

*Discussions of indigenous self-determination have traditionally shown little enthusiasm for the idea of indigenous engagement in electoral politics – and for good reasons. Self-determination is usually understood as a means of gaining distance from, rather than inclusion in, state institutions. Legislative bodies are regarded with particular suspicion, even hostility, evoking memories of historic disenfranchisement or strategies of electoral inclusion linked to assimilation and the loss of indigenous rights. As a means of advancing indigenous objectives, moreover, electoral representation seems at best to offer only a token presence in institutions dominated by non-indigenous majorities, and at worst looks like a strategy for pacifying indigenous representatives while energy and resources are diverted away from the goal of indigenous self-government. In spite of these reservations, this article defends the view that electoral politics can be viewed as part of a broader strategy for advancing indigenous self-determination by targeting a variety of complementary access points to political power. The argument is grounded in a relational model of self-determination that emphasizes the importance of self-government and the need for modes of shared decision making capable of governing the complex interdependence characteristic of state–indigenous relationships today. While it is important to acknowledge its many shortcomings, much of the opposition to the electoral route to indigenous self-determination is based on unrealistic expectations regarding what this form of political voice is capable of delivering. Hence, one of the objectives of this article is to clarify the various functions that indigenous electoral representation can and cannot be expected to perform.*

*Key words:* indigenous/representation/self-determination/electoral/  
democracy

### 1 Introduction

Discussions of indigenous<sup>1</sup> self-determination traditionally have not had much to say about electoral politics or about the idea of including

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† Previous versions of this article were presented at the annual meetings of the American Political Science Association in 2005 and of the Australia and New Zealand Studies Association of North America in 2006. Thanks to Pam Prior for valuable research assistance, and to the *Journal's* editor and referees for comments on an earlier draft. Financial assistance from the Social Sciences and Humanities Research Council of Canada is gratefully acknowledged. A final note of thanks to the Gilbert and Tobin Centre of Public Law at the University of New South Wales, for hosting me as Visiting Fellow during the final stages of the article's preparation.

1 The terms 'indigenous' and 'Aboriginal' are used interchangeably to reflect common usage in the different literatures and case studies.

indigenous representatives in the legislative institutions of the modern state. There are good reasons for this. Self-determination is usually understood as a means of gaining distance or protection from rather than inclusion in state institutions. Indigenous peoples frequently express a profound sense of alienation toward these institutions, which carry the stigma of colonial domination. Legislative bodies are regarded with particular suspicion, and even hostility, conjuring up memories of historic disenfranchisement or strategies of electoral inclusion linked to assimilation and the loss of indigenous rights and identities. As a means of advancing indigenous objectives, moreover, electoral representation at best seems to offer a token and ineffective presence in institutions dominated by non-indigenous majorities, and at worst can be viewed as a form of co-optation, whereby indigenous representatives are brought inside state institutions, where their concerns will remain marginalized, while energy and resources are simultaneously diverted away from the goal of greater autonomy or self-government.

In spite of these reservations, the idea of electoral representation has begun to attract some positive attention among both indigenous and non-indigenous leaders and academics. My own contribution to this emerging debate is to argue that indigenous representation in shared-rule institutions such as national legislatures need not be seen as a means of short-circuiting indigenous self-determination; instead, this form of political voice can be viewed as part of a broader strategy for advancing indigenous self-determination by targeting a variety of parallel and complementary access points to political power. My argument is grounded in a relational model of self-determination that speaks both to the importance of self-government and to the need for modes of shared and cooperative decision making capable of governing the complex interdependence characteristic of the relationship between indigenous and non-indigenous populations in so many countries around the globe. While I acknowledge that there are many serious shortcomings of the electoral route to indigenous self-determination, my sense is that opposition to the electoral option is frequently based on unrealistic expectations of what this form of political voice can or should deliver. Hence, one of my key objectives is to clarify the various functions that representation in central institutions *can* and *cannot* perform. My conclusion is that, although we should not expect too much from indigenous legislative representation, it is a mistake to dismiss this political strategy outright.

The discussion is divided into three substantive sections, followed by a brief conclusion. Focusing on Australia, Canada, and New Zealand, Part II briefly illustrates how historic policies of exclusion or coercive inclusion of indigenous peoples in electoral processes created a significant and enduring legacy of suspicion and hostility toward notions of enfranchisement and representation. Nevertheless, this section also attempts to

explain more recent attempts to rethink this historic legacy of suspicion and hostility and to reconsider the utility of an electoral pathway to indigenous empowerment. Part III contrasts the more purely autonomist understanding of self-determination with a concept of relational self-determination that emphasizes both autonomy and interdependence-oriented modes of governance. Here I also seek to answer the standard charge that the ends of electoral representation and self-government are, at best, logically in tension, if not directly incompatible. Part IV canvasses some of the primary strengths and weaknesses of the indigenous electoral option in relation to the broader goals of self-determination and indigenous empowerment. Part V concludes.

II *Indigenous representation and citizenship in Australia, Canada, and New Zealand: A history of inclusion and exclusion*

Toward the latter half of the nineteenth century, colonial settler states such as Australia, Canada, and New Zealand made increasing efforts to influence and, ultimately, control their indigenous peoples by manipulating their citizenship status. These exercises in engineering indigenous citizenship were implemented via state-mandated definitions of indigeneity and the franchise. Various different objectives were sought, including the permanent segregation of portions of the indigenous population deemed to be irredeemably uncivilized, the assimilation of those deemed capable of improvement by tying enfranchisement to the alienation of their indigenous and treaty rights, or the reduction of state obligations to indigenous people by defining them out of existence, at least in legal terms. The engineering of indigenous citizenship followed a distinctive pattern in each of these three settler states.

A AUSTRALIA

Australia's indigenous citizenship policies were among the most extreme and coercive. Blood-based definitions of indigeneity were particularly prominent in Australian law. Whereas early in the nineteenth century an 'Aborigine' in Australia was defined more flexibly, in terms of both ancestry and mode of life (*e.g.*, habitual association with other Aborigines), reliance on social factors gradually gave way to more rigid biological definitions based on blood percentages. With the various Australian states each free to legislate its own definitions, the result was a bewildering array of categories of Aboriginality based on different percentages of Aboriginal ancestry. Different degrees of Aboriginality, in turn, corresponded with different degrees of citizenship. Full-blood Aborigines, who were taken to be inherently and irreversibly biologically inferior to Europeans, and therefore unworthy candidates for citizenship and civil society, were frequently distinguished from half-castes, who were

expected, with the right mix of state support and coercion, to assimilate and become full and equal citizens.<sup>2</sup>

Aboriginality in Australia, therefore, went hand in hand with political exclusion. As Andrew Markus notes, during the period from 1890 to 1940, the high water mark of biological racism in Australia, '[n]on-European blood imposed a permanent barrier to admission into Australian society.'<sup>3</sup> As a case in point, the first Commonwealth Parliament passed the Commonwealth Franchise Act 1902, which granted universal adult suffrage (male and female) but explicitly excluded any Aboriginal Australians not previously enfranchised by the states in which they resided. In 1949 the Commonwealth Electoral Act was amended to provide Aboriginal Australians with the franchise at the commonwealth level, but only in cases where they had previously acquired it at the state level or had completed military service.<sup>4</sup> Their supposed lack of civilization was the primary justification for Aboriginal disenfranchisement, but in certain states, such as Queensland and Western Australia, there were fears that the large number of potential Aboriginal voters might threaten white dominance at the ballot box, a concern not unfamiliar to colonists across the Tasman Sea in New Zealand.<sup>5</sup>

Australia was six decades into the twentieth century before it finally began a slow process of cleansing this historic stain from its citizenship regime. In 1962 the commonwealth finally granted the franchise to all Aboriginal Australians, and by 1965 all the Australian states were in line with this policy. Commonwealth law continued, for some time, to make it illegal to encourage Aboriginal people to enrol to vote, but voting is now compulsory for all Australians.<sup>6</sup> As of 2007, not a single Aboriginal person has been elected to the Australian Commonwealth

2 Andrew Markus, *Australian Race Relations 1788–1993* (St. Leonards, NSW: Allen & Unwin, 1994) at 77–8, 127–8 [Markus, *Australian Race Relations*]; John Chesterman & Brian Galligan, *Citizens without Rights: Aborigines and Australian Citizenship* (Cambridge: Cambridge University Press, 1997) at 12–9, 54–5 [Chesterman & Galligan, *Citizens without Rights*]; and G. Stokes, 'Citizenship and Aboriginality: Two Conceptions of Identity in Aboriginal Political Thought,' in Geoffrey Stokes, ed., *The Politics of Identity in Australia* (Cambridge: Cambridge University Press, 1997) 158. As in Canada, one reason for linking the legal definition of Aboriginality to a certain minimum blood percentage (quantum) was the hope that out-marriage would gradually eliminate the government's political and financial responsibilities toward Aboriginal peoples as their population, in legal terms at least, was effectively reduced to zero. See Chesterman & Galligan, *ibid.* at 19.

3 Markus, *Australian Race Relations*, *supra* note 2 at 111; see also Chesterman & Galligan, *Citizens without Rights*, *supra* note 2 at 12, 18.

4 Markus, *ibid.* at 118; Chesterman & Galligan, *ibid.* at 18.

5 Chesterman & Galligan, *ibid.* at 13.

6 *Ibid.* at 174–7. Voting became compulsory for Aboriginal Australians in 1984, sixty years after this policy was first introduced at the federal level for non-Aboriginal Australians.

