To Treaty or Not to Treaty? Aboriginal Peoples and Comprehensive Land Claims Negotiations in Canada

Author(s): Christopher Alcantara

Source: *Publius*, Spring, 2008, Vol. 38, No. 2 (Spring, 2008), pp. 343-369

Published by: Oxford University Press

Stable URL: https://www.jstor.org/stable/20184972

To Treaty or Not to Treaty? Aboriginal Peoples and Comprehensive Land Claims Negotiations in Canada[1]

Christopher Alcantara*

Although the federal comprehensive land claims (CLC) process has become an almost hegemonic paradigm of government–Aboriginal relations in Canada, this article argues that Aboriginal groups should consider abandoning the CLC process if they have not been able to make significant progress towards completing treaties. Previously, many Aboriginal groups had no better option but to negotiate CLC treaties to achieve their goals. Now, however, a number of institutional developments have given Aboriginal groups a range of other options that are worth pursuing instead of CLC treaties. These developments are: Two judicial decisions handed down in 2004 and the emergence of three policy instruments outside of the treaty process: Self-government agreements, bilateral agreements, and the *First Nations Land Management Act*.

Introduction

Over the last thirty-five years, the federal comprehensive land claims process (CLC) has had a powerful effect on Canadian federalism. Since 1973, Aboriginal peoples and the Crown have completed twenty-two modern treaties. These treaties have allowed Aboriginal peoples to create new land management and governing regimes in the Yukon Territory, the Northwest Territories, Nunavut, British Columbia, Quebec, and Newfoundland and Labrador (Alcantara 2007a; Dacks 2004; Henderson 1994; Hicks and White 2000; McPherson 2003; Russell 2000; Rynard 2000; Saku and Bone 2000; White 2002). Although the CLC process has become an almost hegemonic paradigm of government–Aboriginal relations in Canada, this article argues that Aboriginal groups should consider abandoning the CLC process if they have not been able to make significant progress towards completing CLC treaties. Previously, many Aboriginal groups had no better option but to negotiate CLC treaties to achieve their goals. Now, however, a number of institutional developments have given Aboriginal peoples in Canada a range of other options that are worth pursuing instead of CLC treaties.

The findings of this article are not limited to Canada. Other countries like the United States, Australia, and New Zealand either have used treaties in the past or

*Department of Political Science, University of Toronto

Publius: The Journal of Federalism volume 38 number 2, pp. 343–369
doi: 10.1093/publius/pjm036
Advance Access publication 7 December 2007

have thought about using them for restructuring the relationship between their Aboriginal and non-Aboriginal peoples (Scholtz 2006; Wilkins 2002, 28–29). As such, the theoretical framework of this article, with its emphasis on the interplay between preferences, incentives, strategies, and institutions during treaty negotiations, will be of interest to international readers in other countries that have indigenous populations seeking to achieve self-government and self-determination.

This article, which is a case study of Aboriginal treaty negotiations in Canada, is structured as follows. The first section provides some background information on the CLC process in Canada. The second section constructs a theoretical framework for understanding why many Aboriginal groups, in light of their preferences and incentives, chose to enter the CLC process in the first place. The third section briefly reviews the various reasons why some Aboriginal groups have been unable to complete treaties. The fourth section describes the key institutional changes that have broadened the option set available to those Aboriginal groups currently involved in CLC negotiations. Finally, the article concludes by arguing that those Aboriginal groups that have made little progress in their CLC negotiations should explore a number of policy alternatives for achieving their preferences, at least until governments make a number of fundamental changes to the CLC process (for a list of suggested reforms, see Ladner 2003; Penikett 2006; RCAP 1996, Vol. 2; Woolford 2005; Abele and Prince 2003).

Background Considerations

The Canadian federal government has established two negotiation processes for managing its treaty relationship with Aboriginal peoples: The specific claims process and the comprehensive land claims process. The purpose of the specific claims process is to provide an alternative process (negotiations) to the courts for resolving allegations that the Crown failed to properly interpret or implement the terms of a treaty. Only Aboriginal groups that have completed a treaty can access the specific claims process. For instance, the Blood Tribe in Alberta is currently negotiating with the federal government for unpaid compensation for lands it surrendered through a treaty in 1889. In general, specific claims have proven to be highly problematic and difficult to resolve (Specific Claims Branch of Indian and Northern Affairs Canada, 2006, 2, 65).

The second process, and the one that is the focus of this article, is the CLC process, created in 1973. Up until 1921, the federal government had been negotiating land surrender treaties with Aboriginal peoples in western and northern Canada. In 1921, the federal government ended its policy of negotiating new treaties. In its place, it employed a variety of assimilation mechanisms designed to bring Aboriginal peoples further into mainstream society. In response, Aboriginal peoples began to organize themselves politically in the 1960s to protect their lands

and ways of life (Scholtz 2006). The key turning point was in 1973, when the Supreme Court of Canada in *R. v. Calder* ruled that Aboriginal title did in fact exist. Shortly thereafter, Prime Minister Trudeau announced that his government would begin treaty negotiations to facilitate the exchange of undefined Aboriginal rights for a set of specific treaty rights.

Under the CLC process, an Aboriginal group submits a statement of intent to the federal and relevant sub-national governments to prove three things: That its rights to its claimed lands have never been extinguished; that it historically occupied and used its claimed lands to the exclusion of other groups; and finally that it is an identifiable and recognizable Aboriginal group (Indian and Northern Affairs Canada 1998, 5; RCAP 1996, 536–537). Once an Aboriginal group meets these requirements, the three parties begin negotiating a framework agreement. This agreement sets out the issues that are to be negotiated, how they will be negotiated, and by what date they must be resolved. A comprehensive land claims agreement can address only a limited range of issues and must in the end provide a full, certain, and final listing of all the rights and lands that a group may have now and in the future. Federal policy lists the following issues as being available for negotiations:

> Under this approach, the range of matters that the federal government would see as subjects for negotiation could include all, some, or parts of the following: establishment of governing structures; internal constitutions; elections; leadership selection processes; membership; marriage; adoption and child welfare; Aboriginal language; culture and religion; education; health; social services; administration/enforcement of Aboriginal laws, including the establishment of Aboriginal courts or tribunals and the creation of offences of the type normally created by local or regional governments for contravention of their laws; policing; property rights, including succession and estates; land management, including: zoning; service fees; land tenure and access, and expropriation of Aboriginal land by Aboriginal governments for their own public purposes; natural resources management; agriculture; hunting, fishing and trapping on Aboriginal lands; taxation in respect of direct taxes and property taxes of members; transfer and management of monies and group assets; management of public works and infrastructure; housing; local transportation; licensing, regulation and operation of businesses located on Aboriginal lands." In the following areas, Aboriginal groups may gain some power but federal and/or provincial law making authority is paramount: "divorce; labour/training; administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws; penitentiaries and parole; environmental protection, assessment and pollution prevention; fisheries

co-management; migratory birds co-management; gaming; emergency preparedness." Finally, the federal government retains law making authority over "(i) powers related to Canadian sovereignty, defence and external relations; and (ii) other national interest powers (Indian and Northern Affairs Canada 1995).

Once a framework agreement is achieved, the parties negotiate a nonlegally binding Agreement-in-Principle (AIP). AIP negotiations are by far the most difficult and time-consuming part of the process. Most AIPs contain chapters on eligibility and enrollment, land, access, economic development, culture and heritage, water management, fish and wildlife, migratory birds, forest resources, harvesting, environmental assessment, taxation, dispute resolution, implementation, compensation, and sometimes a self-government provision. The AIP does not have to resolve all negotiation issues. Rather, it can leave some issues for Final Agreement negotiations. Typically, for instance, the negotiating parties will wait until Final Agreement negotiations to negotiate the exact wording of the "cede, release, and surrender" provision and to select the actual parcels of settlement land to be included in the Final Agreement.

