the other side, the new Taiwanese, whose political expression is accreted in the pan-green coalition of political parties that, directly or indirectly, support Taiwanese sovereignty and presumably eventual independence from China. Proponents of this camp organise cultural and

social exhibitions and events that aim to inculcate a widespread sense of pride in Taiwan and everything that distinguishes the island from China. Although it is this camp that represents the most likely ally for aboriginal forces hoping to negotiate a political power-sharing agreement, it is also this camp that has all but appropriated the images and identities of the Taiwanese aboriginal groups for its own use (Simon 2006).

The problem for aboriginal relations with the larger society rests in the fact that society at large does not have a clear conception of its own identity, and can therefore hardly be expected to develop a relationship with a minority group that is concise and symbiotic. The Taiwanese do not yet know who they are, so how can they know how they relate to others?

There is also the risk that the aboriginal identity could be steamrolled over by the Taiwanese drive to develop its own identity. Ironically, while previous governments from Koxinga to the KMT have tried to eliminate aboriginal culture through assimilation into the larger whole, the emerging Taiwanese power brokers now appear to be trying to appropriate aboriginal culture to their own ends. While this extra attention paid to aboriginal culture and imagery is a positive thing, and one that must be steered in the right direction by aboriginal leaders, the risk lies in dilution of the indigenous identity and its being reduced to its most basic, and stereotypical, form for easy consumption by the masses.

This trend can be seen in a multitude of places. The former director general of the Government Information Office, Pasuya Yao, adopted as his nickname an aboriginal given name, even though he himself is not a member of any of Taiwan's aboriginal groups. This in and of itself is not a negative thing; in fact, it could be quite positive, if the individual involved were a champion of aboriginal rights and a friend to the indigenous peoples of Taiwan. Indeed, such an ally so high up in government would be an asset. However, in this case, there is little evidence to suggest that the individual in question is in any real way an ideological ally of Taiwan's aboriginal peoples. Rather, he is a savvy media worker and deft manipulator of public opinion who chose the name because he is keenly aware of modern trends, and the modern trend was for aboriginal culture to enjoy a certain cachet in Taiwan. In choosing the name, he appears to have been hoping to appropriate some of the respect and admiration people are developing for aboriginal culture. It is not unlike the prevalence of black culture in the United States, or "urban culture" to use the politically correct term, being appropriated by white, middle-class teenagers.

Another example can be seen in the prominent presence of aboriginal traditional costumes and dancing that accompanies many major events in Taiwan. Again, this in and of itself is not a negative thing; it helps to

promote indigenous culture, gives aboriginal people pride in their heritage and impels non-aborigines to want to learn more about the culture. However, it can also be a cheapening of that culture. Many, though not all, dances are for specific rites and rituals and, by tradition, should only be performed under certain strict conditions and circumstances. Many are akin to religious expression. When the wider society at large appropriates these dances, they reduce them to mere entertainment.

Whether or not the majority of Taiwan's aboriginal people are aware of it, they are the holders of a very valuable commodity: their culture. It is therefore important that they do not allow that commodity to be reduced in value. Rather, it must be carefully guarded to ensure that it is treated with respect and honoured not only by those who hold a hereditary stake therein, but also by those who would appropriate it for their own use.

In addition to those forces that would dilute aboriginal culture by appropriating it, there are others who completely oppose aboriginal rights on grounds that are ostensibly rooted in a skewed conception of equality, but are in reality little more than racially based. It must be noted that there is considerable resistance in modern Taiwan to the movement to return land and autonomy to the island's aboriginal peoples. Organisations such as the Plains Peoples Rights Association (PPRA), though hardly representative of the mainstream level of commitment to the matter, are nevertheless politically and financially powerful enough to exert considerable influence in the areas in which it operates, and are therefore worthy of consideration in any attempt to determine whether or not Taiwan is in a developmental position that would make self-government for its aboriginal groups a political reality. The group, organised in the early 1990s by non-indigenous businessmen residing in districts that are primarily aboriginal, is concerned with promoting the economic opportunities of Han Chinese residents of these high-mountain areas. In a country as geographically small and as densely populated as Taiwan, competition for land resources is fierce, leading to resentment over the current policy that sets land aside for exclusively aboriginal ownership. As a lobby group, the PPRA seeks to open aboriginal reserve land to free-market forces.