House of Representatives, and only two have been elected to the Commonwealth Senate, although, significantly, the Northern Territory, whose population is approximately 25 per cent Aboriginal, currently counts five Aboriginal members in its twenty-five-strong Legislative Assembly.<sup>7</sup>

Efforts to address this democratic deficit have included several proposals for guaranteed Aboriginal representation in Australia, none of which has ever been implemented. Aboriginal Australians began calling for dedicated seats as early as the 1930s.<sup>8</sup> More recently, parliamentary committees in Queensland and New South Wales examined the option of dedicated representation for Aboriginal peoples; neither process led to any concrete policy outcomes.<sup>9</sup> The recently mothballed Aboriginal and Torres Strait Islander Commission (ATSIC) once proposed similar measures at federal, state, and local levels. ATSIC also proposed, as an interim measure, that its chair be accorded observer status in Parliament, the right to speak to either house on the subject of any bill affecting Aboriginal interests, and the capacity to deliver an annual report to the nation on Aboriginal affairs.<sup>10</sup> In spite of such proposals, for many years ATSIC itself remained the primary forum for Aboriginal political representation in Australia.<sup>11</sup> Composed of and elected by Aboriginal peoples throughout the country, ATSIC was constituted not as a legislative body but as an institution mandated to provide policy advice to the Commonwealth government, to allocate part of the government's budget for Aboriginal affairs, and to play a role in policy development and implementation, working in conjunction with the

7 As Keith Archer correctly notes, Aboriginal Australians have generally been more successful at electing members to state and territorial legislatures. See Keith Archer, 'Representing Aboriginal Interests: Experiences of New Zealand and Australia' (2003) 5 *Electoral Insight* 39. As of 2007, eleven Aboriginal representatives have been elected in the Northern Territory, two in Western Australia, and one each in Queensland, Tasmania, and New South Wales.

8 New South Wales, Legislative Council, Standing Committee on Social Issues, *Enhancing Aboriginal Political Representation: Inquiry into Dedicated Seats in the New South Wales Parliament* (Report No. 18, 1998) at 11–4 [*Enhancing Aboriginal Political Representation*].

9 For discussion see Catherine J. Iorns, 'Dedicated Parliamentary Seats for Indigenous Peoples: Political Representation as an Element of Indigenous Self-Determination,' online: (2003) 10:4 *Murdoch U.E.J.L.* at paras. 45–71 <<http://www.murdoch.edu.au/elaw/>> [Iorns, 'Dedicated Parliamentary Seats'].

10 Scott Bennett, *White Politics and Black Australians* (St. Leonards, NSW: Allen & Unwin, 1999) at 82–4.

11 It should be noted that Torres Strait Islanders exercise a degree of regional autonomy through the Torres Strait Regional Authority (TSRA). Indigenous Australians also enjoy representation on various land councils and co-management institutions, but these are not legislative bodies. See Helena Catt & Michael Murphy, *Sub-state Nationalism: A Comparative Analysis of Institutional Design* (London: Routledge, 2002) at c. 4 [Catt & Murphy, *Sub-state Nationalism*].

Ministry of Aboriginal Affairs.<sup>12</sup> In 2005, the Howard government abolished ATSIC and created in its place a National Indigenous Council, a government-appointed advisory body composed of Aboriginal Australians. In the current political climate in Australia, the birth of another elected body to represent Aboriginal people seems highly unlikely.

#### B NEW ZEALAND

In New Zealand, Māori were accorded a relatively less inferior status than Australian Aboriginals, being regarded by the European colonists as a not-so-distant race of peoples on the social Darwinian scale of being.<sup>13</sup> Nevertheless, despite eschewing the more extreme biological racism of its Australian neighbour, New Zealand did, in the end, establish different legal categories of Māori linked to measures of ancestry and blood percentage. Prior to 1971, for example, a Māori was defined in the census as a person with 50 per cent Māori blood or more. From 1971 to 1986, the census asked for a specific measure of Māori versus European ancestry, and it was not until 1986 that self-identification, regardless of blood percentage, was accepted as the official standard of establishing Māori identity. More than just a means of controlling Māori identity, blood standards played a significant role in governing Māori citizenship status and access to the franchise.

In comparison with indigenous peoples in Australia (and Canada), Māori have figured much more prominently in New Zealand electoral politics, and from a much earlier date. Midway through the nineteenth century, the Constitution Act of 1852 accorded the franchise to all adult male Māori, but most continued to be disenfranchised, in practice, because their collective forms of land ownership conflicted with the individualistic nature of the property qualification required for the vote.<sup>14</sup> This *de facto* disenfranchisement, in fact, suited many of the European colonists, who were of the opinion that Māori were not sufficiently civilized to exercise their voting rights responsibly. Nevertheless, this exclusion was addressed in 1867 by the Māori Representation Act, which provided for a system of guaranteed Māori representation in the form of four single-member electorates overlaying the existing pattern of territorial representation in the country. Blood standards were

12 Ibid. at 103–5.

13 David Pearson, *The Politics of Ethnicity in Settler Societies: States of Unease* (Basingstoke, UK: Palgrave, 2001) at 63 [Pearson, *Politics of Ethnicity*].

14 Augie Fleras, 'From Social Control towards Political Self-Determination? Māori Seats and the Politics of Separate Māori Representation in New Zealand' (1985) 18 *Can.J.Pol.Sci.* 551 at 554–5 [Fleras, 'From Social Control']; New Zealand, *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Wellington: New Zealand Government Press, 1986) at 82–3 [*Electoral Commission Report*].

introduced to govern this new electoral arrangement. Initially, only those individuals with at least 50 per cent Māori blood could vote or stand for election in the Māori seats, while half-caste Māori were entitled to vote in either (or both) European and Māori constituencies.<sup>15</sup> By extension, full-blood Māori could neither vote nor stand for election in the European electorates, a state of affairs that continued until 1967, when the government ended the exclusion of Māori candidates from the European electoral roll and the exclusion of Europeans from the Māori roll.<sup>16</sup> From 1975 onward, self-identification became the standard for participation on the Māori electoral roll.<sup>17</sup>

Originally, Māori were accorded a level of representation significantly disproportionate to their population numbers; for example, on a per-capita basis Māori should have been entitled to fourteen to sixteen members rather than the four they were guaranteed. In fact, one of the original motivations behind the creation of the Māori seats was to ensure European electoral dominance in the remaining electorates, presumably based on the assumption that most Māori would choose the Māori electoral roll.<sup>18</sup> The seats were also seen as a temporary measure until Māori were fully assimilated. When assimilation did not proceed as predicted, the seats were extended for five years in 1872 and then again indefinitely in 1876.<sup>19</sup> However, it was not until 1996, when New Zealand adopted the mixed member proportional representation system (MMP), that population parity in the Māori electorates was successfully reintroduced (it had been introduced briefly in 1975, then abolished again in 1976 after a change in government). Since then the number of Māori seats has been pegged to the number of Māori signed up to the Māori electoral roll, a development that saw the number of seats increase to six and then seven, respectively, in the 1999 and 2002 elections.<sup>20</sup> This development was fed by a more than doubling of the numbers on the Māori roll from 1990 to 2002.<sup>21</sup>

15 In 1893, the provision allowing for dual-constituency Māori voting was abolished. In 1896, a ruling gave half-castes the choice of enrolling for either a European or a Māori constituency. See *Electoral Commission Report*, *ibid.* at 83.

16 *Ibid.* at 83–4.

17 Ian Pool, *Te Iwi Māori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991) at 14.

18 Susan A. Banducci, Todd Donovan, & Jeffrey A. Karp, 'Minority Representation, Empowerment, and Participation' (2004) 66 *J.Pol.* 534 at 534–56 [Banducci *et al.*, 'Minority Representation'].

19 *Electoral Commission Report*, *supra* note 14 at 83.

20 Catt & Murphy, *Sub-state Nationalism*, *supra* note 11 at 95–9.

21 This period also saw the proportion of the Māori population signed up to the Māori roll increase from 40 per cent to 55 per cent. See Ann Sullivan, 'Effecting Change through Electoral Politics: Cultural Identity and the Māori Franchise' (2003) 112:3

The extension of the franchise and the creation of the Māori seats were attended by controversy and conflicting motivations. While some of the European colonists harboured a genuine desire to provide Māori with a political voice, others remained opposed to enfranchisement, both for reasons of racial prejudice and out of fear of the power that Māori might exercise through the ballot box, particularly in parts of the country where they remained concentrated in significant numbers.<sup>22</sup> The Māori electorates also attracted substantial European support, but for most this was linked to the belief that the inclusion of Māori representatives in Parliament would foster cooperation with European laws and institutions, allowing the Māori population to be assimilated more rapidly so that state consolidation, settlement, and economic expansion could proceed apace.<sup>23</sup> Equally imperative was the desire among the colonists to circumvent any independent and autonomist Māori political movement that could threaten European political dominance.<sup>24</sup>

Early on Māori showed relatively little interest in electoral politics, preferring instead to focus on creating their own autonomous political institutions.<sup>25</sup> But as the nineteenth century wore on, and the conditions for Māori autonomy looked increasingly unfavourable in the face of an ever-growing and more powerful settler state, some Māori began calling for a voice in Parliament.<sup>26</sup> This period also witnessed

Journal of the Polynesian Society 219 [Sullivan, 'Effecting Change']; R. Shaw & J. Tapiata, 'Indigenous Representation under MMP in Aotearoa/New Zealand' (Paper presented to the Annual Meeting of the New Zealand Political Studies Association, Hamilton, 22–24 November 2004) [Shaw & Tapiata, 'Indigenous Representation'].

22 Fleras, 'From Social Control,' supra note 14 at 557.

23 Patricia Grimshaw, Robert Reynolds, & Shurlee Swain, 'The Paradox of "Ultra-Democratic" Government: Indigenous Civil Rights in Nineteenth-Century New Zealand, Canada and Australia' in Diane Kirkby & Catharine Coleborne, eds., *Law, History, Colonialism: The Reach of Empire* (Manchester, UK: Manchester University Press, 2001) 78 at 86–7.

24 See Fleras, 'From Social Control,' supra note 14 at 555–8; Ranginui Walker, 'The Māori People: Their Political Development' in Hyam Gold, ed., *New Zealand Politics in Perspective*, 2d ed. (Auckland: Longman Paul, 1989) 320 at 323 [Walker, 'Māori People']; and David Hawkes & Bradford Morse, 'Alternative Methods for Aboriginal Participation in Processes of Constitutional Reform' in Ronald L. Watts & Douglas M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991) 163 at 179.