Although it is not legally binding, the AIP usually forms the basis of the Final Agreement. Previously, an AIP did not need to be ratified for Final Agreement negotiations to begin. However, this policy was changed after a number of Aboriginal communities failed to ratify their Final Agreements. To reduce the possibility that future Final Agreements will be rejected, federal policy now requires that all Aboriginal groups ratify their AIPs before Final Agreement negotiations can begin.

The purpose of the Final Agreement is to transform the AIP into a modern treaty, formally transferring the negotiated settlement lands and land management powers to the Aboriginal group. The Final Agreement also clarifies the roles and responsibilities of each level of government in the affected lands. Once signed, ratified, and enacted by laws passed in Parliament and the relevant sub-national legislature, the Final Agreement becomes a constitutional document guiding future interactions between Aboriginal and non-Aboriginal peoples affected by the treaty.

In contrast to the rest of Canada, Aboriginal groups in British Columbia operate under a slightly different process. In 1992, the federal, provincial, and Aboriginal governments in the province agreed to create the BC Treaty Commission (BCTC) and the BCTC process. The BC Treaty Commission, which received statutory basis in 1995, is an independent body whose job is to oversee the BC negotiation process, facilitate negotiations, create public awareness, and administer loans to participating First Nations (Abele and Prince 2003, 148). The BCTC negotiation process involves six stages. Stage One, "Statement of Intent to Negotiate," involves First Nations submitting a statement of intent to negotiate a treaty. This statement

must identify the negotiating body and the people that are represented by that body. It must also show that the negotiating body has a mandate to negotiate and must list the lands being claimed and all potential overlapping claims. Stage Two, "Readiness to Negotiate," involves the three parties meeting to determine whether they are ready to proceed to negotiations. Stage Three, "Negotiation of a Framework Agreement," is when the parties negotiate the "table of contents" of the treaty. Stage Four, "Negotiation of an Agreement In Principle," involves the parties negotiating the details of the framework agreement. Stage Five, "Negotiation to Finalize a Treaty," is the stage when the technical and legal issues are wrapped up and when the parties must ratify the treaty. Stage Six, "Implementation of a Treaty," involves the parties transforming the treaty into a living document (British Columbia Treaty Commission 2007).

Today, most of the uncompleted CLC claims in Canada are in British Columbia. Of the 197 First Nations in B.C., approximately fifty-seven are currently involved in the BCTC process. Outside of B.C., there are three First Nations in the Yukon (Liard First Nation, Ross River Dena Council, and White River First Nation), one in Labrador (the Innu), and one in the Northwest Territories (Deh Cho) that have yet to complete CLC treaties.

In addition to being the province with the largest number of First Nations without treaties, the BCTC process is also notable for its effect on the CLC process. Two main changes to the CLC process have occurred as a result of the BCTC process. One is the expansion of the CLC process to include concurrent negotiations for self-government agreements. The other is the introduction of a more flexible certainty provision that does not require Aboriginal peoples to extinguish their Aboriginal title when they sign treaties (Kulchyski 2005, 100). These changes have encouraged other groups like the Labrador Inuit to sign treaties with the Crown (Molloy 2000; Alcantara 2007a).

A Theoretical Framework for CLC Negotiations in Canada

The literature on Aboriginal treaties and self-determination is a rich and varied one. In particular, the strength of the literature has been its insistence on the fact that Aboriginal traditions and worldviews are neither easily understood nor recognized in the world of Canadian politics and public policy (Kulchyski 2005; Ladner 2003; Woolford 2005). Abele and Prince (2003, 150–151), for instance, have argued that comprehensive land claims negotiations in Canada have been hindered by fundamental differences between government and Aboriginal understandings of the treaty process (Tully 2001). On the one hand, federal and provincial governments see themselves as "representatives of the Crown meeting with minorities within Canada" while on the other, Aboriginal peoples see themselves as nations negotiating with the Crown as equals. Taiaiake Alfred (1999, 119–120) goes

even further to say that the BCTC process "represents an advanced form of control, manipulation, and assimilation.... The basic assumptions embedded in the process and the negotiating positions put forward in relation to indigenous peoples point to the state's innate prejudice against justice for indigenous peoples." Others, like Patricia Monture-Angus (1999), find that western concepts like "self-government" and "sovereignty" are not useful for achieving justice because they remain rooted in the colonialist history of Aboriginal peoples and the Canadian state. Instead, she advocates for Aboriginal "independence," a word that she argues is free from the taint of the Crown's unjust treatment of Aboriginal peoples in Canada.

Despite the fundamental incongruence between Aboriginal and Canadian worldviews, Aboriginal peoples and the Crown continue to negotiate treaties. Surprisingly, there has been little systematic and theoretical study of why Aboriginal and non-Aboriginal governments continue to negotiate treaties and why Aboriginal peoples do not adopt the strategies advocated by Alfred, Monture-Angus, and others. The analytical framework presented in this section is an attempt to theorize about why some Aboriginal groups continue to negotiate treaties despite achieving little progress. The framework is advantageous because it is falsifiable and can be used to make predications about the treaty process, its participants, and its outcomes. Moreover, the framework is transferable to other settler societies that are considering adopting Aboriginal treaty negotiation processes like the ones used in Canada.

Fundamentally, CLC negotiations are moments in time when governments and Aboriginal actors negotiate regime change (treaty versus no treaty). To understand the dynamics of CLC negotiations, this section borrows from the "political-institutionalist" structure-agency framework that comparative scholars have developed to explain democratic regime change. The political-institutionalist framework explains regime change by focusing on the strategic interactions between government and societal actors working for or against democratization. Actors in this framework do not interact with each other unencumbered. Rather, they are subject to overarching institutional structures that regulate their behavior towards each other. In this sense, "actors make choices but not in the circumstances of their choosing" (Munck 1994, 371).

As a number of political scientists have observed, politics is mainly about rival actors competing for scarce resources (Hall and Taylor 1996, 937). CLC negotiations are no different, with government and Aboriginal actors seeking to negotiate treaties that maximize their preferences. Although "thin-rationalists" argue that the contents of preferences do not matter, "thick-rationalists" argue that they do matter (Shapiro and Green 1996, 17–19). The contents matter because if the preferences of the actors are similar, then an agreement may be easier to achieve. If actors have substantially different preferences, then an agreement may be more difficult to achieve. Giuseppe DiPalma (1990) argues that knowing what the

preferences of the players are is important for understanding whether the crafting of a new democratic regime will be cooperative or conflictual. If all of the negotiating players prefer democracy, then "none of them, by definition, would be facing a dilemma between regime alternatives. Further, sharing a bias for democracy, they would therefore share a readiness to tolerate and trust each other" (DiPalma 1990, 47).

Preferences alone do not determine outcomes nor do actors negotiate unencumbered and without context. Rather, the negotiating actors are subject to incentives (opportunities and constraints) that organize their strategic interactions with each other. In other words, incentives determine whether or not the negotiating actors should work towards or against a completed agreement. These incentives are generated by the relevant institutional structures under which the actors negotiate (North 1990). For instance, during the third wave of democratization, the urban middle classes supported regime change because they believed that a new regime would provide them with greater benefits than what they were receiving under the existing regime (Huntington 1991, 67). Rueschemeyer, Stephens, and Stephens (1992) argue that the reason why the lower classes in authoritarian countries pursued democratization and why the upper classes opposed it was because of their different assessments of the relationship between their preferences on the one hand, and the existing (authoritarianism) and possible future regimes (democratization), on the other. In the same way, government and Aboriginal actors in the comprehensive land claims process will interact with each other according to their preferences and their positions within the existing regime (no treaty) and possible future regimes (a completed treaty or other self-government models).

Knill and Lenschow (2001) have criticized structural approaches for having a determinist bias, since everything can purportedly be explained by institutions (Knill and Lenschow 2001, 198). They argue that structural approaches, which are macro in level, tend to ignore the significant role that agents can play in determining outcomes. Agent-based studies, on the other hand, have shown that at the microlevel, actors can significantly affect outcomes despite the seemingly powerful influence of institutions (Knill and Lenschow 2001, 198; Clayton and Pontusson 1998). As a result, Knill and Lenschow argue that scholars need to develop new frameworks that account for both structure and agency.