Research indicates that the group was formed by businessmen in the motel business in Nantou County before its members used their political and corporate connections to create branches in Taichung, Yilan, Pingtung, and Taoyuan. It was initially founded as a reaction to the land tenure and reservation system that made it illegal for private interests to purchase land set aside for aboriginal peoples. Despite this prohibition, swaths of land were appropriated by the central government and illegal land sales took place, leading indigenous rights groups to launch a land recovery

movement. The PPRA was formed in reaction to this. Its adherents want the reservation land system abolished, arguing that the island's aboriginal peoples should have no special claim to reservation land and that Han Chinese interests should be allowed to develop it. Moreover, they argue for changing the designation of aboriginal people in the Constitution back to "mountain compatriots". Today, it is a lobby group that operates at the national level and is pressuring the central government to legalise the sale of aboriginal land. In reality, this organisation seeks to strike down any law that favours special rights for aboriginal peoples.

Membership in the group is extensive, and has included members of the Han Chinese majority working in the tourist industry, officials from farmers' co-ops, and even elected representatives. Its methods are to appeal for its vision of legal equality between Han Chinese and aboriginal peoples living in mountainous areas, painting itself and its members as the aggrieved victims. The PPRA takes its rhetoric further, however, with oblique threats of violence if the government's special treatment of indigenous groups does not end.

Although the PPRA political contacts are traditionally to the KMT, at least, at the central-government level, there are indications that it also enjoys support among members of other political parties as well, including the DPP and New Party. Again, the group is not representative of Taiwanese society at large. However, the very fact that such an organisation is allowed to exist in Taiwan, and to gain support at the highest levels of government, speaks volumes to the conditions on the island regarding attitudes toward aborigines. What is more telling, however, is the group's reason for being. While the group is clearly an institutionalised expression of an ideological sentiment of perceived racial superiority, it is also very much an economic lobby group that has a very specific policy aim: the right to buy land at depressed prices from poverty-stricken aborigines. The fact that an economic lobby group could so easily adopt rhetoric and principles akin to virulent racist organisations is what is so unsettling to many observers. The influence of the PPRA has waned in recent years since its leader fled to the PRC to escape prosecution on charges of corruption and bribery (Chen 2002: 10).

ECONOMIC CONSIDERATIONS

Any effort to restore a marginalised population to self-sufficiency must include an economic component. In Taiwan, the quest of the indigenous peoples' movement for economic independence has evolved from a focus almost entirely on forestry and agriculture to one predicated on tourism, especially such sub-categories as eco-tourism and cultural tourism. To attract Han Chinese tourists from around the island to their remote tourist destinations, tourism campaigns generally incorporated three basic attractions, forested environs, culture and food. They have found reasonable success in transforming villages by opening conduits for tourist dollars to translate into economic development.

The development of the villages in this way began in the 1990s when the aboriginal movement called on educated members of the community, most of whom were living in the large cities, to return to the villages (Lee 2006: 75). The reasoning behind the move was that, despite the advances being made by these elites in terms of indigenous rights on the legal, political and social fronts, very little had been accomplished to improve life in the villages themselves. In that time, many villages sought to improve their local economies by recognising that the aboriginal identity had been experiencing something of a renaissance in terms of public perception throughout Taiwan, and indeed had acquired something of a prestige, and putting that trend to work in moving toward economic self-sufficiency through the revitalisation and commodification of identity.

One of the villages that chose to focus its efforts on reviving its cultural identity was Nanwang, a Pinuyumayan village in Taidong County, which revived a cultural ceremony known as the Monkey and Hunting Festival and began using it to promote village unity, strengthen cultural identity and derive economic benefits by opening parts of the ritual up to tourists. By tradition, after reaching the age of puberty, Pinuyumayan boys spend six months preparing for their new roles as men, leaving home to study under the tutelage of a tribal elder from whom they learn how to build houses and engage in the hunt. After this training period is over, the young men return home to undergo a test of manhood, in which the entire village takes part. Traditionally, it involves the slaughter of a monkey. This is followed by a three-day sojourn in the mountains—a part of the ritual not open to tourists—in which the young men go on a hunt. The entire village welcomes them back with singing and dancing. Now that the ritual is open to the public, the boys' simian quarry has been replaced with a straw doll after animal-rights activists decried what they saw as animal cruelty and lobbied to put an end to the Pinuyumayan tradition altogether.