25 Walker, 'Māori People,' supra note 24 at 325–7.

26 For a good example, see Fleras, 'From Social Control,' supra note 14 at 556, quoting the Taupo Chief Tukairangi: 'This is our word to you and your companions that you may open up the doors of Parliament to us, the great discussion house of New Zealand, for we are members of some of the tribes of this land. Let us be ushered in so that we may hear some of the growling of the Native dogs without mouths ...

the emergence of a new generation of Māori leaders focused on achieving Māori aims inside state institutions, and their efforts helped raise the stature of the Māori seats among both Māori and Pakeha.<sup>27</sup> Respect would eventually give way to disillusionment as Māori grew frustrated with the limited influence delivered by the four seats, and by the early 1990s a majority were choosing to participate on the general rather than the Māori roll.<sup>28</sup> More recently, with the introduction of MMP, momentum has shifted back in favour of the Māori seats, particularly as the number and influence of the Māori MPs have increased. By 1996 most political parties had placed at least one Māori MP in a favourable position on their party list, and in the inaugural MMP election in 1996 Māori for the first time gained parliamentary representation proportionate to their numbers, electing fifteen of the 120 MPs. By 2002, twenty-one MPs with some Māori ancestry and nineteen self-identifying Māori MPs were present in Parliament.<sup>29</sup> Not without justification, some were referring to the post-MMP period as ‘the dawning of Māori political might.’<sup>30</sup>

#### C CANADA

State manipulation of Indian status and citizenship was also prominent in nineteenth-century Canada.<sup>31</sup> In particular, in the 1830s there began a distinct policy shift away from protecting and civilizing separate and self-governing Aboriginal communities to a policy of direct interference in tribal self-government, a coordinated attempt to break up and alienate any remaining Aboriginal land holdings and to assimilate reserve populations as equal citizens of the burgeoning Canadian polity. One dimension of this new policy, initiated in 1850 with the passage of the Lower Canada Lands Act, was to define who was an ‘Indian’ and thus entitled

so that the eye may come into contact with the eye, the tooth with the tooth.’ See also Roger Maaka & Augie Fleras, *The Politics of Indigeneity: Challenging The State in Canada and Aotearoa New Zealand* (Dunedin, New Zealand: University of Otago Press, 2005) at 130 [Maaka & Fleras, *Politics of Indigeneity*].

27 Maaka & Fleras, *ibid.* at 130. ‘Pakeha’ means, roughly, ‘New Zealander of European descent.’

28 Mason Durie, *Tē Mana, Tē Kawanatanga: The Politics of Māori Self-Determination* (Auckland: Oxford University Press, 1998) at 98 [Durie, *Tē Mana*]; Tina Dahlberg, ‘Māori Representation in Parliament and Tino Rangatiratanga’ (1996) 2:1 *He Pukenga Korero* 62 at 62–72 [Dahlberg, ‘Māori Representation’].

29 Sullivan, ‘Effecting Change,’ *supra* note 21 at 229. As Sullivan notes, MMP encourages all parties to compete for the Māori vote, particularly given the healthy growth-rate projections for the Māori population. The 2005 election saw twenty-one Māori MPs returned to Parliament, including four members of the newly formed Māori Party.

30 Durie, *Tē Mana*, *supra* note 28 at 102.

31 See, e.g., Bonita Lawrence, ‘Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview’ (2003) 18:2 *Hypatia* 3.

to the legal benefits and protections afforded by this status. More importantly, the government outlined the various means by which this status could be (willingly or unwillingly) alienated. Alienation was more important, from the government's point of view, because their ultimate objective was to legally define Indians out of existence, thereby relieving themselves of any further political or financial responsibilities for these populations.<sup>32</sup> As in the Australian case, the use of blood standards (known as 'blood quantum') was a key factor in the policy of alienage,<sup>33</sup> the government's calculation being that a few generations of intermarriage would take care of their Indian problem. Blood quantum came to be a standard feature of the Indian Act (the government's main instrument of Indian policy) and arguably remains a feature of that policy instrument to this day.<sup>34</sup>

A second key dimension of assimilation policy was the process of enfranchisement.<sup>35</sup> Prior to Confederation in 1867, Canadian officials tended to assume that Aboriginal people were too uncivilized for the franchise, and when enfranchisement began in the 1850s it was linked to the loss of Indian status and treaty rights, including the right to live on reserve, to participate in reserve political life, or to hold land collectively as a member of a tribal community.<sup>36</sup> Given the unwillingness of most Aboriginal people to pay such a high price for a voice in government, they remained effectively disenfranchised until 1960, when their participation in federal elections was granted without restriction.<sup>37</sup> For

32 See Darlene Johnston, 'First Nations and Canadian Citizenship' in William Kaplan, ed., *Belonging: The Meaning and Future of Canadian Citizenship* (Montreal & Kingston: McGill-Queen's University Press, 1996) 349 [Johnston, 'First Nations']; John S. Milloy, 'The Early Indian Acts: Developmental Strategy and Constitutional Change' in J.R. Miller, ed., *Sweet Promises: A Reader on Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991) 145; John L. Tobias, 'Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy,' in J.R. Miller, ed., *Sweet Promises: A Reader on Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991) 127 at 127-41.

33 E.J. Dickson-Gilmore, 'Iate-Onkwehonwe: Blood Quantum, Membership and the Politics of Exclusion in Kahnawake' (1999) 3 *Citizenship Studies* 27 at 35.

34 *Ibid.* at 35-6.

35 See Johnston, 'First Nations,' supra note 32; Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) at 17-8 [Cairns, *Citizens Plus*].

36 Johnston, 'First Nations,' supra note 32; Canada, Royal Commission on Aboriginal Peoples [RCAP], *Final Report*, 5 vols. (Ottawa: Minister of Supply and Services, 1996) vol. 2(1) at 374-5 [RCAP Report].

37 Trevor Knight, 'Electoral Justice for Aboriginal People in Canada' (2001) 46 *McGill L.J.* 1063 at 1066-7 [Knight, 'Electoral Justice']. Indians were also denied the provincial franchise everywhere except Nova Scotia and Newfoundland; these prohibitions were first lifted in British Columbia in 1949 and persisted in Quebec until 1962. Inuit were denied the federal franchise between 1934 and 1950. See Jonathan Malloy &

this reason alone, it should come as no surprise that (as of 1996) only thirteen of the nearly 11 000 MPs elected since Confederation self-identified as Aboriginal.<sup>38</sup> There have been several proposals designed to address this representational imbalance, none of which has been implemented. For example, the 1991 Canadian Royal Commission for Electoral Reform and Party Financing considered a system of Aboriginal Electoral Districts (AEDS), which, based on the Aboriginal population at the time, would potentially have yielded eight seats out of 295 in the House of Commons.<sup>39</sup> AEDS have also received support over the years from Aboriginal organizations such as the Métis National Council and the Native Council of Canada.<sup>40</sup> Enhanced Aboriginal representation in both the House of Commons and a reformed Senate was proposed as part of the 1992 Charlottetown package of constitutional reforms, but these measures fell by the wayside once the Charlottetown Accord was defeated in a nationwide referendum. Another idea was to re-draw selected federal and provincial electoral boundaries to conform to historic treaty areas, so that specific treaty First Nations could choose their own representatives,<sup>41</sup> but this idea, too, had little impact among policy makers.

An altogether different type of proposal found its way into the 1996 Final Report of the Canadian Royal Commission on Aboriginal Peoples (RCAP).<sup>42</sup> What the commission proposed was the creation of a parallel Aboriginal House of Representatives that would sit alongside the existing Parliament.<sup>43</sup> Comprising some seventy-five to 100 representatives, one for every distinct Aboriginal nation across the country, the proposed First Nations House was to be modelled roughly along the lines of the Nordic Sámi Parliaments, with the crucial difference that it was to have real policy clout, as opposed to advisory or consultative powers.<sup>44</sup>

Graham White, 'Aboriginal Participation in Canadian Legislatures' in Robert J. Fleming & J.E. Glenn, eds., *Fleming's Canadian Legislatures*, 11th ed. (Toronto: University of Toronto Press, 1997) 60 at 61 [Malloy & White, 'Aboriginal Participation']. Métis have been entitled to vote since Confederation, on the basis of their status as provincial residents, but have faced numerous indirect barriers to participation.

38 See Malloy & White, *ibid.* at 60–1.

39 Tim Schouls, 'Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality' (1996) 29 *Can.J.Pol.Sci.* 729 [Schouls, 'Aboriginal Peoples']; see also Knight, 'Electoral Justice,' *supra* note 37 at 1075–7.

40 Knight, *ibid.* at 1075–6.

41 James Youngblood Henderson, 'Empowering Treaty Federalism' (1994) 58 *Sask.L.Rev.* 241 at 325–6.

42 *RCAP Report*, *supra* note 36 at 377–82.

43 *Ibid.* at 378.

44 There are important differences in the functions exercised by the Sámi Parliaments in Sweden, Finland, and Norway, and debates regarding their effectiveness in achieving

Among other things, the commission proposed that the First Nations House should have the capacity to initiate legislation and the authority to review, and potentially veto, all government legislation on issues crucial to the interests of Aboriginal peoples. The commission further recommended that Aboriginal representatives be included on key legislative committees and accorded the capacity to review relevant draft legislation from the Senate and House of Commons in the early stages of its development.<sup>45</sup> Like the bulk of the commission's recommendations, this proposal was neither implemented nor seriously debated by Canadian politicians.

#### D AMBIVALENCE ABOUT REPRESENTATION

Given the strong historical link between electoral inclusion and efforts to undermine indigenous autonomy in favour of assimilation, it is not difficult to understand the hostility and suspicion with which this form of political voice is frequently regarded by indigenous people. As Kiera Ladner concludes, '[b]y and large, Aboriginal people continue to see the Canadian political system as an instrument of their domination and oppression.'<sup>46</sup> For some Canadian Aboriginal people, engagement with the Canadian electoral system may seem like participating in the institutions of a foreign nation, an idea that is anathema to individuals who consider themselves citizens of Aboriginal nations but not citizens of Canada.<sup>47</sup> Mason Durie has observed a similar sentiment among Māori,

Sámi aspirations, including the broader goal of self-determination. For discussion see Donna Craig & Steven Freeland, 'Indigenous Governance by the Inuit of Greenland and the Sámi of Scandinavia' (discussion paper no. 8, University of New South Wales, Sydney, 1998), online: Reconciliation and Social Justice Library <<http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/dp8.html>>; Kristian Myntti, 'The Nordic Sámi Parliaments' in Pekka Aikio & Martin Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Åbo, Finland: Institute for Human Rights, Åbo Akademi University, 2000) 203.

45 *RCAP Report*, supra note 36 at 377–80.