A framework synthesizing structure and agency would have to acknowledge that institutional structures remain important for establishing the incentives of actors to work towards different outcomes; however, such a framework would also have to specify that institutional structures do not predetermine political outcomes (Encarnacion 2000, 486). In the words of Knill and Lenschow (2001, 195), "Institutions are conceived as an opportunity structure that constrains and enables the behavior of self-interested actors. Institutions limit the range of strategic

options that are available to actors, however—in contrast to structure-based approaches—without entirely prestructuring political decisions towards certain outcomes."

In this approach, it is up to the negotiating actors to decide which strategies and actions to take to achieve their preferences, subject to the incentives they face. In the case of comprehensive land claims negotiations in Canada, the relative power that the negotiating parties have within the negotiating process is important for understanding negotiation outcomes. Gerardo Munck (1994), makes a similar observation of the democratization process: "Now to say actors have choices does not mean that outcomes are random or that actors are equally likely to pick any set of potential institutional designs. Probably the primary factor explaining the shape of emerging institutions, as has been underlined by various authors, is the *relative power* of the actors involved in the process, the rulers and the opposition" (emphasis added) (Munck 1994, 370). In the case of CLCs in Canada, the outcomes of negotiations are subject to the power relations between governments on the one hand, and the negotiating Aboriginal groups, on the other. The relative power of these actors comes from the institutional structures governing CLC negotiations. If the power relations are not balanced, then the outcomes will depend on the ability of the weaker actors to influence the stronger actors, assuming their preferences are different (Rueschemeyer, Stephens, and Stephens 1992). In comprehensive land claims negotiations, as will be shown subsequently, the federal, provincial, and territorial governments are the dominant actors and benefit the most from the existing regime (no treaty). The Aboriginal actors, on the other hand, are much weaker and would benefit more from negotiating a new regime (a modern treaty).

In sum, government and Aboriginal actors in the CLC process come to the table with their own preferences for what the process should achieve. Their propensity to cooperate to complete a final treaty is very much influenced by the incentives that emanate from the relevant institutional structures governing comprehensive land claims negotiations in Canada. In the context of those incentives, the actors still have the freedom to choose how they want to interact with each other. However, completing a treaty requires the weaker actors (Aboriginal groups) to convince the dominant actors (governments) that a completed treaty is in their interests (Alcantara 2007a). In the event that the Aboriginal groups cannot convince the governments to complete treaties, the Aboriginal groups will continue to negotiate until viable alternatives emerge.

In the next section, I examine government and Aboriginal preferences (which are internal to the groups) and incentives (which are derived from the institutional structures governing treaties and treaty negotiations) to illustrate the usefulness of this framework for understanding the dynamics of CLC negotiations in Canada. Specifically, I draw upon empirical evidence (interviews with government and

Aboriginal officials) from one province (Newfoundland and Labrador) and one territory (the Yukon Territory) in Canada.

Preferences and Incentives: Some Empirical Evidence

Preferences

The federal government in comprehensive land claims negotiations is primarily interested in ensuring certainty and finality for the purposes of encouraging economic development (Mitchell 1996, 343–344, 347; Rynard 2000). It is also interested in empowering Aboriginal peoples by helping them to increase their capacity for governance and self-sufficiency (Serson 2006; Shafto 2006). According to INAC's (1998, 5) *Federal Policy for the Settlement of Native Claims*:

> The primary purpose of comprehensive claims settlements is to conclude agreements with Aboriginal groups that will resolve the debates and legal ambiguities associated with the common law concept of Aboriginal rights and title. Uncertainty with respect to the legal status of lands and resources, which has been created by a lack of political agreement with Aboriginal groups, is a barrier to economic development for all Canadians and has hindered the full participation of Aboriginal peoples in land and resource management.

These policy goals, especially the drive for development, have been confirmed by Aboriginal, federal, provincial, and territorial officials (Ben Andrew 2006; John-Pierre Ashini 2006; Innes 2006; Andersen III 2006; Shafto 2006; Serson 2006; Mitander 2006; Gingell 2006). Yet government actions have not always respected or benefited those Aboriginal groups whose lands were being developed. In many instances, the federal government provided permits, tax breaks, and infrastructure to encourage businesses to engage in economic development on Aboriginal lands, despite opposition from Aboriginal and other stakeholder groups (Angus 1992, 68–69; Miller 2000, 365–366; Nuke 2006; McPherson 2003, 142).

Canadian provincial governments are also driven by economic development concerns. In Newfoundland and Labrador, for instance, Minister Ernest McLean has said (2001), "successful land claims negotiations with the LIA [Labrador Inuit Association] and the Innu will ensure economic, legal and social certainty for governance and business and social development." Settling these claims is necessary because Labrador is the key to the economic health of the entire province. According to Minister Tom Rideout (2004),

> The goal of this government is to achieve economic health for the province. Building the economic health of Labrador is a key part of that plan. We are building a strong foundation that will enable all regions of the province to achieve their enormous potential. From what I have seen during my visit

> to Labrador, the potential there is certainly enormous.... As we move forward with implementing the strategy, our investments will be made where they will have the most positive impact for all regions of the province.

Others have reiterated that economic development should benefit all provincial citizens and should not be at the expense of Aboriginal peoples in the province (Pelley 2006). "It is imperative that we ensure any land claim settlement reached with the Inuit and Innu are fair to all Labradorians—Aboriginal and non-Aboriginal" (Lush 2001). In sum,

> The provincial government's objective in negotiating comprehensive land claim agreements is to achieve certain and final settlement of Aboriginal claims to territory within the Province. Certainty as to the ownership of lands and how such lands are to be managed will provide a more stable environment for development and investment.... Settlement of the land claim is necessary to provide for the long term economic and social development of the province, and contribute to the economic, social and cultural development of Labrador Inuit claimants. Negotiations are intended to accommodate the interests of Labrador Inuit, governments and third parties (Executive Council 1997).

The actions of the provincial government, however, do not reflect its stated belief that economic development should benefit both Aboriginal and non-Aboriginal peoples. Between the 1970s and 1990s, the provincial government engaged in a number of economic development projects in Labrador without consulting the Innu or the Inuit. These projects included commercial logging, mining, fishing, hydroelectric projects, military bases, and low-level flying by military aircrafts (Nuke 2006; Rich 2006; Tony Andersen 2006). According to members of both Aboriginal groups, governments and businesses have benefited from these developments much more than the affected Aboriginal groups (John-Pierre Ashini 2006; Nuke 2006; Andrew 2006; Riche 2006; Tony Andersen 2006; Jararuse 2006).

Territorial governments are also very interested in economic development. The Yukon territorial government has long been interested in maximizing the development of its lands for the purposes of enhancing the well-being of its citizens (McArthur 2006; Penikett 2006; Flynn 2006; McCullough 2006; McCormick 2001, 369; Cameron and White 1995, 12). It has for many years, lobbied the federal government to transfer to it control over Yukon lands and resources (McCormick 2001; McArthur 2006; Armour 2006; McCullough 2006). As in Labrador, the Yukon territorial government, the federal government, and private companies have long engaged in economic development on Yukon Indian lands despite the opposition of Yukon First Nations.

In contrast, the preferences of Aboriginal groups involved in the CLC process are much broader. In general, Aboriginal groups want to maximize their control over their traditional lands to protect their traditional ways of life and practices. They also want to protect their interests in and derive tangible benefits from economic development and they desire greater control over their lives in areas such as education, taxation, health, law enforcement, environmental protection, culture, heritage, fishing, and hunting (Samson, Wilson, and Mazower 1999, 30–34; Wadden 1991, 200; Jack 1990, 23; Andrew 2006; Nuke 2006; Porter 2006; Mitander 2006; Joe 2006; Beaudoin 2006; O'Brien 2006). Finally, Aboriginal peoples are interested in acquiring justice for past wrongs, such as the restitution of their traditional lands of which they were illegally dispossessed. Although concepts such as rights, justice, and sovereignty are sometimes discussed at the negotiating table, most of the time negotiations focus on economic and governance goals. According to the interviews, I conducted with Aboriginal negotiators, civil servants, and politicians, Aboriginal groups involved in CLC negotiations are mainly interested in how the above abstract concepts can be translated into practical economic and governance goods.

