

Rangatiratanga, Citizenship and a Crown that is ‘Māori too’: Boldness and the Future of Local Government

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Ko Māmari te waka
Ko Te Rarawa te iwi
Ko Te Uri o Hina te hapu
Ko Te Uri o Hina te marae

Introduction

The Local Government Review (the Review) must consider the Treaty of Waitangi¹ partnership principle (Te Tari Taiwhenua, Department of Internal Affairs, 2021). At the same time, the Review Panel has decided to ‘be bold’ (Te Arotake i te Anamata mo Nga Kaunihera, 2021, p. 52), perhaps creating opportunities to think about rangatiratanga (Waitangi Tribunal, 2016, article 2) and citizenship (Waitangi Tribunal, 2016, article 3) in greater depth. Considering, especially, how they may work together to contribute to good government, as te Tiriti o Waitangi’s Preamble envisages, ‘the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness’ (Waitangi Tribunal, 2016 Preamble).

With the ideal of effective government in mind, this discussion paper is guided by two overarching assumptions. The first is that not all local government functions must be conducted by councils. Some functions could be more justly conducted by iwi, hapu, marae or other Māori political communities and managed to reflect rangatiratanga.

The paper understands rangatiratanga as a people’s authority over its own affairs—an authority that is not subservient or subject to the control of others. Te Tiriti refers to rangatiratanga in this way: ‘The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the

¹ Te Tiriti o Waitangi was an agreement between Maori rangatira and the British Crown in 1840. The agreement was initially drafted in English though presented to and signed by most rangatira in a substantively different Maori language text, te Tiriiti o Waitangi. Unless the context otherwise requires te Tiriti is the instrument referred to in this discussion paper.

unqualified exercise of their chieftainship over their lands, villages and all their treasures' (Waitangi Tribunal, 2016, article 2).

The paper's second assumption is that Māori are entitled to make culturally distinctive contributions to councils' work because, like all citizens, Māori are shareholders in kawanatanga. As such, and as te Tiriti implies, Māori are as entitled as anybody to expect councils to work in their favour. '[T]he Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England' (Waitangi Tribunal, 2016, article 3).

The paper understands citizenship as the terms of one's belonging to the state. Citizenship is an evolving body of political capacities determining how people influence the development of the society in which they live. Its terms reflect the values, customs, laws and practices by which a society functions. Citizenship is concerned with how people arrange their public institutions and make decisions on matters of public importance. It describes people's obligations to one another and the relationships between people and the state. Citizenship reflects human values, which means that it is a cultural concept as much as it is political. Ideally, in a liberal democracy like New Zealand, its effect is to uphold human equality. For Māori, human equality means that citizenship must be attentive to the claims of culture and responsive to colonial context. Culture influences the ways relationships between people and the environment are perceived. Therefore, culture influences how people set political priorities and form their expectations of what local government is for and what it should achieve. It is democratically important that neither culture nor colonialism is a barrier to Māori experiencing citizenship as the meaningful political authority that Aristotle imagined when he described the citizen simply as one who deliberates. As a deliberator, one is a shareholder in the decision-making power of the state (Hindess, 2002). The alternative is cultural homogeneity, which automatically prevents Māori from *being* Māori when participating in public decision-making. Homogeneity prevents the Maori citizen from participating with the expectation that their voice counts.

What, then, would a non-colonial system of local government look like? What would a system of local government look like if everybody contributed in culturally meaningful ways? The purpose of liberal democracy is to protect people's freedom, though this cannot occur if political systems and institutions work in isolation from culture. Indeed, democracy developed because individuals have different perspectives and different values that must be managed in a fair and orderly way.

Differentiated liberal citizenship, participatory parity and rangatiratanga are key concepts of human equality that this paper uses to raise and explain several questions in considering which of local government's functions best belong to iwi, hapu and other Māori entities while also considering how Māori citizens best exercise their share in kawanatanga in the context of local government. For ease of reference and to facilitate discussion, the questions are brought together in thematic sequence in the paper's summary and conclusion. Together, they show that, rather than thinking about political relationships as an 'us' and 'them' binary, policymaking can be recast as a site of both respectful inclusion and respectful difference. In this way, boldness can mean thinking about 'relations between Indigenous peoples and the state not simply as Indigenous policy making but as democracy making' (Davis, 2021, p. 376). The question then becomes which kinds of institutions, making decisions according to which kinds of values, will best contribute to this ideal? If, for example, it is taken for granted that Māori values and aspirations should influence policy decisions, it follows that they should also influence decision-making processes. Influence is a greater political authority than the right to be consulted as a partner or stakeholder.