46 Kiera Ladner, 'The Alienation of Nation: Understanding Aboriginal Electoral Participation' (2003) 5 *Electoral Insight* 16 at 23 [Ladner, 'Alienation']. Indigenous people in Australia have also voiced some scepticism about their participation in institutions from which they were deliberately excluded in the past. See Queensland, Legislative Assembly, Legal, Constitutional and Administrative Review Committee, *Hands on Parliament: A Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples' Participation in Queensland's Democratic Processes* (Report No. 42, September 2003) at 10 [*Hands on Parliament*].

47 Ladner, 'Alienation,' *ibid.* at 24–5. This view is reflected in comments made by the executive director of the Union of New Brunswick Indians in rejecting the province's offer of two reserved seats in the provincial assembly: 'What it boils down to is we are a nation and, by becoming part of someone else's system, we are going to give that up.' Quoted in Knight, 'Electoral Justice,' supra note 37 at 1093.

Who have often concluded that, in the search for *tino rangatiratanga*, there is an irony in Māori becoming part of an institution which has used its powers, at least in the past, to exploit Māori rather than empower them.<sup>48</sup>

This sense of alienation frequently combines with a parallel sense that increased legislative representation would do little to advance Aboriginal interests. Reflecting the RCAP's general sense of scepticism about Aboriginal representation *within* Canadian institutions, co-chair Georges Erasmus asked rhetorically, 'If you had a half-dozen or dozen Aboriginal MPs in the House of Commons, what difference would it make?'<sup>49</sup> Representation as a means of indigenous political advancement might appear even less plausible in Australia, where a geographically dispersed indigenous population makes up less than 3 per cent of the country as a whole. Indeed, proposals for dedicated seats in Australia have sometimes been criticized as an exercise in 'window dressing' that is unlikely to deliver real power to Aboriginal people.<sup>50</sup> In New Zealand, where the experience with Māori representation has been relatively more positive, there have nevertheless been sharp criticisms of the parliamentary route to Māori empowerment, including calls for the abolition of the Māori seats<sup>51</sup> and for greater Māori activism and political organization *outside* the parliamentary forum.<sup>52</sup>

These are powerful objections, but there are persuasive reasons for reconsidering representation as a pathway to indigenous empowerment, and for viewing this form of political voice not as a subversive alternative to indigenous self-determination but as a useful component of a broader strategy of indigenous political development. As Ovide Mercredi, former grand chief of the Assembly of First Nations, told the Winnipeg public hearing of the Royal Commission on Electoral Reform and Party Financing, 'There is no inconsistency in Canada recognizing our collective rights of self-government and us still getting involved and maintaining our involvement in the political life of the state, which means getting involved in federal elections.'<sup>53</sup> A similar

48 Durie, *Te Mana*, supra note 28 at 98. *Tino rangatiratanga* translates approximately as 'self-determination.'

49 Quoted in Malloy & White, 'Aboriginal Participation,' supra note 37 at 65. For a detailed discussion of the position of the RCAP on Aboriginal inclusion in Canadian parliamentary institutions, see Cairns, *Citizens Plus*, supra note 35; Alan C. Cairns, *First Nations and the Canadian State: In Search of Co-existence. 2003 McGregor Lecture* (Kingston, ON: Institute of Intergovernmental Relations, 2005) [Cairns, *First Nations*].

50 *Enhancing Aboriginal Political Representation*, supra note 8 at 50.

51 Fleras, 'From Social Control,' supra note 24 at 566–8.

52 Walker, 'Māori People,' supra note 24 at 339.

53 Canada, Royal Commission on Electoral Reform and Party Financing, *The Path to Electoral Equality: Committee for Aboriginal Electoral Reform* (Ottawa: Ministry of Supply and Services, 1991) at 177. The complementarity of parliamentary representation

position was jointly articulated by the Assembly of First Nations (AFN) and the Native Women's Association of Canada (NWAC) in the lead-up to the 2004 Canadian federal election. The time was right, according to AFN Grand Chief Phil Fontaine, to reassess the role of electoral participation as a strategic means of securing First Nations political objectives.<sup>54</sup> This debate is particularly crucial as governments in Canada begin to discuss the merits of proportional forms of representation whose implementation, as illustrated by the experience of New Zealand Māori, can significantly increase the presence and the impact of indigenous representatives on the national stage.

Among the most important reasons for reconsidering elections as a strategy of indigenous empowerment is the simple fact that indigenous people are, and for the foreseeable future will continue to be, subject to the laws and decisions of non-indigenous governments. This creates a powerful incentive for indigenous representatives to play a role in shaping those decisions. An equally significant reason for reconsidering the strategic importance of electoral representation is the reality that the life experiences of a substantial number of indigenous people are characterized by relations of deep and complex interdependence with non-indigenous communities.<sup>55</sup> Significant numbers of indigenous people either reside exclusively outside of a territorially concentrated indigenous community or circulate back and forth between their 'homelands' and non-indigenous communities. Urbanization<sup>56</sup> and intermixing with non-indigenous people is also a significant feature of indigenous realities around the globe, which, in turn, has led to increased rates of intermarriage, exposure to a range of non-indigenous sociocultural

and autonomous forms of Māori governance has also been emphasized by Māori analysts. See Dahlberg, 'Māori Representation,' supra note 28 at 70–2; Mason Durie, 'Representation, Governance and the Goals of Māori Self-Determination' (1997) 2 *He Pukenga Korero* 1 [Durie, 'Representation, Governance'].

54 Oliver Moore, 'AFN Hopes to Capitalize on Minority in Ottawa,' *Globe and Mail* online, 20 July 2004 (accessed 21 July 2004).

55 Cairns, *Citizens Plus*, supra note 35; Pearson, *Politics of Ethnicity*, supra note 13.

56 In 1998 in Australia, for example, approximately 30 per cent of the indigenous population resided in major urban centres, and in Canada in 2001 the figure was closer to 50 per cent. Australian Bureau of Statistics, 2002, online: ABS <<http://www.abs.gov.au/>>; Statistics Canada, *Census Data on Aboriginal Peoples*, 2003, online: Statistics Canada <<http://www.statcan.ca/start.html>>. In New Zealand the figures are even more dramatic, with approximately 80 per cent of Māori residing in urban centres in 1996. New Zealand, Te Puni Kokiri / Ministry of Māori Development, 2002, online: TPK <<http://www.tpk.govt.nz/default.asp>>. Intermixing with non-indigenous peoples is also increasingly a reality for reserve-based populations, as in the case of Tribal Nations in the United States. See Kouslaa Kessler-Mata, 'In Pursuit of Self-Determination: Contemporary Challenges for American Indian Tribal Governance' (Paper presented to the Political Theory Workshop, University of Chicago, 12 April 2004).

influences, and greater participation in the mainstream economy, professions, and sociocultural institutions.<sup>57</sup> Moreover, territorially concentrated Aboriginal communities are frequently small, resource starved, and (in some cases) weak in governing capacity, factors that increase their level of dependence on non-indigenous governments. For these reasons, it is important to envision forms of governance and empowerment that speak to both the autonomy and the interdependence dimensions of contemporary indigenous realities and that are relevant to the living experience of a broad spectrum of land-based, urban, and geographically dispersed indigenous populations. This objective matches the stated preferences of indigenous leaders and academics in Australia, Canada, and New Zealand who stress the importance of renewing rather than rejecting relationships with non-indigenous peoples and governments.<sup>58</sup> What is missing from the literature, however, is a systematic theoretical account of how to configure indigenous self-determination in the context of deep and complex interdependence, as well as an understanding of how legislative representation fits into this new configuration of indigenous political development.<sup>59</sup>

### III *Representation and relational self-determination*

In calling for greater self-determination, indigenous peoples seek to regain control over their individual and collective futures and to negotiate relationships with the non-indigenous societies with whom they share a state – relationships predicated on principles of co-equality and mutual consent rather than on paternalism and domination. The importance of a relational understanding of indigenous self-determination is that it compels us to recognize not only the centrality of a sphere of autonomous self-governing authority beyond the reach of state laws and institutions but also the need for sites of governance capable of effectively managing the *relationships* among self-governing peoples living in

57 John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) at 145 [Borrows, *Recovering Canada*]. See also Cairns, *First Nations*, supra note 49 at 11–21; Manahuia Barcham, '(De)Constructing the Politics of Indigeneity' in Duncan Ivison, Paul Patton, & Will Sanders, eds., *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000) 137.

58 A small sample of these includes Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Sydney: Federation Press, 2003); Borrows, *Recovering Canada*, *ibid.*; and Durie, *Tē Mana*, supra note 28.

59 As Catharine Iorns observes in the Australian context, '[o]nly through explicit consideration of what indigenous self-determination entails is it likely that indigenous self-determination will result. If this is done well, separate political representation will be able to be used as an effective component of indigenous self-determination in Australia.' Iorns, 'Dedicated Parliamentary Seats,' supra note 9 at para. 74.

conditions of complex interdependence.<sup>60</sup> Relational self-determination partly responds to the *practical* need to make effective decisions under conditions of complex interdependence, but it also reflects an important *ethical* imperative. In ethical terms, it tells us that because the decisions and activities of different self-determining political communities have an impact on one another, there is a need for shared forums of democratic decision making designed to ensure that these interdependencies can be governed by consent rather than by imposition or domination.<sup>61</sup>

A relational model of self-determination suggests the need for multiple points of access to political power and decision-making. Autonomous institutions of self-government may be the most obvious route to indigenous empowerment, but indigenous representatives may also need an effective voice in local, regional, and national institutions that have the capacity to influence their individual and collective futures. Dedicated seats in national legislatures, an effective presence in key intergovernmental forums, equal representation in land and resource co-management regimes, and a voice in select transnational institutions such as United Nations forums all are good examples. Regimes of consultation play a crucial role in ensuring that indigenous peoples are provided with a meaningful opportunity to influence, and in some cases to veto, government policies that impact their rights and interests. Where more direct means of accessing political power prove insufficient, there will be a need for alternative methods, such as litigation in support of constitutional or treaty rights<sup>62</sup> or, when circumstances dictate, circumventing conventional political and judicial processes to engage in creative forms of pressure-group activity and acts of civil disobedience. Regardless of the particular method or methods employed, the overall message is that self-government, on its own, may not be enough to secure indigenous self-determination under conditions of deep and complex interdependence. A more comprehensive strategy of empowerment would see indigenous peoples asserting their presence and authority in a wide

60 For a more detailed discussion and application of the concept of relational self-determination in the case of multinational states see Siobhán Harty & Michael Murphy, *In Defence of Multinational Citizenship* (Cardiff: University of Wales Press, 2005). The discussion here builds on Iris Young's concept of relational autonomy, developed in relation to the broader challenge of global interdependence. See Iris M. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000) at 32–3, 258–60.

