

1. 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 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 recognizing 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 that, while not politically realistic in the current era of combative politics in Taiwan, are nonetheless goals to aspire to.

A brief note on terminology. In this document, “aboriginal peoples” is used as a collective name for all of the original peoples of a territory, in this case, mostly Canada or Taiwan. In contrast, the term “aboriginal people” refers to more than one aboriginal person, rather than the group as a collective. Moreover, the words “aboriginal” and “aborigine” are used with a lowercase “a” to distinguish them from the proper noun for the indigenous people of Australia. The term “tribe” is a political chieftain intended to refer to a social group that is often mistakenly used to refer to an entire aboriginal ethnic group sharing a common language and culture, as in “Tsou tribe” or “Cree tribe.” In this document, the word “group” is used in lieu of “tribe” except in organization names or in quoting other sources directly. The term “First Nations” is a term that, despite not having a legal definition, has been in common use in Canada since it was adopted to replace the terms Indian and band, which some people found offensive. “Indigenous” means “native to the area” and is similar to the terms “aboriginal peoples,” “native peoples” or “First Peoples.” The term “Indian” collectively describes all the indigenous people in Canada who are not Inuit or Métis. “Inuit” are the aboriginal people of the Northwest Territories, Nunavut, northern Quebec and Labrador. It means “the people” in Inuktitut and is the term by

which Inuit refer to themselves. The singular form is “Inuk.” The word “Métis” is French for “mixed blood” and is used to describe people with mixed European and First Nations ancestry.

After the fall of the Ch’ing [Qing] Dynasty (1644-1911), the Republic of China (ROC) was the national government of all of China that came into existence in 1912. It acquired Taiwan in 1945 after the Japanese defeat in World War II, and it relocated from the China mainland to Taiwan in 1949. It remains the official country name of Taiwan, and is often used synonymously with Taiwan. 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, from 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 institutions when they retreated toward the end of the Chinese Civil War (1927-1949) and moved the seat of power to Taipei. The Kuomintang (KMT) itself deserves definition for the purposes of clarity. The name refers to the Chinese Nationalist Party that fought the Communist Party for control of China during the Civil War and then fled to Taiwan, taking over the island and ruling it under martial law for four decades, billing itself internationally as the government of Free China. 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 democratization, the KMT evolved into what it is today: a bona fide political party in the country's multi-party system.

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 legal codes from the West, especially Germany, 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). More recently, the newly established media regulatory body the National Communications Commission uses as its blueprint the United States Federal Communications Commission. 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 Communist Party. 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.

The Taiwanese are one of several main sub-ethnic groups of Taiwan with roots on the island that go back between 300 and 400 years. It's 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 a “Chinese consciousness.” In their view, they are only recently emerging from a century of oppression: first at the hands of the Japanese colonizers, and then at the hands of another “foreign” occupying force, the Kuomintang (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 [Qing] 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. Still, the patterns of governmental responses to calls for self-rule indicate that they are becoming somewhat standardized. 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. 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 organizations 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.

1.1 Literature review

This theme was examined by Scott Simon in his “Paths to Autonomy: Aboriginality and the Nation in Taiwan,” (2006) which provides an excellent synopsis of the historical interaction

of the aboriginal people of Taiwan and the island's successive governments, as well as an examination of the Democratic Progressive Party (DPP) government's efforts in terms of aboriginal rights, with particular emphasis on the 2000 DPP White Paper on Indigenous Rights.

Simon's paper provides strong evidence for how the language of aboriginality was appropriated by proponents of Taiwan independence as they sought a non-Chinese identity for the island. He adds that indigenous activists were able to contribute to official policy on how to protect their rights through constitutional amendments once the DPP was in power after 2000, but that the confrontational relationship between the DPP-controlled executive branch and the KMT-controlled legislative branch resulted in a failure to enact laws to adequately address these demands for autonomy, short of recognition in principle that aboriginal peoples do have the right to political autonomy.

The approach taken by Simon of examining the history of governmental interaction with native groups is a valuable one, as only through such an understanding can policymakers develop an appreciation for the complexity of the issues involved. Many works take a historical approach, but tend to focus on the past half century, such as "Changes in Aboriginal Policies—From the Perspective of Political Development Since Taiwan's Retrocession" (2002) by Hsieh Shun-syu, which begins its examination with the KMT era beginning in 1945, and how that regime's

relationship with the island's aboriginal peoples changed over time, culminating in the handover of power to the DPP in 2000 and the efforts made by that administration, beginning with the official recognition on Sept. 23, 2001, of the Thao people as Taiwan's 10th bona fide indigenous group. Hsieh posits that aboriginal policy has entered mainstream policy debate and asks how such policy has changed during the period under discussion, and how it can be fairly assessed in compliance with aboriginal characteristics, concepts of ethnic justice and a commitment to pluralism.