Incentives

In general, the federal, provincial and territorial governments face powerful disincentives to complete an agreement. The actual CLC process, with its formal rules and procedures, places Aboriginal groups in a weaker position relative to the federal and provincial/territorial governments. The process forces Aboriginal groups to prove to the governments that their claims are valid and therefore acceptable for negotiations. During the actual negotiations, Aboriginal groups must adopt western forms of knowledge, proof, and discourse if they want negotiations to proceed. Rather than, being able to use their traditional knowledge, languages, and oral histories in negotiations, they are forced to produce maps, hire white anthropologists, linguists, lawyers and historians to prepare and document their claims, and engage in formal proposal-counter proposal negotiations, all in the English language (Samson 2003; Macklem 2001, 271–272; Michel 2006; Andrew 2006; John-Pierre Ashini 2006; McPherson 2003, 140; Nadasdy 2003; Kulchyski 2005). This can be a problem in Aboriginal communities where traditional languages remain dominant. Moreover, Aboriginal groups have little power to influence the agenda as they can only negotiate those responsibilities and jurisdictions that are listed under the federal comprehensive land claims policy (INAC 1998, 7–8). Finally, the government can at any time declare that certain lands are no longer on the table for negotiation. This action, for instance, occurred in 1994, when the Voisey's Bay area in Labrador was taken off the table after large nickel deposits were found there.

In essence, under the CLC process, the federal, provincial and territorial governments have become rights-granting entities while the Aboriginal groups have become petitioners, forced to prove the validity of their claims to the governments before they can receive lands, rights, self-government, and jurisdictions (Samson 2003; Andrew 2006; Backhouse and McRae 2002, 58). Bolstering the authority of Canadian governments is the *Constitution Act of 1982*, which gives them a wide range of powers over the lands, water bodies, and peoples in Canada. As mentioned earlier, federal, provincial, and territorial governments have used their constitutional powers to engage in development on Aboriginal lands despite Aboriginal opposition (Nui 2006; Rich 2006; Andersen III 2006; Tony Andersen 2006; Andrew 2006; Marshall 2006).

Government incentives are also affected by the negotiation stakes. Much of the powers and lands involved in comprehensive land claims negotiations involve Crown lands and jurisdictions. The federal government tends to be interested in cash transfers, taxation, implementation costs, fisheries, migratory birds, and environmental protection. The provinces, on the other hand, have jurisdiction over inland water, economic development, renewable and nonrenewable resources, land, environmental protection, and local governance. Overall, provincial governments have much more at stake in negotiations than the federal government (Pelley 2006; Carter 2006; Feit 1980), meaning that the main task of Aboriginal groups is to convince the provinces that a modern treaty is consistent with their interests (INAC 1998, 6–7; Hawco 2006; Rowell 2006). The same can be generally said about the territories. Traditionally, the federal government took the lead in negotiations because it had primary jurisdiction over territorial lands and resources. However, the territorial governments quickly became more important because the treaties, once completed, had a larger impact on them than on the federal government (Armour 2006; McCullough 2006; McArthur 2006).

Canadian courts have provided governments with mixed incentives. For instance, the Supreme Court of Canada ruled in *Delgamuukw v. British Columbia* (1997) that the federal government can infringe upon Aboriginal rights for the greater good of economic development. However, the Crown is still bound by its fiduciary duty to take into account Aboriginal concerns prior to engaging in development (Macklem 2001, 252–253). Subsequent court cases in 2004 have tried to clarify the Crown's fiduciary duty and these cases are discussed subsequently.

Other incentives to negotiate have come from a growing awareness of Aboriginal rights. Former Deputy Minister of INAC Scott Serson (2006) mentioned that federal bureaucrats and negotiators felt enormous pressure to complete treaties after the publication of the Royal Commission on Aboriginal Peoples (RCAP 1996). They felt they had to demonstrate that they could successfully address the concerns raised in RCAP about treaty making in Canada. Yukon territorial government officials also mentioned that in addition to legal certainty, they were interested in

correcting the historical wrongs inflicted by the Crown on Yukon First Nations peoples (McCullough 2006; Armour 2006; Flynn 2006). Floyd McCormick (1997) disagrees with these characterizations and argues that government motivations tend to be overwhelmingly economic in nature.

Aboriginal groups, on the other hand, face powerful incentives to negotiate a CLC treaty. First and most importantly, they have no better option to adequately satisfy their preferences within the current institutional framework. A number of Aboriginal officials have mentioned that the comprehensive land claims process is the "only game in town" for achieving the type of control they want over their lands (Rich 2006; Riche 2006; Jararuse 2006; Hibbs 2006; Andersen III 2006; Porter 2006; Dick 2006; Sterriah 2006; Beaudoin 2006). Aboriginal groups throughout Canada have considered and used litigation, but judicial outcomes are unpredictable and can be as damaging as helpful (Macklem and Townshend 1992, 78–79; Monture-Angus 1999; Feit 1980, 163; Penikett 2006). Other Aboriginal groups have used protest tactics, but these tactics do not really let Aboriginal groups gain the type of control they want. The Innu in the 1980s and early-1990s, for instance, were one of the most active groups in Canada in using protests and other confrontational strategies. However, as of 2001, the Innu have focused solely on negotiations because their confrontation strategies produced uneven results (Innes 2006; Riche 2006; Rich 2006).

Aboriginal groups face another incentive to negotiate, mainly that "once it became clear that development was going to happen even in the absence of a settlement, pressure began to grow at the community level to resolve claims and to "catch a ride" on the development that was occurring" (Angus 1992, 71). Aboriginal groups realize that governments will engage in economic development on their lands anyway, so negotiating CLC treaties are the only way to ensure that their interests are protected (Rich, 2006; Jararuse 2006; Joe 2006; Mitander 2006; Porter 2006; Dick 2006; see also McPherson 2003 regarding Inuit in Nunavut; and Rynard 2001, 12–13 regarding the Cree in Quebec).[2]

Why Have Some Aboriginal Groups Failed to Complete Treaties?

Scholars have offered a number of reasons for why some Aboriginal groups have been unable to complete CLC treaties. Rynard (2001), Feit (1980), and Diamond (1985) have argued that treaties get completed only when federal and provincial governments are subject to significant economic development pressures. Others have argued that fundamental differences in governmental and Aboriginal world-views have prevented some groups from completing treaties (Abele and Prince 2003, 150–151; Tully 2001). Tony Penikett (2006) places the blame for incomplete treaties on the federal, provincial, and territorial governments. Specifically, he criticizes their inflexible political mandates, their lack of political will, and their

failure to provide sufficient incentives to their negotiators to complete agreements quickly. Finally, Alcantara (2007a) points to the importance of the Aboriginal groups themselves in determining CLC negotiation outcomes. For him, one external factor and three internal factors relative to the Aboriginal groups affect their ability to complete treaties. These factors are: Compatible versus incompatible goals (internal); frequent versus minimal use of confrontational tactics (internal); Aboriginal group internal cohesion versus Aboriginal group internal division (internal); and positive versus negative government perceptions of the Aboriginal group (external).

Regardless of the reasons, since 1973, twenty-two Aboriginal groups have completed treaties whereas many others have not. Some of these negotiations have gone on for almost thirty-five years. In addition, most, if not all, Aboriginal groups participating in the CLC process have borrowed money from the federal government to pay for their negotiating costs. In some cases, as a result of negotiations dragging on for far too long, the amount of money that they borrowed from the federal government has equaled or surpassed the amount that they were supposed to receive under their treaty settlements (Mitander 2006; Porter 2006; Walsh 2006). As a result, a number of groups have dropped out of the CLC process, or have shown no interest in returning to the table despite negotiating for many years. The most recent group to drop out of the CLC process was the Carrier Sekani First Nations in British Columbia, who left the negotiating table in March 2007 after thirteen years. One reason why they dropped out of the process was because their leaders decided that negotiations had become a waste of money as a result of little progress occurring. A second reason was because, in the words of Tribal Chief David Luggi, "While they keep us talking at the table, resource extraction continues" on their traditional lands (Brethour 2007, A2).