61 See Young, *ibid.* at 258–60. See also Melissa S. Williams, 'Sharing the River: Aboriginal Representation in Canadian Political Institutions' in David H. Laycock, ed., *Representation and Democratic Theory* (Vancouver: UBC Press, 2004) 93 at 104 [Williams, 'Sharing the River']; Borrows, *Recovering Canada*, *supra* note 57 at 141–52.

62 Litigation might also be used as a means of revitalizing stalled land claims and self-government negotiations. On this point see Tony Penikett, *Reconciliation: First Nations Treaty Making in British Columbia* (Vancouver: Douglas & McIntyre, 2006) at 222.

variety of decision-making forums in defence of their fundamental rights and interests. A similar message lies at the heart of John Borrows' creative re-visioning of the relationship between land and citizenship in the context of Canadian Aboriginal–state relations:

To preserve and extend our participation with the land, and our association with those who now live on it, it is time to talk of Aboriginal control of Canadian affairs. Various sites of power in Canada must be permeated with Aboriginal people, institutions, and ideologies . . . Aboriginal people must work individually and as groups beyond their communities to enlarge and increase their influence over matters that are important to them.<sup>63</sup>

Self-government is central to Borrows' vision for the future, but his warning is that an exclusive focus on self-government might leave Aboriginal people in Canada without an effective voice in institutions whose authority extends over territories, resources, and jurisdictions they consider central to their individual and collective interests.

Recent work in political theory has also grappled with the difficult relationship between self-government and representation for national minorities and indigenous peoples. I particularly have in mind the work of Melissa Williams and Will Kymlicka.<sup>64</sup> Kymlicka adopts a nuanced approach to the question of representation for self-governing minorities in national institutions. On the one hand, he argues, given that the influence of national governments over self-governing minorities is reduced, one might reasonably conclude that those minorities should have reduced influence in state institutions exercising authority in jurisdictions that do not apply to them.<sup>65</sup> On the other hand, self-governing minorities would seem to be entitled to representation on bodies that have an impact on their interests, examples of which include high courts that can interpret or modify their rights and governmental institutions authorized to make decisions in areas of concurrent or overlapping jurisdiction.<sup>66</sup>

To oversimplify, then, self-government for a national minority seems to entail guaranteed representation on *intergovernmental* bodies, which negotiate, interpret, and

63 Borrows, *Recovering Canada*, supra note 57 at 140.

64 Williams, 'Sharing the River,' supra note 61; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995) [Kymlicka, *Multicultural Citizenship*].

65 A similar argument was raised in the debates over Scottish and Welsh devolution, under the rubric of the West Lothian Question. For discussion see Ron Johnston, Charles Pattie, & David Rossiter, 'Devolution and Equality of Representation in the United Kingdom: A Constitutional Mess?' (2002) 73 Pol.Q. 158.

66 Kymlicka, *Multicultural Citizenship*, supra note 64 at 142–3.

modify the division of powers, but reduced representation on *federal* bodies which legislate in areas of purely federal jurisdiction from which they are exempted.<sup>67</sup>

On this basis Kymlicka concludes that it is a mistake to see guaranteed representation in central legislatures for national minorities or indigenous peoples as a logical corollary to the right to self-government. If anything, he argues, the logic of self-government dictates a measure of distance and protection from the authority of central governments rather than a right to have a voice in shaping and exercising that authority.<sup>68</sup>

There are several ways of responding to these objections. In the first place, the analysis clearly does not apply to indigenous peoples, like New Zealand's Māori, who have little access to powers of self-government and for whom representation in central institutions may, in fact, be the primary means of directly accessing political power. Yet Kymlicka's argument can be challenged even in cases where self-government is a viable or existing option. For example, as Williams' analysis indicates, the negotiation of self-government agreements may not change the fact that many indigenous people will continue to reside full-time in urban areas or to circulate back and forth between the local indigenous community and the city.<sup>69</sup> For substantial parts of their lives, urbanized indigenous peoples will continue to be subject to laws and policies authorized by non-indigenous governments, which is a convincing reason for them to have a voice in those governments.<sup>70</sup> Williams also rightly concludes that even after the institutionalization of self-government agreements there will continue to be jurisdictional and policy overlap between indigenous and non-indigenous governments and, thus, a need for shared decision-making forums to govern these overlaps.<sup>71</sup> Kymlicka himself recognizes that there is a greater overlap of jurisdictions and interests among indigenous and non-indigenous governments than his foregoing analysis would seem to indicate and, as a result, is prepared to accept that this may grant representation rights on an issue-specific basis.<sup>72</sup>

Yet my feeling is that Kymlicka and, to a lesser extent, Williams underestimate the degree of interdependence and jurisdictional

67 Ibid. at 143.

68 Ibid.

69 For a discussion of this pattern of circulation between reserves and urban cities in the Canadian context see E.J. Peters, 'Geographies of Urban Aboriginal People in Canada: Implications for Urban Self-Government,' in Michael Murphy, ed., *Canada: The State of the Federation, 2003: Reconfiguring Aboriginal-State Relations* (Montreal & Kingston: McGill-Queen's University Press, 2005) 39.

70 Williams, 'Sharing the River,' *supra* note 61 at 110.

71 Ibid. at 111.

72 Kymlicka, *Multicultural Citizenship*, *supra* note 64 at 227–8 n17.

overlap among indigenous and non-indigenous peoples. For example, an indigenous government that assumes jurisdiction over health policy may still find itself without the resources, the expertise, or even the desire to finance, build, and staff a major hospital, a task that will remain in the hands of another level of government. Similar arguments can be made in relation to education policy, roads and transportation, the environment, natural resources – indeed, it is difficult to imagine many major jurisdictions in which there will not continue to be significant overlap between the legislative competencies of indigenous and non-indigenous governments, which again suggests that self-government and a voice in central legislatures can be viewed as complementary rather than mutually exclusive political strategies. Moreover, for those indigenous peoples who continue to see themselves both as citizens of an indigenous community and as citizens of the broader non-indigenous community, this form of dual representation is perfectly natural and, as many commentators have pointed out, is standard practice in federal states, where all citizens have a stake in the decisions taken by national institutions, regardless of whether these have a direct impact on their interests.<sup>73</sup> As articulated by a representative of the Inuit Committee on National Issues at the public hearings of the 1983 Special Joint Committee of the Senate and the House of Commons on Senate Reform, ‘Representation of the Aboriginal peoples in the central institutions of Canada is an extension of our right to self-determination within the federation.’<sup>74</sup>

More fundamentally, so long as indigenous aspirations are cast exclusively in the language of autonomous self-government, it will be difficult to see the relevance, or the legitimacy, of gaining representation in central institutions. A relational model of self-determination helps us see the limitations of this theoretical perspective in contexts where the ideal of autonomy is constrained by the realities of interdependence. It encourages the view that indigenous peoples must seek influence in a variety of different political forums to manage the complex web of relationships in which they have become entangled with non-indigenous communities and governments. From this perspective, electoral representation is not necessarily in tension with the goals of self-government but, alongside self-government, can be part of a more comprehensive strategy of empowering indigenous people both inside and outside state institutions, and in as wide a variety of political forums as is necessary

73 Borrows, *Recovering Canada*, supra note 57 at 152. See also Knight, ‘Electoral Justice,’ supra note 37 at 1095.

74 Quoted in Robert A. Milen, ‘Aboriginal Constitutional and Electoral Reform,’ in Robert A. Milen, ed., *Aboriginal Peoples and Electoral Reform in Canada* (Ottawa: Canada Communication Group, 1991) 3 at 19 [Milen, ‘Aboriginal Constitutional’].

to effectively promote indigenous priorities and ensure the security of indigenous futures.

IV *The electoral route to self-determination: Strengths and weaknesses*

The remainder of the article aims to critique some of the main theoretical arguments for and against the electoral route to indigenous self-determination and to illustrate these arguments, wherever possible, with the available empirical evidence. A major obstacle to this task is the fact that there has been little systematic or sustained empirical research into the impact of legislative representation as a means of advancing indigenous self-determination. This is partly explained by the relatively minor role played by this form of representation outside of New Zealand, but even in the New Zealand case this sort of research has yet to be conducted. Empirical evidence is therefore supplemented, wherever necessary, with measured theoretical conjecture. I have divided the arguments into three sections: impact, symbolism, and diversity.

A IMPACT

Critics of representation suggest that the impact of a relatively small number of indigenous MPs will be limited, at best, and certainly will fall well short of an indigenous veto over undesirable policies or the capacity to control the government's agenda on indigenous affairs. The impact of indigenous representatives working inside government will be limited by the realities of democratic majoritarianism and by the constraints imposed by factors such as party discipline and executive domination of the policy process. Alternatively, to sit outside government – as independents or as members of an indigenous political party – is to risk even greater marginalization from the policy-making process.<sup>75</sup> In New Zealand, where Māori MPs have secured cabinet positions and where governments have frequently depended on the Māori electorate to secure power, the feeling remains that this has not always guaranteed the delivery of policies, programs, and services that benefit Māori.<sup>76</sup> Concerns have also been expressed that the election of indigenous representatives may relieve other legislators of the incentive to engage with indigenous constituents and their issues, a concern raised particularly

75 Roger Gibbins, 'Electoral Reform and Canada's Aboriginal Population: An Assessment of Aboriginal Electoral Districts' in Robert A. Milen, ed., *Aboriginal Peoples and Electoral Reform in Canada* (Ottawa: Canada Communication Group, 1991) 153 at 172–5. See also Schouls, 'Aboriginal Peoples,' supra note 39 at 745–6; Augie Fleras, 'Aboriginal Electoral Districts for Canada: Lessons from New Zealand' in Robert A. Milen, ed., *Aboriginal Peoples and Electoral Reform in Canada* (Ottawa: Canada Communication Group, 1991) 67 at 74–6 [Fleras, 'Aboriginal Electoral Districts'].