During the KMT period of Taiwanese history, the government's aboriginal policy was driven by the desire to create social harmony, Chien Yu-hwa posits in "Research on Autonomous Policy of Taiwan's Indigenous Peoples" (2003). Since 2000, this policy transformed from one of integration and assimilation to something approaching a multicultural policy. Chien suggests that the government of Taiwan has forsaken its patriarchal mindset and is seeking a new partnership with the island's aborigines by encouraging self-government. She questions the constitutionality of the Basic Law on Indigenous Peoples, proposed by aboriginal legislators and passed by the Legislative Yuan in January 2005, and suggests that the draft law on aboriginal autonomy borrows too heavily from organic laws on local bureaucratic systems, introducing legacy errors

into the new legislation that would seriously affect the efficient practice of aboriginal self-governance.

Chien is right to point out that it is not sufficient merely to use current organic laws as templates to be imposed on aboriginal communities. As Hsieh recommends, policies should be predicated on an assessment of political participation by aborigines as well as their inherent social and cultural rights. Jin Hung-jei concurs, writing in “On Self-determination of Taiwan’s indigenous people—a comparison and critique of various drafts of self-governance laws” (2004) that the right to aboriginal self-determination can be defended from the standpoint of liberalism, human rights or a nation-state viewpoint.

Jin compares and critiques six drafts of aboriginal self-governance laws, looking at the procedural mechanisms designed to implement autonomous regions, create and finance administrative districts, and the intergovernmental relationships that would be created between the new governments and other governmental units in Taiwan. Jin questions the adequacy of imposing each law on the nation’s diverse aboriginal groups and cites the many barriers that continue to exist before aboriginal autonomous regions can become a reality in Taiwan, including those within and among the indigenous groups themselves.

Many of the studies that attempt to tackle this topic focus on the issue of land rights. Huang Meng-nan's "Study on Administrative Districts Within an Aboriginal Autonomous Region" (2004), for example, looks at the draft law on aboriginal autonomous regions and analyzes the consequences of its implementation with regards to the demarcation of administrative districts and the reallocation of administrative and political resources. The paper points out that the institution of autonomous regions would be influenced by national land planning and local development initiatives, and that the inefficiency of resource integration in Taiwan would be an issue that must be taken into account. Likewise, Yu Zhong-yi's "Aboriginal Land Rights and How They Are Being Protected in Taiwan" (2002) notes how the provision of land rights to aboriginal populations is an international trend and that it is the government's responsibility to see these rights put into practice. Yu calls for the establishment of a mechanism for negotiation between aboriginal and government negotiators that would see the two sides able to open talks on the issue from a position of equals.

Land rights is an issue that is very much at the forefront of aboriginal and government relations, and it is one that elicits much emotion and controversy. The risk is that the entire dialogue could become bogged down with the land rights issue, or that policymakers, in addressing it, feel they can rest on their laurels with regards to the much larger issue of political

power-sharing. Another danger of exclusive attention to the land rights issue is that it is often associated with a patriarchal mindset on the part of central government forces. This leads to a tendency lump all aboriginal groups into one category and ignore the different cultures, traditions and needs of each. Fortunately, there are a raft of studies addressing this larger issue, such as “Theory and practice of aboriginal self-governing system based on Tsou tribe” (2002), in which Yang Chih-wei looks specifically at the text of the Indigenous Autonomy Act drafted by the Council of Aboriginal Affairs to evaluate the feasibility of its implementation, given the track record of previous administrations in Taiwan in state-oriented indigenous policies and how they have affected the survival of indigenous peoples.

Yang’s hypothesis is that the act can only be successful when the distinctive cultural and historical background of each group is accounted for, and that a uniformity in autonomy regulations will not work for all of the Taiwanese groups. To this end, the example is used of the Tsou people and their development of the Danaiku Village into a successful ecological park without assistance from the central government. Yang concludes that more than one single Indigenous Autonomy Act is needed for all the indigenous peoples, although the same basic principles of self-government hold.

Each group should be allowed to define to its own satisfaction exactly what autonomy entails, and that the only successful legislation to this end will provide for input from each group. In such a situation, Yang concludes from the Danaiku example, issues such as identification to the group, freedom from government intrusion, and intra-tribal consensus are the crucial elements. Yang suggests that the central government adopt the role of facilitator, rather than imposer of self-government, by establishing bodies to research and promote aboriginal autonomy and create aboriginal empowerment projects to that end.

These and other studies are a boon to policymakers and aboriginal rights scholars as they attempt to navigate the difficult waters of power-sharing agreements. It is important for these policymakers to appreciate the difficulty inherent in such an undertaking, however, and not expect to solve the problem with one, all-encompassing piece of legislation, which would run the risk of being diluted and altered through the contentious legislative process in Taiwan today. Rather, a new paradigm is taking sway, one which accepts the premise that aborigines have an inherent right to political autonomy, and recognizes the reality that arriving at that goal it is a long and arduous process. Indeed, as the example of the Canadian experience shows, it is a never-ending process, and one that continues to evolve to reflect the political and social evolutions that every nation experiences.