Another group that has rejected the CLC process was the Kaska in the Yukon Territory. The Kaska were part of the fourteen Yukon First Nations that entered the CLC process in 1973. After failing to negotiate a Final Agreement in June 2002, the federal mandate to negotiate in the Yukon Territory expired. Although there has been some talk of reopening negotiations over the last several years, Kaska leaders have indicated that they are no longer interested in negotiating a CLC treaty. One reason why they abandoned the treaty process was because it was too expensive to continue negotiating. They were also frustrated that the federal and territorial governments were using Kaska lands during negotiations. Finally, Kaska leaders felt that the treaty process was too rigid to allow them to negotiate the type of control that they want over their traditional lands (McMillan 2006; Porter 2006; Dixon 2006).

The reasons offered by the Carrier Sekani First Nations and the Kaska for dropping out of the treaty process illustrate the usefulness of the structure-agency framework described earlier. Both groups originally entered the treaty negotiation

process because, it was the best option available to them for achieving their economic and political goals. Indeed, both groups negotiated for thirteen and twenty-nine years, respectively, before dropping out of the negotiating process. Their decision to drop out of process was facilitated by a number of recent institutional developments that broaded the choice set beyond CLC negotiations. These developments are described in the next section subsequently.

The Broadening of Aboriginal Options

Two institutional developments have provided negotiating Aboriginal groups with a set of alternative options that are preferable to continued CLC negotiations. The first development was two recent court decisions handed down by the Supreme Court of Canada in 2004. The second development was the emergence of new policy instruments outside of the CLC process that Aboriginal groups can now use to achieve their goals. These developments, which are explored in greater detail subsequently, represent fundamental changes to the incentive structures facing Aboriginal peoples. Whereas previously, Aboriginal peoples had no better option to achieve their economic and political goals, they now face a set of alternatives that are preferable to the compromises that are necessary to complete CLC treaties.

Judicial Decisions

In November 2004, the Supreme Court of Canada handed down two crucial decisions that had important implications for the nature of Aboriginal rights and title in Canada: *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, and *Taku River Tlingit First Nation v. British Columbia* (Project Assessment Director), 2004 SCC 74, [2004] 3 S.C.R. 550. In both cases, the First Nations sought the court's help to clarify the Crown's duty to consult and accommodate them prior to the Crown's development of their traditional lands. The court ruled that prior to developing these lands, the Crown must engage in meaningful consultation with the Aboriginal groups, and if appropriate, accommodate their concerns. In *Taku River*, the court ruled that "The duty to consult arises when a Crown actor has knowledge, real or constructive, of the potential existence of Aboriginal rights or title and contemplates conduct that might adversely affect them. This in turn may lead to a duty to change government plans or policy to accommodate Aboriginal concerns. Responsiveness is a key requirement of both consultation and accommodation" (para. 25). In *Haida Nation*, the court ruled that the government's duty to consult should be "proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed" (para. 39). Yet, consultation and accommodation does not mean a duty to reach agreement with an Aboriginal group. In *Taku River*, the court ruled that

"the Province was not under a duty to reach agreement with the TRTFN [Taku River Tlingit First Nation] and its failure to do so did not breach the obligations of good faith that it owned to TRTFN" (para. 22).

In essence, these rulings give Aboriginal groups greater leverage to affect the ability of governments and private companies to use their traditional lands, even if their rights have yet to be clarified through litigation or a treaty. At a minimum, the federal and provincial governments must consult and/or accommodate any Aboriginal groups that have some claim to the affected lands. The level of consultation and accommodation must be proportionate to the strength of the group's case for Aboriginal title. One way of assessing strength, according to the court in *Taku River* (para. 32), is whether an Aboriginal group has been accepted into treaty negotiations. If so, the government's duty to consult and accommodate is quite strong.

These two court decisions are important because Aboriginal groups no longer have to rely solely on a CLC agreement to protect their interests in their traditional lands. Now, Aboriginal groups involved in the CLC process can explore alternative options that may cost less and are more effective in providing immediate and preferable results. The rest of this article discusses three alternatives to the treaty process that Aboriginal groups should consider pursuing. They are: Self-government agreements, bilateral agreements, and the *First Nations Land Management Act.*

Alternative Policy Instruments

Self-Government Agreements

Strictly speaking, a comprehensive land claims agreement is completely different and separate from a self-government agreement. When the Kwanlin Dün First Nation in the Yukon Territory completed its modern treaty with the federal and territorial governments in 2005, for instance, it signed two separate documents: The Kwanlin Dün First Nation Final Agreement and the Kwanlin Dün First Nation Self-Government Agreement. Although it is common for Aboriginal groups to negotiate both agreements concurrently, they are not required to do so and can choose to negotiate only one or the other.

Groups that have become frustrated with comprehensive land claims negotiations should seriously consider focusing all of their efforts on negotiating a self-government agreement. An advantage of doing so is that it simplifies negotiations, since only the Aboriginal group and the federal government are involved. Moreover, a completed self-government agreement prior to a CLC agreement allows the Aboriginal group to build capacity and exercise tribal sovereignty that is compatible with local needs and interests. These two advantages are important because scholars have identified them as being necessary conditions for successful

economic development on Canadian Indian reserves (Cornell and Kalt 1992; Alcantara 2007b). At Kwanlin Dün First Nation, leaders have replaced the old band council structure with a Chief and Council supported by an Elders Council, a Youth Council, the General Assembly, and a Judicial Council. Kwanlin Dün's self-government agreement also recognizes that the First Nation is a legal entity for the purposes of borrowing, lending, and transacting. Its new government can pass laws affecting language, culture, health care, training, adoption, education, inheritance and wills, solemnization of marriage, administration of its reserve lands, administration of justice, and taxation of its citizens, among other things. These powers are more extensive and are a clear improvement on the powers available to band councils under the *Indian Act*.[3]

One First Nation that has signed a self-government agreement prior to completing a comprehensive land claims agreement is Westbank First Nation, located near Kelowna, British Columbia. Westbank First Nation entered the British Columbia Treaty Commission process in 1994, completing a framework agreement in 1997. Since then, however, the First Nation has made little progress in negotiating an AIP with the federal and provincial governments. According to Tim Raybould, Westbank's chief negotiator, "Treaty negotiations have not been 'negotiations' for many years. Governments come to the table with poorly thought out take-it-or-leave-it positions that serve neither the province nor Canada well, nor, indeed, first nations. Treaties have become way too complicated. They are not designed to be living documents but rather 'full and final settlement,' a dangerous approach that may result in future conflict. If B.C. and Canada truly want economic certainty, they had better realize who actually needs the treaties" (Raybould, 2007). In contrast, Westbank self-government negotiations were much more successful. On July 6, 2000, Westbank First Nation and federal negotiators initialed the Westbank First Nation Self-Government Agreement. They brought it to the community for ratification, which they did on May 24, 2003. Finally, the parties formally signed the agreement on October 3, 2003. Under the agreement, Westbank has been able to design its own governing institutions and exercise a number of important powers. It has passed laws governing wills and estates, taxation, management of reserve lands, resource management, agriculture, environmental protection, culture and language, education, health services, law enforcement, traffic enforcement, public order, and public works, among other things. Although Westbank's CLC negotiations have stalled, it has been able to use its self-government agreement to build capacity and craft laws that are sensitive to local needs.

Bilateral Agreements

A second option that Aboriginal groups should consider exploring is the use of bilateral agreements with governments and private companies. These bilateral

agreements tend to be used to seek agreement on particular issues. For instance, the Kaska signed a bilateral agreement with the Yukon territorial government to co-manage the forest resources on its traditional lands (Bi-Lateral Agreement Between the Kaska and the Yukon Government 2003). The Carrier Sekani First Nations in British Columbia withdrew from the treaty process in March 2007 to explore bilateral agreements with private companies such as Canfor Corporation to develop the natural resources on their lands (Brethour 2007, A2).