76 Sullivan, 'Effecting Change,' supra note 21 at 235–6.

in relation to the option of providing guaranteed indigenous representation.<sup>77</sup> This argument was advanced by the 1986 New Zealand Royal Commission on the Electoral System, which came to the conclusion that abolishing the Māori seats in favour of a nationwide system of proportional representation would encourage all parties to compete for, and work to satisfy, the Māori vote.<sup>78</sup> Other critics suggest that the electoral option is simply a means of containing indigenous political activism focused on the alternative goal of increasing indigenous autonomy.<sup>79</sup>

There are important elements of truth in each of these criticisms, and it is important to acknowledge their force. Indeed, many supporters of the electoral option for indigenous people acknowledge that the impact of this form of representation will be limited and that, in many cases, it will not be capable either of pushing indigenous causes to the fore or of preventing them from being overridden. For example, in the early part of the twentieth century, a Māori presence in the New Zealand Parliament was ineffective in preventing the progressive alienation of Māori land;<sup>80</sup> it has been similarly ineffective in the twenty-first century in preventing the government from legislating the extinguishment of Māori communal ownership rights to the foreshore and seabed.<sup>81</sup> The limitations of the Māori seats were particularly exposed in the period prior to the introduction of MMP, when, regardless of Māori demographics, their number was permanently pegged at four. Not even a seat in cabinet could guarantee that Māori priorities would be heeded.<sup>82</sup>

There is, however, another side to this story. To begin with, the constraints of majoritarianism, party discipline, and executive dominance are not peculiar to indigenous representation but are part of the limitations of mass representative government in general; specific interests are always going to face defeat at some point in the give-and-take of majoritarian politics. The message here is that we should lower our expectations of what indigenous representatives are capable of delivering

77 *Enhancing Aboriginal Political Representation*, supra note 8 at 52–3.

78 Gibbins, 'Electoral Reform,' supra note 75 at 171. See also Knight, 'Electoral Justice,' supra note 37 at 1080–1; and *Electoral Commission Report*, supra note 14.

79 Walker, 'Māori People,' supra note 24 at 339. See also Milen, 'Aboriginal Constitutional,' supra note 74 at 40–2.

80 Walker, 'Māori People,' supra note 24 at 328.

81 The ruling Labour government did, however, lose one of its Māori MPs in the process – Junior Minister Tariana Turia, who left the party to become co-leader, with Pita Sharples, of the newly created Māori Party. The Māori Party captured four of the seven Māori seats in the 2005 election.

82 Durie, *Tē Mana*, supra note 28 at 98; Maaka & Fleras, *Politics of Indigeneity*, supra note 26 at 131; Dahlberg, 'Māori Representation,' supra note 28 at 63–4.

to their constituents and that we need to assess the potential impact of indigenous representation in the context of the limitations of electoral representation as a whole. If one expects legislative representation to deliver an indigenous veto or guaranteed policy outcomes, then the electoral option will never fail to disappoint; but if we temper our expectations somewhat, it is possible to see this form of political voice in a more positive light. Indeed, alongside the failures of representation there have been successes, some more modest and some more significant.

Evidence from New Zealand suggests that the presence of Māori MPs in government and the importance of the Māori vote have translated into laws and policies favourable to Māori interests.<sup>83</sup> This is true even of the period prior to the birth of MMP, when the influence of the Māori MPs is generally considered to have been at its lowest ebb.<sup>84</sup> In the early part of the twentieth century, Māori MPs helped secure the devolution of power to local Māori communities under the Māori Councils Act (1900) and were influential in the government's extension of key social welfare benefits to Māori in the 1930s. As minister of Māori affairs under the third Labour government, Matiu Rata helped reduce the rate of alienation of Māori land and worked to persuade the government to pass the Treaty of Waitangi Act (1975), setting in motion an ongoing process of redressing historic Māori claims whose impact on the country has been profound. Māori voices in government were at the forefront of the decision to enshrine Māori as an official language of courts and Parliament in 1987 and the government's commitment to the preservation of Māori as a living language in the daily life of indigenous people.<sup>85</sup>

Sceptics such as Ranginui Walker respond by arguing that progress on Māori issues has been achieved not by Māori participation in mainstream politics but via persistent Māori activism outside of Parliament;<sup>86</sup> yet Walker's own analysis indicates that the need to compete for the Māori vote helped produce government policies at least moderately more favourable to Māori – particularly in relation to social-welfare development, land alienation, and the Treaty of Waitangi.<sup>87</sup> In other words, the evidence suggests that Māori representation and Māori political mobilization outside of Parliament worked in tandem to advance the

83 Elizabeth McLeay, 'Political Arguments about Representation: The Case of the Māori Seats' (1980) 28 *Pol.Stud.* 43 at 55 [McLeay, 'Political Arguments'].

84 Dahlberg, 'Māori Representation,' supra note 28; Maaka & Fleras, *Politics of Indigeneity*, supra note 26; Sullivan, 'Effecting Change,' supra note 21.

85 This evidence is drawn from Dahlberg, 'Māori Representation,' supra note 28 at 63–7; Walker 'Māori People,' supra note 24 at 328–30; Sullivan, 'Effecting Change,' supra note 21 at 223–5; and Fleras, 'Aboriginal Electoral Districts,' supra note 75 at 81–4.

86 Walker, 'Māori People,' supra note 24 at 339.

87 *Ibid.* at 328–30.

cause of Māori development. This is also the view of Tina Dahlberg, who, although sceptical of the degree of influence exerted by the early Māori MPs within government, nevertheless concludes that they deserve credit for helping to initiate a new era of Māori empowerment by opening up access to opportunities and resources for Māori working outside of Parliament toward the goal of greater Māori autonomy. She particularly has in mind the role played by Māori MPs in improving the government's opinion of tribal decision-making bodies and their potential as partners in Māori socio-economic and political development.<sup>88</sup>

Most observers agree that the arrival of MMP in 1996, and the removal of the cap on the Māori seats, brought about a significant increase in Māori parliamentary influence. As the number of Māori representatives increased, so did their capacity to hold the balance of power in the formation of coalition governments. There was now a much greater incentive for political parties across the ideological spectrum to court the Māori vote, and to tailor their platforms and policies accordingly.<sup>89</sup> It was not long before Māori representatives were increasing their presence in cabinet and extending their influence over government policy making.<sup>90</sup> Examples include persuading government to back away from a proposed monetary cap on Treaty of Waitangi settlements and to develop a policy for closing the socio-economic gaps between Māori and Pakeha. Māori MPs also proved instrumental in facilitating resource transfers to Māori, in the form of government approval for the Ngai Tahu Treaty settlement and the allocation of a portion of the New Zealand radio spectrum to Māori as a means of reducing socio-economic disparities.<sup>91</sup> Evidence from New Zealand also suggests that Māori

88 Dahlberg, 'Māori Representation,' supra note 28 at 66, 70. See also Fleras, 'Aboriginal Electoral Districts,' supra note 75 at 93–4. In Canada, Malloy and White argue, indigenous legislators can play a valuable complementary role in land claims and self-government negotiations and in related dealings with government. Specifically, '[t]he status, office resources, and personal contacts of a member's office can provide valuable support to Native bands umbrella organizations, and other groups dealing with governments.' Malloy & White, 'Aboriginal Participation,' supra note 37 at 63.

89 Durie, *Tē Mana*, supra note 28 at 102, 108; Durie, 'Representation, Governance,' supra note 53 at 128–9; Ann Sullivan, 'The Treaty of Waitangi and Social Well-Being: Justice, Representation, and Participation' in Michael Belgrave, Merata Kawharu, & David Williams, eds., *Waitangi Revisited. Perspectives on the Treaty of Waitangi* (Melbourne: Oxford University Press, 2005) 123 at 127 [Sullivan, 'Treaty of Waitangi']. According to Sullivan, 'the Māori electorates have been a major force in determining which political party governs.'

90 Fiona Barker *et al.*, 'An Initial Assessment of the Consequences of MMP in New Zealand' in Matthew Soberg Shugart & Martin P. Wattenberg, eds., *Mixed-Member Electoral Systems: The Best of Both Worlds?* (Oxford: Oxford University Press, 2003) 297; Maaka & Fleras, *Politics of Indigeneity*, supra note 26 at 132–3.

91 Durie, 'Representation, Governance,' supra note 53 at 127–8.

constituents consider MMP to be a fairer system of representation than first-past-the-post (FPP) and that the corresponding increases in the number of Māori MPs has improved the rate of Māori political participation and their perception that they have a more effective voice in government.<sup>92</sup> Perhaps the final word here belongs to Roger Maaka and Augie Fleras, who argue that in spite of all the obvious limitations of the Māori seats, '[t]here can be few alternatives that will give Māori more political power; it is a position that most minorities in similar decolonial situations can only dream about.'<sup>93</sup>

In Canada, the Aboriginal Caucus of the federal Liberal Party played an important role in developing the government's 1995 policy recognizing the inherent right of Aboriginal peoples to self-government and continues to be actively involved in developing the party's policies relating to Aboriginal peoples.<sup>94</sup> A more dramatic example is that of Elijah Harper, whose filibuster in the Manitoba Legislature helped defeat the Meech Lake Accord (the purpose of which was to bring Quebec formally into the constitutional fold by recognizing its status as a distinct society). Harper's action was designed to signal the disappointment felt by indigenous leaders across the country that their own interest in constitutionalizing the inherent right to self-government had been sidelined in the negotiations leading up to the accord. The federal government took note, and in the subsequent round of constitutional negotiations, leading up to the 1992 Charlottetown Accord, the leaders of Canada's four national Aboriginal organizations were included as full partners. This admittedly is a rare and extraordinary example, but its value is to demonstrate the potential policy impact of even a single indigenous MP.

In submissions to the New South Wales parliamentary inquiry into dedicated seats for Aboriginal people, a number of Aboriginal individuals and organizations expressed their belief that reserved seats might be the only means of securing a voice for indigenous Australians in an institution from which they continue to be effectively excluded.<sup>95</sup> Many felt that

92 Sullivan, 'Treaty of Waitangi,' supra note 89 at 131-2; Banducci *et al.*, 'Minority Representation,' supra note 18 at 539, 552. As Banducci *et al.* remind us (at 552), however, this perception should not be counted as evidence that efficacy has been increased in practice.