Another example of reviving culture and repurposing it as an economic activity through tourism revenue is the Amis harvest festival, which takes place every year from July to September. With 167,700 members, the Amis group is the largest indigenous ethnic group in Taiwan by population. Traditionally, the event begins with the young men of the tribe leaving the village to live a few days on the seashore where they spend the time catching fish. Young women are forbidden from interfering during this period of bonding and fishing, except for a certain day when they are allowed to bring supplies, such as wine, tobacco and betel-nuts, to the men as they stand their vigil. Upon completion of the task, the men return to the village, whereupon they are greeted with song and dance. The event is heavily promoted by the Taitung County Government in a way that divorces it from any understanding or appreciation of its social importance and reduces it to the level of a commodity.

> The 40 aboriginal tribes under the jurisdiction of the East Coast National Scenic Area Administration, Tourism Bureau of the Ministry of Transportation and Communications will launch a series of celebratory activities pertaining to the symbolic Amis cultures from 9 July to 23 August in a row. These are the most important annual cultural events among aborigines from Taitung to Hualien. It is recommended that travelers enjoy the pluralistic cultures of the Amis with an open mind ("The 2005 Amis Harvest Festival in the East Coast to Start in July," 2006).

Many of the dangers inherent in this commercialisation of culture are self-evident. For one, it risks leading to a "theme park" mentality that distils indigenous culture down to its most visible attributes and reduces them to mere ritual without consideration of the importance of the meanings behind the ceremonies being commodified. For another, it places such ceremonies under the power of market forces, as in the example of the Pinuyumayan monkey hunt. In that case, the monkeys were replaced by dolls to appease the increasingly sensitive consumers, thus adulterating the primary reason for the ritual: helping boys become men through a time-honoured ritual of physical and psychological trial.

For another, aboriginal entrepreneurs can often be restricted to a narrow position on the industry chain. Travel agencies, for example, are often operated by Han Chinese businesspeople who themselves get a cut of each tour. Often, "improvements" are made so that aboriginal villages and ceremonies are more accessible to tourists, such as paving concrete steps into mountain paths and providing non-traditional, but more popular, food

items for paying visitors to enjoy—to say nothing of the problems of overcrowding, littering and disputes about how to distribute income. Finally, in cases where the central government gets involved in the sponsorship and organisation of cultural events, there is often an attempt to broaden the appeal by adding activities to the program, such as inviting performance troupes from abroad to demonstrate their own cultural activities. This can have the effect of creating a carnival atmosphere and turning a solemn cultural or religious ceremony into a circus.

The Wulai Aboriginal Culture Village is a successful business enterprise that is predicated on tourists, primarily from Taipei, having an interest in the aboriginal way of life. There are dancing shows, native food restaurants and several shops selling indigenous products and products adorned with aboriginal motifs. Of the almost forty such shops and restaurants along the main street of Wulai Village, however, only one restaurant and one shop were owned by aborigines, even though all of the businesses once belonged to aborigines (Huang et al. 1994: 190). The Atayal people of the area, unpractised at business affairs, have allowed Han Chinese businessmen to displace them to meet market demand for an authentic aboriginal experience in the tourist area.

One way to mitigate the negative effects of this foray into the economic sphere would be to promote the creation of indigenous chambers of commerce or business associations, giving aboriginal businesses a stronger voice in their own economic development and leading to a renewed spirit of unity. A Canadian example of such an organisation is the Labrador Inuit Association, which was founded in 1973 to support Inuit culture and protect Inuit rights to their traditional land, and its business arm the Labrador Inuit Development Corporation (LIDC), which was formed in 1982 to help give the Labrador Inuit control over the local economy.