Besides the time and monetary advantages that come from negotiating specific agreements between only two parties, bilateral agreements give Aboriginal groups a number of other advantages. First, it allows the Aboriginal groups to gain immediate control and input into the use of their lands. The decisions in *Taku River* and *Haida Nation* require the federal and provincial/territorial governments to consult and/or accommodate Aboriginal groups before issuing licenses or engaging in development on Aboriginal lands. A second advantage of bilateral agreements is that the governments have shown more flexibility to what they are willing to agree. For instance, although the Yukon territorial government refused the Kaska's demand for a veto over land use during CLC negotiations, the territorial government was willing to accept a Kaska veto in their 2003 bilateral agreement co-managing forest resources on Kaska lands. The preamble of this agreement states: "WHEREAS: Yukon acknowledge, in agreements entered into with the Kaska in January 1997, that the Kaska have Aboriginal rights, titles, and interest in and to the Kaska Traditional Territory in the Yukon" (Bi-Lateral Agreement Between the Kaska and the Yukon Government 2003, 1). Under Section 3, entitled "Kaska Consent," the agreement states: "Yukon shall not agree to any significant or major dispositions of interests in lands or resources or significant or major authorizations for exploration work and resource development in the Kaska Traditional Territory without consulting and obtaining the consent of the Kaska" (Bi-Lateral Agreement Between the Kaska and the Yukon Government 2003, 4). The Yukon territorial government was willing to agree to a Kaska veto in the bilateral agreement because, it was not a treaty agreement. Moreover, the government at the time was keen on developing the rich forest resources on Kaska lands and was cognizant of its duty to consult and/or accommodate Kaska interests before it could extract those resources (Armour 2006; McCullough 2006; Flynn 2006).

In sum, bilateral agreements show promise in giving Aboriginal peoples immediate and significant control over resource developments on their lands. Moreover, bilateral agreement negotiations tend to be quicker, more cost effective, and focused, since the stakes are lower and considerably less complex. Governments have shown a willingness to be more flexible in recognizing Aboriginal rights and title in these types of agreements than they are during comprehensive land claims negotiations. There are limitations, however, to bilateral agreements. They tend to

be used only for resource development projects and not for other purposes like fishing and hunting rights. Moreover, they tend to last for a specific period of time, meaning that the rights that Aboriginal groups may gain in bilateral agreements may not transfer over to future agreements.

First Nations Land Management Act

For those groups that are reluctant to take on the responsibilities that flow from a self-government agreement, another option is to opt into the *First Nations Land Management Act* (FNLMA), passed by the federal government in 1999. In essence, the FNLMA allows an Aboriginal group to opt out of the land management provisions of the *Indian Act* to develop its own land code for managing its reserve lands. Originally, only fourteen First Nations were allowed to participate in 1999. Since then, forty-one bands have opted into the FNLMA, ninety have inquired about doing so, and eighteen have had their land codes in operation (Alcantara 2007b).

The FNLMA provides Aboriginal groups with a number of advantages. First, there is very little negotiating involved. Under the FNLMA, a First Nation develops and drafts a land code, submits it to a jointly appointed verifier, negotiates a funding agreement with Indian and Northern Affairs Canada, and then holds a community vote on both the land code and the funding agreement. Once approved, the verifier certifies the land code and the First Nation takes over all land management responsibilities from the Crown. The average time to complete a land code is three years (Isaac 2005; Alcantara 2007b).

Second, an Aboriginal group operating under the FNLMA benefits from capacity building and tribal sovereignty. These groups are free to design land management regimes as they see fit. Most land codes address individual property rights, collective property rights, leases and licenses, matrimonial property rules, dispute resolution involving band lands, and other law-making powers related to the management of an Aboriginal group's lands. Some groups have designed land management regimes that mimic off-reserve regimes, while others have combined the efficiency of off-reserve regimes with local customs such as expropriation to meet the needs of the community as a whole. At a minimum, land codes reduce transaction costs by eliminating the involvement of the federal government in the management of reserve lands (Alcantara 2007b).[4]

Conclusion

This article has added to the existing literature on CLC treaties by providing a useful theoretical framework for understanding the relationship between the preferences and the incentives (which are derived from the relevant institutional structures) that drive Aboriginal and non-Aboriginal governments to

negotiate treaties. Aboriginal and non-Aboriginal actors come to the table with a set of goals that they want to achieve. Their ability to achieve these goals is influenced by the institutional structures governing their interactions. As well, the outcomes of negotiations are strongly affected by the distribution of power between the participating actors. In Canada, the institutional structures privilege government interests over Aboriginal ones, much to the detriment of Aboriginal peoples, unless their interests happen to coincide with government ones. These findings are not only applicable to Canada. Rather, other settler societies (like Australia, New Zealand, and the United States) that are considering adjusting their intergovernmental structures to constitutionally entrench Aboriginal governments will find this theoretical framework highly relevant.

This article has also tried to argue that those Aboriginal groups that have not been able to complete treaties within a reasonable amount of time should consider exiting the process to pursue the alternatives described earlier. Aboriginal groups should place these alternatives on a continuum. On the one end, bilateral agreements provide Aboriginal groups with immediate control over specific uses of their traditional lands. In the middle, the FNLMA gives Aboriginal groups significant land management authority over their reserve lands, much more so than bilateral agreements. At the other end of the continuum are self-government agreements, which combine the FNLMA's land management powers with the option of constructing governing institutions that regulate citizen behavior in culturally sensitive ways.

These alternatives, however, are not without their limitations. Bilateral agreements tend to have expiry dates built into them and are usually limited in scope. Self-government agreements and the FNLMA land codes are more permanent and broader in nature, but they only apply to the reserve lands that the groups already own. Comprehensive land claims, on the other hand, allow Aboriginal groups to increase and make permanent the amount of lands that they can control. Moreover, by opting into these policy alternatives, Aboriginal groups may be undermining their ability achieve meaningful self-government and self-determination.

Despite these concerns, Aboriginal groups that have yet to complete treaties should consider dropping out of the process to pursue the alternatives described earlier. These alternatives are preferable to the status quo (no treaties and *Indian Act* governance) since, the status quo gives Aboriginal peoples the least amount of control over their lands and peoples. They are also preferable to litigation and protests, since such strategies sometimes generate significant legal defeats and substantial negative publicity among non-Aboriginal government actors and the general public. Continued treaty negotiations is also not an acceptable option for some groups, since the theoretical framework above suggests that the process is unable to accommodate Aboriginal interests and goals that are significantly different from government ones.

In contrast, the alternatives described earlier are promising in two respects. First, they provide Aboriginal peoples with highly useful tools for achieving some of the essential elements of Aboriginal self-determination within a relatively short time frame. Second, self-government agreements and land codes represent significant opportunities for capacity building. The human and financial resources generated by such alternatives can be used by Aboriginal groups to more successfully achieve a broader and more just conception of Aboriginal self-determination within the Canadian state.

Notes

The author would like to thank the three anonymous reviewers of this journal for providing helpful advice on an earlier version of this manuscript.

1. As far as I can tell, the first author to use the phrase "to treaty or not to treaty" as a title or heading in a published work is Peter Sand (1999).
2. An alternative argument is that Aboriginal peoples see protests and litigation as important tools for creating space and recognition of Aboriginal demands. Although Aboriginal groups did rely on such strategies to create space during the early periods of Aboriginal mobilization, many groups have begun to turn away from such strategies because they tend to produce unpredictable and harmful results (unpredictable judicial decisions) and/or negative feelings among non-Aboriginal government actors and the public (as a result of public protests, occupations, and blockades).
3. The *Indian Act* is a federal piece of legislation governing almost all aspects of Aboriginal life on Canadian Indian reserves. The *Act*, for instance, addresses governance structures, taxation rules, by law powers, membership codes, and property rights, among other things.
4. On the importance of reducing transaction costs for economic development, see Akee 2006.