93 Maaka & Fleras, *Politics of Indigeneity*, supra note 26 at 134.

94 Canada, *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Ottawa: Public Works and Government Services, 1995); Liberal Party of Canada, Aboriginal People's Commission, 1995, online: <[http://www.apc-cpa.ca/default\\_e.aspx](http://www.apc-cpa.ca/default_e.aspx)>. In 1990, the Liberal Party of Canada created the Aboriginal Peoples' Commission (APC), designed to encourage the active participation of Aboriginal peoples at all levels of the party.

95 This effective exclusion stems from a variety of factors, including socio-economic deprivation, poor health and educational outcomes, and racism. See *Enhancing*

dedicated seats would deliver 'some actual, real political power,' the opportunity to influence their fellow legislators in debate and to contribute their insights into Aboriginal needs in key areas such as health, social services, education, and correctional services.<sup>96</sup> Aden Ridgeway, an Aboriginal member of the federal Senate, expressed his belief that a voice in government could bring positive changes in the quality of life of Aboriginal people, for example by affording indigenous members the opportunity to chair Aboriginal committees providing 'closer scrutiny ... of services being delivered by government agencies.'<sup>97</sup>

Aside from its more direct impact on the development of public policy, legislative representation might also serve simply as a means of carving out and maintaining a space for indigenous concerns on the national agenda. In their statement to the public hearings of the 1983 Special Joint Committee of the Senate and of the House of Commons on Senate Reform, the Inuit Committee on National Issues (ICNI) argued that representation in the Canadian Senate had increased their capacity to 'reach the federal government' and to introduce and make known their concerns in Parliament and to southern politicians.<sup>98</sup> Fleras has described the Māori seats as an invaluable means of conveying Māori concerns and priorities to political parties and to Parliament, while in the Canadian context Knight argues that one positive impact of enhanced indigenous representation in the long term would be the education of other MPs about the concerns and aspirations of Aboriginal people through increased contact and dialogue.<sup>99</sup> In similar terms, indigenous Australians have argued that a dedicated presence in Parliament would afford them the opportunity to expand the cultural horizons of their

*Aboriginal Political Representation*, supra note 8 at c. 6, 46–7; *Hands on Parliament*, supra note 46 at 15–6.

96 *Enhancing Aboriginal Political Representation*, supra note 8 at 37, 44–8.

97 *Ibid.* at 48. As noted above, these assumptions have yet to be tested empirically, a difficult task given the near absence of indigenous representatives from Australian legislatures. With this in mind, the legislature of the Northern Territory, one-fifth of whose members are Aboriginal, would seem to be the perfect test case in waiting.

98 Quoted in Milen, 'Aboriginal Constitutional,' supra note 74 at 19–20. Compare Knight, 'Electoral Justice,' supra note 37 at 1077–9.

99 Fleras, 'Aboriginal Electoral Districts,' supra note 75 at 77. Compare McLeay, 'Political Arguments,' supra note 83 at 53–4; Knight, 'Electoral Justice,' supra note 37 at 1081–3; Borrows, *Recovering Canada*, supra note 57 at 146. From a somewhat different point of view, Anna Hunter argues that '[i]ncreasing Aboriginal representation also offers the potential to imbue existing governmental structures with indigenous traditions, philosophies and ideologies, to the advantage of Aboriginal and non-Aboriginal people.' Anna Hunter, 'Exploring the Issues of Aboriginal Representation in Federal Elections' (2003) 5 *Electoral Insight* 27 at 28 [Hunter, 'Exploring the Issues'].

fellow parliamentarians and to promote the mutual understanding essential to the process of reconciliation in Australia.<sup>100</sup>

Concerns that the presence of indigenous legislative representatives will reduce the incentive of other representatives to engage with or represent indigenous interests must also be taken seriously, but there are several reasons for treating them with a degree of scepticism. First and foremost, non-indigenous representatives and governments already have a long history of ignoring and marginalizing indigenous concerns, so it is difficult to imagine the situation getting worse with the inclusion of indigenous representatives in the legislature. Rather, the marginalization of indigenous priorities is more likely to continue in the absence of indigenous representatives in the central legislative institutions of the state. As Roger Gibbins argues with an eye to the Canadian case, '[o]n balance, AEDS would likely increase the electoral impact and thus the parliamentary influence of Aboriginal communities, in part because their impact and influence are so minimal at the present time.'<sup>101</sup> Concerns over the potential marginalization of indigenous issues within the legislature also fail to account for the fact that when indigenous representatives run for election under the banner of an established political party, that party becomes (to varying degrees) dependent upon the votes of an indigenous constituency, whose priorities must therefore be factored into the larger calculus of securing and retaining the reins of government.<sup>102</sup> In cases where the indigenous representatives are not members of an established party, the type of electoral system in use may still create incentives for all parties to compete for the indigenous vote. Under New Zealand's MMP system, even if it seems likely that all seven of the dedicated Māori seats will be captured by the Māori Party in an upcoming election, the incentive for traditional parties to address Māori concerns remains, since they may stand a chance of attracting the *party* vote of Māori electors.

Critics concerned about the marginalization effect of indigenous representation also fail to consider the possibility that non-indigenous constituents will press their representatives to act on indigenous priorities, or that non-indigenous representatives may have their own independent motivations for addressing the interests of indigenous people. Equally problematic is the assumption that there

100 *Enhancing Aboriginal Political Representation*, supra note 8 at 44, 48.

101 Gibbins, 'Electoral Reform,' supra note 75 at 182. Deborah Yashar makes a similar argument with respect to indigenous representation in countries such as Bolivia and Ecuador. See Deborah Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (Cambridge: Cambridge University Press, 2005) at 307 [Yashar, *Contesting Citizenship*].

102 This is obviously more straightforward in cases where the indigenous representative's constituents are all indigenous, as in the case of the Māori seats or the Aboriginal Electoral Districts proposed in Canada.

will be no common interests among indigenous and non-indigenous constituencies – clean air and a sustainable public health system, for example – that are likely to motivate all representatives, regardless of their electoral base.

#### B SYMBOLISM

More than just a question of policy impact, the inclusion of indigenous representatives in central legislatures raises important issues on the symbolic level. Looking back on their historic experience with the franchise, indigenous people may be wary of the electoral option because they feel it symbolizes their subordination to the state and their acceptance of a policy of assimilation. They may also fear that participation in state institutions will signal their acceptance of the legitimacy of colonialism and a rejection of the goals of autonomy and self-government. Electoral representation may also be viewed as an expression of a citizenship status that some indigenous people reject in favour of exclusive membership in their own sovereign nations.<sup>103</sup>

The difficulty of overcoming these symbolic challenges means that representation in state institutions will continue to be a difficult sell in many indigenous constituencies. In some cases, the decision on whether or not to participate may come down to a simple weighing of the symbolic risks against the potential policy pay-offs. For example, participation in shared-rule or intergovernmental institutions might be viewed in purely instrumental terms as a means of coping with the interdependence that is a regrettable, yet unavoidable, residue of colonization. Participation in this sense will not be anchored in a sense of shared political identity, but it could possibly be grounded in what Williams calls a sense of shared-fate, a sense that, like it or not, '[t]here is no plausible alternative to living together' and no alternative to agreeing on common political strategies to make that coexistence as mutually beneficial and mutually agreeable as possible.<sup>104</sup> On the other

103 Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Toronto: Oxford University Press, 1999) at 112–3; Kiera Ladner, 'Treaty Federalism: An Indigenous Vision of Canadian Federalism' in François Rocher & Miriam Smith, eds., *New Trends in Canadian Federalism*, 2d ed. (Peterborough, ON: Broadview Press, 2003) 167 at 186. For an overview of a similar range of perspectives among Māori, see the chapter on 'Absolute Māori Sovereignty' in Andrew Sharp, *Justice and the Māori: The Philosophy and Practice of Māori Claims in New Zealand Since the 1970s*, 2d ed. (Auckland: Oxford University Press, 2000) at 249–65. As Benedict Kingsbury notes, this perspective has not enjoyed widespread popularity among Māori commentators. See Benedict Kingsbury, 'Competing Conceptual Approaches to Indigenous Group Issues in New Zealand Law' (2002) 52 U.T.L.J. 101. For some indigenous Australian perspectives see *Hands on Parliament*, supra note 46 at 12–3.

104 Williams, 'Sharing the River' supra note 61 at 104.

hand, there may be options available that can mitigate these kinds of symbolic concerns. Ladner<sup>105</sup> suggests that electoral participation might be more acceptable in Canada if it were facilitated not through the normal electoral process but, instead, through the creation of AEDS, since an indigenous person could then vote as a citizen of his or her Aboriginal nation rather than as a citizen of Canada.<sup>106</sup>

In other cases, electoral representation may carry positive symbolic connotations. In New Zealand, guaranteed representation, for many Māori, has come to symbolize their unique status in the country's constitutional order, and in a broader sense the Māori seats may have helped demonstrate to the public at large the legitimacy of a cooperative and bicultural approach to governance.<sup>107</sup> Indigenous Australians have argued that dedicated parliamentary seats would demonstrate the government's commitment to the principle of indigenous self-determination and serve as a powerful symbol of national reconciliation.<sup>108</sup> Legislative representation may also help demonstrate to the wider public that indigenous people have the capacity and the right to speak on their own behalf, rather than being spoken for, and that they are entitled to the same dignity and respect as all other members of society. Lastly, it is important to remind ourselves that not all indigenous people reject the idea of participating in and belonging to a larger political community, so long as this does not require the loss or subordination of their rights and identities as citizens of distinctive indigenous collectives.<sup>109</sup> Moreover, for those indigenous people who do not manifest a strong sense of trust or identification with the wider community and its institutions, some analysts believe that having their representatives included in government may provide a constructive pathway toward such an identification.<sup>110</sup>

105 Ladner, 'Alienation,' supra note 46 at 24–5.

106 Compare Henderson, 'Empowering Treaty Federalism,' supra note at 41.

107 Fleras, 'Aboriginal Electoral Districts,' supra note 75 at 76, 89. See also McLeay, 'Political Arguments,' supra note 83 at 62.

108 *Enhancing Aboriginal Political Representation*, supra note 8 at 37. The committee also reported that '[t]he majority of people at the community consultations suggested that dedicated seats would be an acknowledgment of Aboriginal people as the original owners of Australia' (at 43).