The LIDC focused on promoting the use of traditional Inuit skills in ways that diversified the economy and improved living conditions by providing training and jobs on the north shore of Labrador, whose economy had previously been dominated by the fishing industry and propped up by government subsidies. One of its first projects was to hold a commercial hunt of George River caribou. After a few years, the corporation obtained a license to sell the meat throughout the province, and then outside of Newfoundland, which led to the construction of a processing and packaging plant that provided jobs for several locals. In addition to providing the Labrador Inuit with invaluable experience in sales and marketing, the venture led to the region's first meat inspection service certified by the federal government.

More recently, the LIDC has diversified the local economy, forming ancillary companies and subsidiaries, and engaging in several entrepreneurial projects. It has managed to attract investors by building a strong equity position through the judicious creation of partnerships with Canadian corporations. One of these joint ventures, and one which illustrates how the LIDC manages to create employment opportunities and generate economic benefits by merging the traditional Inuit skill set with the demands of the modern world, is the Pan Arctic Inuit Logistics project. The company, which is contracted by the federal government to man outposts throughout Canada's north, operates and maintains the radar line in the arctic called the North Warning System. LIDC partners in the venture include several like institutions, including Kitikmeot Corporation, Inuvialuit Corporate Group and Makivik Corporation.

POLICY RECOMMENDATIONS

Given the differences between the Canadian and Taiwanese examples, their unique historical foundations and the different cultural, legal and developmental state of affairs, the wholesale adoption of the Canadian system would neither be realistic nor prudent. However, the Canadian example holds many lessons, both in what had worked in the past and what has not worked. Moreover, the Canadian mechanism is designed to accommodate a certain degree of flexibility due to the heterogeneity of the players involved. ROC policymakers would do well to turn their eyes to the Canadian government's Federal Policy Guide promulgated by Indian Affairs and Northern Development on the issue of aboriginal self-government, not for a blueprint, but for an understanding of why certain negotiation objectives and methods of power-transfer were successful.

The ROC government must, first and foremost, recognise the inalienable right of the Formosan aborigines to self-government. There should be no question on this matter, and indeed it should be enshrined in no uncertain terms in the Constitution. International law provides as a fundamental element the concept of self-determination. This began as an understanding *vis-à-vis* the right of a nation to self-determination in regards to other nations in the world (for example, in response to concerns about colonialism) but has come, over time, to include the rights of aboriginal groups to have a say in their own fate. However, this concept remains a vague one and its terms are relatively undefined. Certain concepts, such as what groups qualify for consideration, and what form and extent the mechanism of self-rule takes, remain open to interpretation.

In the modern era of globalisation and multilateralism, the world has, for the most part, moved beyond the Westphalian model and towards what proponents of the international system hope will be a more equitable, responsible pattern of international interaction and governance (Anaya 2000: 15). Even today, international law has taken on more prominence in issues of accountable governance, and one of the basic tenets of international law is that governments shall demonstrate a respect for the human rights of the governed. There is precedent for the inclusion of ethnic and linguistic minorities in this equation.

Article 27 of the International Covenant on Civil and Political Rights states:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This, in conjunction with Article 1, would seem, on the surface of it, to provide a legislative mandate for aboriginal self-government in the highest tiers of international law.

Article 1 states:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

There is a precedent for aboriginal peoples using the right of individual petition to obtain a ruling from the Human Rights Committee on perceived violations of Article 27. Moreover, Article 14 of the International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries states the following:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Clearly, there is more than token attention paid in the international system to the issue. The question remains, however, whether the current state of international law concerning human rights can be used as anything more than a blunt instrument to protect the rights of indigenous peoples, and whether individual governments unwilling to comply can be effectively coerced by the international community, providing there is sufficient political currency for such efforts. In addition, Taiwan's unprecedented political situation *vis-à-vis* the international community presents a host of unique problems that further call into question the applicability of international law. Suffice to say that the rights of self-rule of indigenous peoples around the world are recognised in principle.

Though provided for in international law, this concept must be enshrined in the ROC Constitution. Unfortunately, constitutional change is not so simple in Taiwan, especially in the current political climate, but it is imperative that this right to self-determination be enumerated among the

rights delineated in the nation's prime law. Moreover, the Constitution must reflect the fact that this right is properly to be expressed in the form of duly negotiated treaties between authorised aboriginal community groups and the central government. Once these basic conceptions are expressed in the nation's constitution—the very codification of a nation's identity—it must be accepted by mainstream opinion that the indigenous persons of the island have the right to chart their own political course as regards matters of their own internal administration, and in ways that are consistent with their own cultures, languages and unique identities, and above all, with their special relationship to their lands.