References

Abele, Frances, and Michael J. Prince. 2003. Aboriginal governance and Canadian federalism: A to-do list for Canada. In *New Trends in Canadian Federalism*, eds. François Rocher, and Miriam Smith. Peterborough, ON: Broadview Press.

Akee, Randall. 2006. Checkerboards and coase: Transactions costs and efficiency in land markets. Discussion Paper No. 2438, Institute for the Study of Labor.

Alcantara, Christopher. 2007a. Explaining Aboriginal treaty negotiation outcomes in Canada: The cases of the Inuit and the Innu in Labrador. *Canadian Journal of Political Science* 40 (1): 185–207.

Alcantara, Christopher. 2007b. Reduce transaction costs? Yes. Strengthen property rights? Maybe. The First Nations Land Management Act and economic development on Canadian Indian reserves. *Public Choice* 132 (3–4): 421–432.

Alfred, Taiaiake. 1999. *Peace, power, righteousness.* Toronto: Oxford University Press.

Andersen, Tony. 2006. Former LIA vice president and current first minister, Department of Nunatsiavut Affairs. Personal Interview. Nain, Labrador, February 20.

Andersen III, William. 2006. Former LIA president and current Nunatsiavut Government president. Personal Interview, Nain, Labrador, February 23.

Andrew, Ben. 2006. Innu Nation Official. Personal Interview. Sheshatshiu, Labrador, February 13.

Angus, Murray. 1992. Comprehensive claims: One step forward, two steps back. In *Nation to nation: Aboriginal sovereignty and the future of Canada*, eds. Diane Engelstad, and John Bird. Concord, ON: Anansi.

Armour, Karyn. 2006. Assistant Deputy Minister for YT land claims secretariat. Personal interview. Whitehorse, YT, October 24.

Ashini, John-Pierre. 2006. Innu Nation official. Personal interview. Sheshatshiu, Labrador, February 13.

Backhouse, Catherine and Donald McRae. 2002. Canadian Human Rights Commission on the treatment of the Innu of Labrador by the Government of Canada. Ottawa: Canadian Human Rights Commission, March 26.

Beaudoin, Tom. 2006. Land claims director, Kwanlin Dun First Nation. Personal interview. Whitehorse, YT, October 26.

Bi-Lateral Agreement Between the Kaska and the Yukon Government. Whitehorse, YT, 2003.

Brethour, Patrick. 2007. Band to withdraw from treaty talks. *Globe and Mail* A2.

British Columbia Treaty Commission. 2007. Six-stages: Policies and procedures. Website at: http://www.bctreaty.net/files/sixstages.php (accessed February 15, 2007).

Cameron, Kirk and Graham White. 1995. Northern governments in transition: Political and Constitutional development in the Yukon, Nunavut, and the Western Northwest Territories. Montreal: Institute for Research on Public Policy.

Carter, Ruby. 2006. Senior provincial negotiator for the Inuit file. Personal interview. St John's, Newfoundland, February 27.

Clayton, Richard, and Jonas Pontusson. 1998. Welfare state retrenchment revisited: entitlement cuts, public sector restructuring, and inegalitarian trends in advanced capitalist societies. *World Politics* 1: 67–98.

Cornell, S, and J. Kalt. 1992. Reloading the dice: Improving the chances of economic development on American Indian reservations. In *What can tribes do? Strategies and institutions in American Indian Economic Development*, eds. S Cornell, and J. Kalt. Los Angeles, University of California at Los Angeles, American Indian Studies Center.

Dacks, Gurston. 2004. Implementing First Nations self-government in the Yukon: Lessons for Canada. *Canadian Journal of Political Science* 37 (3): 671–694.

Diamond, Billy. 1985. Aboriginal rights: The James Bay experience. In *The quest for justice: Aboriginal peoples and Aboriginal rights*, eds. Menno Boldt, J. Anthony Long, and Leroy Little Bear. Toronto: University of Toronto Press.

Dick, Hammond. 2006. Kaska tribal council hereditary chief. Personal interview. Watson Lake, YT, October 31.

DiPalma, Giuseppe. 1990. *To craft democracies: An essay in democratic transitions.* Berkeley: University of California Press.

Dixon, Dave. 2006. Liard First Nation band councillor. Personal interview. Watson Lake, YT, October 31.

Encarnacion, Omar G. 2000. Beyond transitions: The politics of democratic consolidation. *Comparative Politics* 32 (4): 479–498.

Executive Council. 1997. Backgrounder #2: Land claims backgrounder. St John's: Executive Council of Newfoundland and Labrador, November 5. Available at: http:// www.releases.gov. nl.ca (accessed April 10, 2006).

Feit, Harvey A. 1980. Negotiating recognition of Aboriginal rights: History, strategies and reactions to the James Bay and Northern Quebec Agreement. *Canadian Journal of Anthropology* 1 (2): 159–172.

Flynn, Dermot. 2006. Chief YT negotiator for the Kaska and Kwanlin Dün files, 1983-present. Personal interview. Whitehorse, YT, October 24.

Gingell, Judy. 2006. Bios – Judy Gingell, president and CEO, Kwanlin Development Corp. Kwanlin Dün First Nation Website. Website at: http://www.kwanlinDün.com (accessed February 15, 2007).

Hall, Peter, and Rosemary Taylor. 1996. Political science and the three new institutionalisms. *Political Studies* XLIV, 936–957.

Hawco, Ray. 2006. Former provincial chief negotiator for Newfoundland and Labrador. Personal interview. St. John's, Nfld, February 26.

Henderson, James, and Youngblood. 1994. Empowering treaty federalism. *Saskatchewan Law Review* 158: 241.

Hibbs, Mina Campbell. 2006. LIA board member. Personal interview. North West River, Labrador, February 16.

Hicks, Jack, and Graham White. 2000. Nunavut: Inuit self-determination through a land claim and public government? In *Inuit regain control of their lands and their lives*, eds. Jens Dahl, Jack Hicks, and Peter Jull. Copenhagen: International Work Group for Indigenous Affairs.

Huntington, Samuel. 1991. *The third wave: Democratization in the late twentieth century.* Norman, OK: University of Oklahoma Press.

Indian and Northern Affairs Canada (INAC). 1998. *Federal policy for the settlement of native claims.* Ottawa: Minister of Public Works and Government Services Canada.

Indian and Northern Affairs Canada. 1995. *Federal policy guide: Aboriginal self-government.* Ottawa: Minister of Public Works and Government Services Canada.

Innes, Larry. 2006. Innu Nation lawyer and negotiator. Telephone interview. Happy Valley Goose Bay, Labrador, March 7.

Isaac, Thomas. 2005. First Nations Land Management Act and third party interests. *Alberta Law Review* 42: 1047–1060.

Jack, Bart. 1990. *Labrador in the '90s.* Happy Valley-Goose Bay: Labrador Institute.

Jararuse, John. 2006. Inuit elder. Personal interview. Nain, Labrador, February 23.

Joe, Dave. 2006. Former legal counsel for Council of Yukon Indians, negotiator on the Umbrella Final Agreement. Personal interview. Vancouver, B.C., October 16.

Knill, Christoph, and Andrea Lenschow. 2001. Seek and ye shall find! Linking different perspectives on institutional change. *Comparative Political Studies* 34: 187–215.

Kulchyski, Peter. 2005. *Like the sound of a drum: Aboriginal cultural politics in Denendeh and Nunavut.* Winnipeg, MB: University of Manitoba Press.

Ladner, Kiera. 2003. Treaty federalism: An indigenous vision of Canadian federalisms. In *New trends in Canadian federalism*, eds. Francois Rocher, and Miriam Smith. Peterborough, ON: Broadview Press.

Lush, Tom. 2001. Speaking notes for the Minister of Intergovernmental Affairs, & government house leader. In *Directions north: Labrador in the new century*, ed. Martha Macdonald. Happy Valley-Goose Bay: Labrador Institute.