109 This perspective is supported in Borrows, *Recovering Canada*, supra note 57 at 150; Hunter, 'Exploring the Issues,' supra note 99 at 28; Durie, *Tē Mana*, supra note 28 at 258–60; Yashar, *Contesting Citizenship*, supra note 101 at 281–308; and Peter Read, 'Whose Citizens? Whose Country?' in Nicholas Peterson & Will Sanders, eds., *Citizenship and Indigenous Australians: Changing Conceptions and Possibilities* (Cambridge: Cambridge University Press, 1998) 169 at 172.

110 Cairns, *Citizens Plus*, supra note 35; Banducci *et al.*, 'Minority Representation,' supra note 18 at 538–9, 552.

## C DIVERSITY

The last set of issues I would like to canvass relates to the tremendous internal diversity characteristic of indigenous populations in Australia, Canada, and New Zealand. Indigenous people in all three countries are first of all characterized by linguistic and cultural diversity, which tends to manifest itself in more localized identities and political loyalties. In Australia, for example, one must first of all distinguish between Aboriginals and Torres Strait Islanders. Furthermore, despite common use of the generic term 'Aboriginals' and occasional appeals to the image of a countrywide indigenous nation, the reality on the ground is that local and regional indigenous identities, cultures, and communities are the norm.<sup>111</sup> Similarly, in New Zealand, where the Māori language might plausibly be seen as the basis for a countrywide Māori national identity, allegiances to *whanau* (extended family), *hapu* (clans), *iwi* (confederations of *hapu*), and more contemporary forms of Māori political community (particularly urban Māori associations) play a much more significant role in everyday life.<sup>112</sup> Linguistic and cultural divisions are further cross-cut by urban–rural divides and by differences in socio-economic and educational achievement.<sup>113</sup> Urban indigenous populations themselves are highly internally diverse in terms of factors such as language, culture, kinship ties, and political identification and solidarity, and thus they cannot be said to constitute homogeneous indigenous communities.<sup>114</sup> State efforts to control and manage indigenous populations have further complicated this state of affairs. In the Canadian case, for example, there are further divisions among the legal categories of Indian, Métis, and Inuit and between status and non-status Indians, not to mention the more than 600 Indian Act bands dispersed across the country. Government emphasis on traditional *iwi* at the expense of contemporary urban Māori authorities as partners in the process of negotiating Treaty of Waitangi reparations has had a similar effect in New Zealand.<sup>115</sup>

111 Pearson, *Politics of Ethnicity*, supra note 13 at 8–9.

112 Andrew Sharp, 'Blood, Custom and Consent: Three Kinds of Māori Groups in New Zealand and the Challenges They Present to Government and the Constitution' (2002) 52 U.T.L.J. 9 at 36–7. See also Roger Maaka, 'The New Tribe: Conflicts and Continuities in the Social Organization of Urban Māori' (1994) 6 Contemporary Pacific 311.

113 Shaw & Tapiata, 'Indigenous Representation,' supra note 21 at 17.

114 On the other hand, scholars such as Chris Andersen argue that we may be witnessing the emergence of urban Aboriginal identities in Canada that cut across differences of tribe, culture, language, and so on. See Chris Andersen, 'Residual Tensions of Empire: Contemporary Métis Communities and the Limits of the Canadian Judicial Imagination' in Michael Murphy, ed., *Canada: The State of the Federation, 2003: Reconfiguring Aboriginal–State Relations* (Montreal & Kingston: McGill-Queen's University Press, 2005) 295.

115 Manahuia Barcham, 'The Challenge of Urban Māori: Reconciling Conceptions of Indigeneity and Social Change' (1998) 39 Asia Pacific Viewpoint 303.

Diversity this deep, according to the critics, cannot possibly be reflected through institutions of mass representation, and for this reason the electoral route to indigenous self-determination is fatally compromised. This concern was raised several times during the consideration of dedicated seats for Aboriginal peoples in the Australian state of New South Wales. Some expressed the fear that Aboriginal representatives might be placed under enormous pressure to represent a range of cultural values and perspectives they were not adequately equipped to understand or to address.<sup>116</sup> In the Canadian context, Tim Schouls has argued that AEDS are not the proper means of expressing differentiated citizenship for Aboriginal peoples because this option would never produce enough seats to adequately represent the diversity within the Aboriginal population.<sup>117</sup> James Henderson's proposal for a larger number of seats to represent treaty nations attempts to address this diversity deficit,<sup>118</sup> but this proposal itself potentially excludes non-treaty nations and urban populations, among others. Similarly, in New Zealand, despite the greater number of representatives produced by the shift to MMP, Māori MPs cannot hope to faithfully represent the rich diversity of interests, identities, and customary norms that mark the differences among *hapu* and *iwi* across the country.

My response to these sorts of objections is not to deny diversity but to deny that the electoral option for indigenous people must be capable of comprehensively reflecting this diversity in order to legitimate itself. Just as it is too much to expect non-indigenous representatives to mirror the full range of ethno-cultural, religious, gender, class, and ideological differences among their constituents, so it is too much to expect this of indigenous representatives.<sup>119</sup> Asking representatives to faithfully mirror the full range of values, opinions, and commitments of their constituents is simply asking electoral representation to do the wrong sort of thing. This brings us back to a point made earlier in the discussion, which is that the electoral option is best viewed as one of a variety of parallel and complementary means of accessing power and exerting influence in the quest for greater

116 *Enhancing Aboriginal Political Representation*, supra note 8 at 50–1.

117 Schouls, 'Aboriginal Peoples,' supra note 39 at 742–4, 747–8. A related problem, according to Schouls (at 744), is that indigenous people from different nations, tribes, or communities may not identify with an indigenous candidate who is not one of their own and may even view the act of voting for such a candidate as a betrayal of their true political loyalties. New Zealand's experience seems to suggest that this conflict has not hamstrung the operation of the Māori seats, and since the 1990s there has been a steady increase in participation in the Māori electorates.

118 Henderson, 'Empowering Treaty Federalism,' supra note 41.

119 For a discussion of the various challenges associated with this notion of mirror representation see Kymlicka, *Multicultural Citizenship*, supra note 64, and Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995).

self-determination. Within this broader strategic framework, the *distinctive local* interests of particular indigenous communities are likely to be better served through self-government, co-management bodies, and the redistribution of land, assets, and natural resources.<sup>120</sup> On the other side of the coin, however, there is no reason to think that the challenge of diversity would always prevent indigenous representatives from representing the particular interests of different segments of the indigenous population, for example by pushing the government to address a specific land claim or to finance the clean-up of a toxic waste spill on a particular reserve or outstation. Moreover, it is not difficult to imagine a number of common interests that cut across this rich variety of internal indigenous differences. For example, in spite of the many divergent interests of particular *iwi* and *hapu* across New Zealand, a variety of issues affect a countrywide Māori constituency, including cultural retention, socio-economic deprivation, treaty reparations, and improvements in environmental regulations. The same point could be made in both Australia and Canada with respect to these and a wide range of other issues (*e.g.*, the survival of indigenous languages, the needs of urban Aboriginals, and calls for the independent mediation of land claims), and I see no reason why indigenous representatives would be incapable of representing and seeking government action on these sorts of questions.

#### V Conclusion

It is essential that we avoid loading the strategy of representation with an unmanageable burden of expectations and that we be as clear as possible on what can and cannot be expected from this form of political voice. While evidence suggests that electoral representation can play a significant role in advancing the interests and priorities of indigenous people, rarely if ever will it deliver an indigenous veto over government policy, and in many instances its impact will be modest, neutral, perhaps even negligible. Moreover, a broad variety of factors will help or hinder the likelihood of this impact, including the type of electoral system (proportional forms of representation promise greater numbers of indigenous representatives), the demographic strength of the indigenous electorate, access to cabinet and to key legislative committees, the will of governing parties to facilitate and advance the concerns of their

120 I recognize that these different strategies will not always be complementary. For example, indigenous MPs may be required to vote with their party on a policy that cuts against the express wishes of their Aboriginal constituents. Again, this is one of the unavoidable shortcomings of mass representation and party politics in general, but it is not in itself a reason for rejecting the indigenous electoral option. For an enlightening discussion of these challenges in the Latin American context see Yashar, *Contesting Citizenship*, *supra* note 101 at 302–6.

indigenous members, and the skill and determination of the representatives themselves. There are no guarantees, and more likely than not there will be frequent disappointments.

In spite of its limitations, however, there are some very simple yet persuasive reasons why indigenous peoples might wish to consider electoral representation as a means of advancing the goal of self-determination. At the top of the list is the simple but compelling fact that indigenous peoples in Australia, Canada, New Zealand, and elsewhere continue to be subject to the authority of settler societies and their institutions, and it is therefore essential to find ways to shape and mediate the impact of that authority. The message at the heart of this article is that the most effective strategy for doing so is to seek to exercise influence simultaneously inside and outside of state institutions. Although the indigenous electoral option is not likely to significantly advance the cause of self-determination on its own, it can play a valuable role as part of a larger array of mutually reinforcing sites of indigenous empowerment, including self-government, consultation processes, protest and activism, negotiations, unilateral assertions of jurisdictional authority, litigation, and participation in co-management regimes. Given their disadvantaged position in the balance of power with settler governments, indigenous people must seek every means and opportunity available to increase their influence and authority in the face of majority indifference or domination – particularly when access to autonomous forms of political self-government is minimal, as is still the case for many First Nations in Canada, or non-existent, as is the case for Māori in New Zealand, Australian Aboriginal peoples, and urban indigenous populations almost everywhere.

Ultimately, the strategy of seeking representation in state institutions must prove acceptable to indigenous people themselves. This, in turn, may depend on a variety of measures aimed at re-establishing bonds of mutual trust and respect among indigenous and non-indigenous peoples, including the willingness of settler states to recognize and respect fundamental indigenous rights, to settle outstanding claims to land and resources, to empower autonomous indigenous governments, and to engage in symbolic and substantive processes of reconciliation with historic injustice. Less ambitiously, but no less importantly, it is essential that the historic stigma that attaches itself to the notion of electoral representation be removed, and one small step toward this goal is to begin envisioning its potential as a tool for securing, rather than subverting, the goals of indigenous self-determination.