Moreover, the government must be committed to the principle that these rights are enforceable though the nation's judicial system, meaning it must be more than mere lip service. Indeed, the courts system in Taiwan is particularly weak. The Chinese culture that is prevalent in Taiwan tends to promote harmony over equity, and unfortunately the courts system reflects this. However, it is slowly improving, and there will doubtless come a day when the judicial system and the people of the island are no longer afraid of costly, time consuming litigation on the matter of rights provided that it returns valuable results, for only then will the courts take their place as a pillar of government equal in importance and responsibility to the legislative and executive. As with any right, there will be differing opinions on the nature and scope of aboriginal rights to self-governance, and the responsibility of settling these matters rests with the judicial system in cases where the parties involved reach impasse.

Naturally, litigation must be understood to be the last course of action when other techniques have failed, such as negotiation. The treaty process which would involve good-faith negotiation between aboriginal groups and government must naturally take precedence, which is why constitutional protections of the right to self-government are so important.

It must also be accepted that aboriginal governments, once implemented, will have to work closely with other levels of government in Taiwan, both laterally and from within the hierarchy of government. Genuine effort must be made to ensure the proper and efficient functioning of such relationships geared toward the success of the nation and its experiment in aboriginal self-rule, with a priority on cooperation over competition.

Not just the central government, but county and city governments as well must be committed to the success of the process, as their participation in the negotiation process will be of equal importance. Many of the matters under negotiation will fall within the jurisdictional boundaries of these sub-central governance units, and the outcome of talks will necessarily impact

them as well. For that reason, they must have representation in appropriate talks and be signatory to the result thereof.

It is important the persons entering the treaty negotiations with the central government on behalf of a group or groups be authorised by the group they profess to represent, and that a continuity of support extend throughout the process—a process, it should be noted, that could take years, if not decades, in each individual case. It is therefore incumbent upon the aboriginal organisations involved that prior to entering into negotiations, all affected individuals are satisfied that they are being duly represented. This calls for a degree of intra-tribal unity that, to date, has been rare in Taiwan. This is an issue that rests solely with the groups themselves, and the central government cannot become involved in hand-picking representatives with which to enter into negotiations, lest the entire process lose legitimacy.

As in the Canadian example, it must be understood that the right of autonomy does not imply the right of succession, or to the creation of sovereign independent states. Quite the opposite, in fact: the creation of self-governing aboriginal jurisdictions will help ensure that the island's aboriginal population work in concert with, and not in isolation from, the rest of Taiwan, and that they contribute their unique history, traditions and viewpoints to the polity.

Perhaps one of the best lessons Canada has to teach falls only peripherally within the realm of aboriginal self-government, but is related to constitutional law, and that is the Canadian Charter of Rights and Freedoms. This document binds all levels of government and supersedes all legislation in the nation, applying equally to all individuals, aboriginal and non-aboriginal. As with all treaties, those realising self-government agreements must adopt the Charter to govern their operation. Indeed, the Charter itself includes a clause guaranteeing its applicability in cases of aboriginal rights and self-government treaties. The adoption in Taiwan of a Charter similar to Canada's would be unprecedented for such a young Asian democracy, but it is not outside the realm of possibility.

This is not to imply that the process would be a quick or painless one; even in Canada, it was only through a difficult period of nearly three decades of constitutional mayhem marked by failed drafts, and a series of referenda, that the current state of affairs was arrived at, with the central primacy of the Charter. One of the most important aspects of the Charter is its directive of having a review by the judiciary overrule the actions of parliament. Likewise, the adoption of such a model in Taiwan would help temper the power of the legislature and empower the currently toothless judiciary as an organ to ensure that the individual rights of all Taiwanese are held supreme. In Canada, the adoption of the Charter created something of

an activist supreme court. This development, if duplicated in Taiwan, would not necessarily be amiss. However, since a previous round of constitutional re-engineering essentially kept the issue of aboriginal rights off the agenda, and made further constitutional revision subject to ratification by the Legislature and the people of the island, this created a situation where any further changes to the Constitution to include sections on the rights to self-determination of indigenous peoples would be even harder to realise.