Macklem, Patrick. 2001. *Indigenous difference and the constitution of Canada.* Toronto: University of Toronto Press.

Macklem, Patrick, and Roger Townshend. 1992. Resorting to court: Can the judiciary deliver justice for First Nations? In *Nation to nation: Aboriginal sovereignty and the future of Canada*, eds. Diane Engelstad, and John Bird. Concord, ON: Anansi.

Marshall, Harold. 2006. Former senior civil servant for Newfoundland and Labrador. Telephone interview. St John's, NL, March 5.

McArthur, Doug. 2006. Former Deputy Minister YT Land Claims Secretariat 1989-1992. Personal interview. Vancouver, BC, October 20.

McCormick, Floyd. 2001. Still frontier, always homeland: Yukon politics in the year 2000. In *The provincial state in Canada: Politics in the provinces and territories*, eds. Keith Brownsey, and Michael Howlett. Peterborough, ON: Broadview Press.

McCormick, Floyd. 1997. Inherent Aboriginal rights in theory and practice: The Council for Yukon Indians Umbrella Final Agreement. PhD Dissertation. Edmonton, AB: University of Alberta.

McCullough, Lesley. 2006. Director of research for YT land claims secretariat. Personal interview. Whitehorse, YT, October 24.

McLean, Ernest. 2001. Speaking notes for minister of Labrador and Aboriginal Affairs Ernest McLean to the meeting of Newfoundland and Labrador RED boards. Happy Valley Goose Bay, NL, October 12. Available at: http://www.releases.gov.nl.ca.

McMillan, Liard. 2006. Liard First Nation chief. Personal interview. Watson Lake, YT, November 1.

McPherson, Robert. 2003. *New owners: Minerals and Inuit land claims in their own land.* Calgary: University of Calgary Press.

Michel, Ben. 2006. Former Innu negotiator for Sheshatshiu and current Innu Nation president. Telephone interview. Sheshatshiu, Labrador, January 24.

Miller, J. R. 2000. *Skyscrapers hide the heavens: A history of Indian-White relations in Canada.* Toronto: University of Toronto Press.

Mitander, Victor. 2006. Former Council of Yukon Indians negotiator on the Umbrella Final Agreement. Personal interview. Whitehorse, YT, October 23.

Mitchell, Marybelle. 1996. *From talking chiefs to a native corporate elite: The birth of class and nationalism among Canadian Inuit.* Montreal-Kingston: McGill-Queen's University Press.

Molloy, Tom. 2000. *The world is our witness: The historic journey of the Nisga'a into Canada.* Calgary: Fifth House Publishers.

Monture-Angus, Patricia. 1999. *Journeying forward: Dreaming First Nations' independence.* Peterborough, ON: Fernwood Press.

Munck, Gerardo. 1994. Democratic transitions in comparative perspective. *Comparative Politics* 26 (3): 355–375.

Murphy, Michael. (ed.). 2005. Relational self-determination and federal reform. *Canada and the State of the federation: 2005,* Montreal-Kingston: McGill-Queens University Press.

Nadasdy, Paul. 2003. *Hunters and bureaucrats: Power, knowledge, and Aboriginal-State relations in the Southwest Yukon.* Vancouver, ON: UBC Press.

North, Douglass. 1990. *Institutions, institutional change and economic performance.* New York: Cambridge University Press.

Nui, Mark. 2006. Current Innu Nation negotiator representing Natuashish. Personal interview. Natuashish, Labrador, February 17.

Nuke, Ponus. 2006. Innu elder. Personal interview. Sheshatshiu, LB, February 15.

O'Brien, Rick. 2006. Bios – Rick O'Brien chief, Kwanlin Dün First Nation" Kwanlin Dün First Nation Website. Website at: http://www.kwanlinDün.com (accessed February 15, 2007).

Pelley, Bob. 2006. Senior provincial negotiator for the Innu file. Personal interview. St John's, Newfoundland, February 27.

Penikett, Tony. 2006. *Reconciliation: First Nations treaty making in British Columbia.* Vancouver, BC: Douglas & McArthur.

Porter, Dave. 2006. Kaska Chief negotiator. Personal interview. Vancouver, BC, October 17.

Raybould, Tim. 2007. Just who needs treaties? *Globe and Mail.* (April 4): Letters to the editor.

Rich, Paul. 2006. Former Innu Chief of Sheshatshiu. Personal interview. Happy Valley-Goose Bay, Labrador, February 16.

Riche, Joseph. 2006. Current Innu negotiator for Sheshatshiu. Personal interview. Sheshatshiu, Labrador, February 13.

Rideout, Tom. 2004. Minister reflects on issues facing Labrador and Aboriginal people. News Releases: NLIS 4, Labrador and Aboriginal Affairs, August 24. Available at: http://www.releases.gov.nl.ca (accessed April 10, 2006).

Rowell, Judy. 2006. LIA negotiator. Telephone interview. Nain, Labrador, March 6.

Royal Commission on Aboriginal Peoples (RCAP). 1996. *Report of the royal commission on Aboriginal Peoples.* Ottawa: Minister of Supply and Services Canada.

Rueschemeyer, D., John Stephens, and Evelyn Huber Stephens. 1992. *Capitalist development and democracy.* Chicago: University of Chicago Press.

Russell, Dan. 2000. *A people's dream: Aboriginal self-government in Canada.* Vancouver, ON: UBC Press.

Rynard, Paul. 2001. Ally or colonizer? The federal state, the Cree Nation, and the James Bay agreement. *Journal of Canadian Studies* 36 (2): 8–47.

Rynard, Paul. 2000. Welcome in, but check your rights at the door: The James Bay and Nisga'a agreements in Canada. *Canadian Journal of Political Science* 33 (2): 211–243.

Saku, James C, and Robert M. Bone. 2000. Looking for solutions in the Canadian North: Modern treaties as a new strategy. *The Canadian Geographer* 44 (3): 259–270.

Samson, Colin. 2003. *A way of life that does not exist: Canada and the extinguishment of the Innu.* St. John's, NL: Institute of Social and Economic Research.

Samson, C., James Wilson, and Jonathan Mazower. (1999). *Canada's Tibet: The killing of the Innu.* Toronto, ON: Survival International.

Sand, Peter. 1999. *Transnational environmental law, lessons in global change.* Amsterdam, Holland: Wolters Kluwer.

Scholtz, Christa. 2006. *Negotiating claims: The emergence of indigenous land claim negotiation policies in Australia, Canada, New Zealand, and the United States.* New York: Routledge.

Serson, Scott. 2006. Former Deputy Minister of INAC. Telephone interview. Ottawa, Ontario, March 24.

Shafto, Penny. 2006. Former senior federal negotiator for the Inuit file. Telephone interview. Ottawa, Ontario, March 23.

Shapiro, Ian, and Donald Green. 1996. *Pathologies of rational choice theory: A critique of applications in political science.* New Haven, CT: Yale University Press.

Specific Claims Branch of Indian and Northern Affairs Canada. 2006. *Public information status report.* Ottawa: Specific Claims Branch.

Sterriah, Norman. 2006. Former Ross River Dena Council chief and land negotiator. Personal interview. Ross River, YT, October 30.

Tully, James. 2001. Reconsidering the B.C. treaty process. *Speaking truth to power: A treaty forum.* Ottawa: Law Commission of Canada.

Wadden, Marie. 1991. *Nitassinan: The Innu struggle to reclaim their homeland.* Toronto: Douglas & McIntyre.

Walsh, Steve. 2006. Legal counsel to the Kaska Nation. Personal interview. Whitehorse, YT, October 22.

White, Graham. 2002. Treaty federalism in northern Canada: Aboriginal-government land claims boards. *Publius: The Journal of Federalism* 32 (3): 89–114.

Wilkins, David E. 2002. *American Indian politics and the American political system.* Lanham, MD: Rowman & Littlefield.

Woolford, Andrew. 2005. *Between justice and certainty: Treaty-making in modern-day British Columbia.* Vancouver, ON: UBC Press.