Given the fact that Taiwan sub-ethnic groups each have their own unique cultures, languages, and circumstances, it must be understood that no single self-government model can be imposed on each. For that reason, extensive negotiations for each case are paramount in order to ensure that an equitable form of government is arrived at for each group that takes into account its unique political, legal, historical, and social state of affairs.

Moreover, the government must realise that self-governing units must be given wide discretion and the appropriate authority to exercise their right of autonomy. The purposes of the negotiations therefore are not to be bogged down in semantic or legal arguments over the meaning of the term self-government, but must cover the nuts and bolts of how administrative mandate is to be exercised. To that end, government negotiators must relinquish certain rights to the governmental unit being negotiated, such as the right to define certain elements that are integral to the aboriginal group in question. These elements may include issues of adoption and child welfare, marriage laws, definitions of group membership, protection of the group's language and culture, education within the jurisdiction, and the provision of health and social services. They must also, by definition, include the makeup of the governance mechanisms, such as the selection of leaders, so long as these follow democratic principles of universal suffrage—a defining element of the national identity as a democratic country.

As sub-central governmental units, the new jurisdictions to be created must have the mandate to enact certain laws and define certain offenses, such as the type normally covered by the nation's other, non-aboriginal sub-central government units. Moreover, it is absolutely essential that aboriginal tribunals or courts be empowered to adjudicate such offenses, and policing units be set up to enforce the jurisdiction's laws. Internal issues such as the delineation of property rights, the handling of estates, land-use and zoning issues and management of natural resources must be squarely in the hands of the aboriginal governments. Only in this way can traditional activities and customs, which may or may not involve agriculture, hunting, fishing and trapping, be protected as aspects of the way of life, and therefore the very identity, of the people in question.

The negotiation process must include the provision of detailed arrangements with respect to issues that may overlap with central-government purview, such as taxation, especially property taxes, management of group assets and the operation of public works and infrastructure projects. Issues such as public transportation, housing, and business licensing for enterprises on aboriginal lands should be recognised aboriginal responsibilities, although they may overlap with and therefore must be consistent with adjacent administrative units.

Just as there are a number of areas in which aboriginal self-governmental units should hold jurisdiction, and others where detailed delineation of responsibilities must be negotiated, so too are there areas that would naturally remain within the purview of the central government. These issues tend to have an impact at the national level and go beyond influencing only the indigenous inhabitants of the sub-central administrative unit. Issues in this category may include, but are not restricted to, the enforcement of national criminal laws and punishment for federal crimes, the operation of penitentiaries and emergency preparedness. In these cases, the primary responsibility should rest with the central or applicable county governments, and these laws would prevail in cases of overlap.

In the Canadian example, these issues also include such things as environmental protection initiatives, pollution prevention, and fisheries and migratory birds conservation. However, it is understood that many of these issues have proven in the Taiwanese context to be thorny, and have the potential to be abused in an effort to create roadblocks to progress. This is especially true on the appropriation of the environmental impact assessment mechanism, which is all too easily abused for partisan political obstruction. Therefore, good-faith negotiation and cooperation is absolutely essential in such matters, and an equitable dispute-resolution mechanism should be considered (prior to the recourse of the courts), to ensure appropriate administration in such areas.

In addition, there are a number of administrative areas where there exist no convincing arguments for power-sharing. In these areas, it is important for the central government to remain the primary legislative authority. These normally include issues such as national sovereignty, national defence and international relations. In practical terms, these have impacts in areas such as military service, foreign policy, national security (especially the administration of armed-forces bases), negotiation of international treaties, and issues related to immigration, refugees and naturalisation.

Moreover, the government cannot relinquish its mandate to oversee such aspects of governance as the active management of and regulatory

authority over the economy, fiscal policy, currency controls, administration of the banking system, trade policy including negotiation of free-trade agreements, and protection of intellectual property rights. Lawmaking authority in areas such as the national health system, administration of the post, operation of national-level transportation systems and broadcasting shall likewise not be open to negotiation and should rest within the exclusive purview of the central government.

On the issue of implementing the results of successful negotiations, there are several mechanisms that, following the Canadian example, could be employed in Taiwan as well. The most common of these of course is the treaty system. The ROC government must be prepared to confer constitutional protection to treaties negotiated and completed between its negotiators and those of the claimant aboriginal associations. As discussed earlier, a constitutional amendment would be necessary before this can become a feasible reality. By their very nature, treaties produce compulsory responsibilities on the part of both parties, and must therefore have the force of constitutional mandate behind them. Since this carries implications for future generations, it is imperative therefore that matters under the protection of the Constitution include the clear definition of aboriginal jurisdictional responsibilities and those that fall within the purview of the central and appropriate county governments, an unambiguous description of the persons to be subject to the treaty and the geographical area to which it applies, and the force of constitutional protection to the laws created by the aboriginal self-governance unit and its accountability to the people it serves.

Other issues of a provisional nature, including such things as funding provisions and welfare service implementation details, do not require the full force of constitutional protection, so a clear definition of what is and is not designed to be flexible and subject to changing circumstances must be made. These issues, important as they are, are not treaty rights per se, but can be considered interim arrangements in the provision of such rights.

Other mechanisms for self-government can be implemented, such as through the passage of legislation, the signing of contracts or the agreement on memorandums of understanding. For example, legislation could give the force of law to signed contracts on technical or provisional issues toward the establishment of final self-governing units. Non-binding memorandums of understanding, though they do not have the legal protection of contracts, can be employed to signal a commitment to the power-sharing process, and are therefore also important mechanisms toward that end.

In geographical terms, it must be understood that the aboriginal self-governmental units will, in all likelihood, include jurisdiction over non-indigenous members of the population, and the matter of whose authority

they fall under should be clearly addressed. In some cases, the aboriginal self-government will want to exercise territorial powers over the negotiated area, as discussed earlier, while in other situations it may the case that an asymmetrical mechanism is adopted in which aboriginal governmental units are restricted to administration of the group's members exclusively. This issue is more difficult than it may at first seem, and serious consideration must be given to solving jurisdictional problems before they arise. For example, in the former case, a way must be provided for non-members to have some measure of input.

In many ways, the successful negotiation of a treaty or other legally binding agreement is just the beginning of the process, as the self-government stipulation contained therein must be applied. Therefore, it is important that these issues of transition be dealt with adequately, in some cases to the extent of being part of the negotiating process itself. In order to ensure that execution of the new governmental unit does not become obstructed by legal ambiguity, these changeover measures should be clearly laid out. For example, some aboriginal groups may want to gradually phase-in administrative responsibility over a period of time, not only to ensure a smooth transfer of power but also to train personnel and solve logistical problems. To what degree it is possible, these needs should be anticipated and accounted for during the process of negotiation.

Part of this gradual transfer of authority will be the fiduciary obligations that the ROC government has to the island’s aboriginal peoples. As negotiated power-sharing agreements take effect and aboriginal councils gradually assume a greater administrative role, it is important that this be cushioned by ongoing central government provision as per its responsibilities, only reduced gradually as its responsibilities are taken over by the created governmental unit. The process must not be conceived of as one in which the ROC government is abdicating its responsibilities to the island’s aboriginal peoples, but as one in which those responsibilities are being redefined and expressed in less paternalistic ways. There will be cases in which the created governments and the central government have concurrent obligations in the same areas, but in situations where the central government has given over control to self-governmental units, it is important that those units likewise assume the funding responsibilities.

For this reason, it is imperative that the same accountability mechanisms that are in place to ensure existing local-level governments fulfil their responsibilities to their constituents be instituted to protect the rights and livelihoods of the aboriginal constituents of new, negotiated self-governmental units. Moreover, the operation of the aboriginal government must be accountable for political actions, and its operation must be subject

to its own internal basic law, one that is transparent and freely available not only to its constituent members but to other governments and parties that will realistically interact with that government.

Naturally, the new governments' financial record-keeping practices must be consistent with central-government laws and regulations, and should be similar to those mechanisms in place for other sub-central governments. This is especially important in such areas as public audits and transparency of public spending. Just as in the case of county and municipal governments around the island, aboriginal governments would be made accountable to the legislature for spending monies provided by the central government, and the legislature must be satisfied that the public funds were utilised in the proper manner. It will be the responsibility of the aboriginal governments to eventually assume the responsibility of providing for its constituents the level of minimum basic services enjoyed by the population at large. This is not to say that such services will be identical—the situation will vary from area to area, and from group to group. However, a minimum of welfare provision and basic services must be made available, and to this end, the aboriginal governments must eventually assume the responsibility for raising funds, through taxation and other methods, to be disbursed in this manner.

Finally, any agreements, contracts or treaties successfully negotiated must be properly ratified. Following the Canadian example where the executive branch is the ratifying body, the ROC Executive Yuan could be the body to ratify cases of memoranda of understanding, whereas with treaties and other contracts involving legislation, the Legislative Yuan would be responsible for providing the governmental stamp of approval. On the claimants' side, the aboriginal group committee must have a mechanism to ratify the agreement and the government should be provided with evidence that the indigenous group involved has consented to the negotiated agreement and that each member to whom the treaty will apply has had a chance to participate in the ratification process, thereby solidifying the applicability of the deal reached and leaving little question of its binding authority.

REFERENCES

Anaya, S. J. 2000. *Indigenous Peoples in International Law*. New York: Oxford University Press.

Bakvis, H. 1981. *Federalism and the Organization of Political Life: Canada in Comparative Perspective (Queen's Studies on the Future of the Canadian*

Communities). Canadian Federation for the Humanities/Federation: Distributed by P. D. Meany Co.

Catt, H. and Murphy, M. 2002. *Sub-State Nationalism: A Comparative Analysis of Institutional Design (Routledge Research in Comparative Politics)*. New York: Routledge.

Chen, Y. F. 2002. The Impacts of the September 21st Earthquake on Indigenous Peoples' Land Rights and the Reconstruction of Place Identity in Taiwan. *Journal of Geographical Science* 31: 1–15.

Huang, C. C., and Stevan, H. 1994. *Cultural Change in Postwar Taiwan*. Illustrated edition ed. Oxford: Westview Press.

Cote, C. 2001. Historical Foundations of Indian Sovereignty in Canada and the United States: *A Brief Overview. American Review of Canadian Studies*. New York: Association For Canadian Studies in The United States.

Hsiau, A. C. 2000. *Contemporary Taiwanese Cultural Nationalism (Routledge Studies in the Modern History of Asia)*. 1 ed. New York: Routledge.

Indian Affairs and Northern Development, Aboriginal Self-Government, Federal Policy Guide. 1995. Ottawa: Government of Canada Publication.

Lee, C. 2006. Marching to Their Own Beat Economic Development in Aboriginal Villages. *Taiwan Panorama*, May.

Office of the United Nations High Commissioner For Human Rights. International Covenant on Civil and Political Rights. http://www2.ohchr. org/english/law/ccpr.htm

Pribic, R. 2004. Cultural and Social Globalization in Germany at the End of the Twentieth Century. *BardPolitik* 5: 47–56.

Rokkan, S. 1999. *State Formation, Nation-Building, and Mass Politics in Europe (Comparative European Politics)*. New York: Oxford University Press.

Simon, S. 2006. Paths to Autonomy: Aboriginality and the Nation in Taiwan. In *The Margins of Becoming. Identity and Culture in Taiwan*, ed. Storm, C. and Harrison, M., 221–240. Wiesbaden: Harrassowitz Verlag.

Wang, T. S. 2002. The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country. *Pacific Rim Law and Policy Journal* 11: 531.

Taitung County Government. 2005. Welcome to Taitung. The 2005 Amis Harvest Festival in the East Coast to Start in July. www.taitung.gov.tw/ english/news/t_newview.php?n_id=6499

Weller, R. P. 2000. Religion and New Taiwanese Identities: Some First Thoughts. *Harvard Studies on Taiwan: Papers of the Taiwan Studies Workshop* 3: 225.

Young, E. 1995. *The Third World in the First: Development and Indigenous Peoples*. New York: Routledge.