Rangatiratanga and Citizenship

Rangatiratanga and citizenship are the foundational principles in the discussion of how Māori political authority should exist both *inside* and *outside* the state. The Review must consider how rangatiratanga and Māori citizenship are distinct, how they intersect and how they contribute to good government. In short, who does what, how and why?

Its interest in rangatiratanga means that this paper is not a discussion of race or about the rights of minorities but rather one about the nature of political communities, their different and common

spheres of influence and their interrelationships. A political community is different from a stakeholder or group to be consulted over a public decision because its right is to help make the decision. Political communities are 'the products of narratives of peoplehood' (Hase, 2021, p. 684). A community is justly political where it has an inherent authority to manage its own affairs and make decisions to advance the wellbeing of its members.

Although local government is not, legally, a party to te Tiriti, its functions are exercised with the Crown's authority; therefore, it is reasonable to consider citizenship with reference to Justice Williams' argument that:

Fundamentally, there is a need for a mindset shift away from the pervasive assumption that the Crown is Pākehā [non-Māori], English-speaking, and distinct from Māori rather than representative of them. Increasingly, in the 21st century, the Crown is also Māori. If the nation is to move forward, this reality must be grasped. (Waitangi Tribunal, 2010, p. 51)

In other words, the Crown is not the Pākehā population, and councils do not belong exclusively to Pākehā as the senior Tiriti partner. Political authority is shared among all citizens. Yet, it is true that, for some people, the idea that the 'Crown is also Māori' may be difficult to imagine. Māori mistrust and the desire to protect rangatiratanga as an independent authority mean that individuals often have good reasons to see the Crown as an adversary. People may feel similarly distanced from local government, particularly when they perceive others as not motivated by mutual respect, not interested in Māori aspirations and policy ideas and, therefore, unable to accept the merits of inclusive decision-making. However, political equality requires that all people have reason to accept that the state belongs to them as much as to anybody else, rather than echoing Grant's (2016) Australian sentiment that 'we lived in Australia, and Australia was for other people' (A cage in search of a bird, para. 3).

A state that belongs to everybody and works for everybody requires bold thinking about how kawanatanga works to include all citizens with the same realistic opportunities for influence. For these reasons, Williams' presumption of a Crown that is 'also Māori' promises a higher level of political authority than partnership as 'the right of tangata whenua to share governance as a partner of the

Crown’ (Webster & Cheyne, 2017, pp. 149–150). Beyond partnership, a Crown that is ‘also Māori’ implies opportunities to influence government from the *inside* and play a role in developing its values and practices as shareholders in its decision-making authority. Taking one’s position as a shareholder in the Crown’s sovereignty is not an alternative to rangatiratanga but rather a complement to ensure that Māori are present wherever other citizens make decisions. As partner, the opportunity to influence arises only from the *outside*.

What, instead, could a system arranged to uphold both rangatiratanga and distinctive Māori citizenship mean for how politics actually works? Can the Review help society resolve the tension between the Waitangi Tribunal’s (2014) finding that te Tiriti was not a cession of sovereignty to the British Crown and the government’s insistence that ‘There is no question that the Crown has sovereignty in New Zealand’ (Finlayson cited in Kenny, 2014, para. 4)?

Perhaps, in fact, the tension between the Tribunal and government positions is overstated and is only unresolvable if one thinks about sovereignty as a rigid and inflexible authority that is distant from the people rather than a reflection of their shared authority? Thinking about local government as a political system with many parts and interactions between rangatiratanga and citizenship may show that sovereignty is not an all-powerful and unconstrained authority but that it is, in fact, widely dispersed. Perhaps there are ways of ensuring that *all* and not just *some* citizens are shareholders in the authority that the Crown exercises in relation to, but not over and above, rangatiratanga. In this way, the Review may respond to the finding that:

The rangatira consented to the Treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. (Waitangi Tribunal, 2014, p. 521)

Partnership and Beyond

Although partnership assumes that Māori people and culture have a place in public life, the partnership is usually one of senior and junior (O’Sullivan, 2007). The state is a large, powerful and coercive institution and, inevitably, the most powerful in any domestic relationship. As junior partners

to the Crown, iwi, hapu and other Māori communities do not have the independent political space that rangatiratanga requires, nor does the junior partnership presume a distinctive and meaningful Māori share in the kawanatanga that local government exercises. This means that, if Williams' description of an inclusive Crown is undesirable or simply unachievable, one's political aspirations are confined to a predetermined framework that limits the sites of political influence available to Māori. For example, Auckland Council explains that it is interested in the Treaty/te Tiriti because it is the Crown's agent, with the Crown the senior partner: 'The Crown is the primary Tiriti/Treaty partner responsible for the Tiriti/Treaty relationship. However, under various statutes, Parliament has directed the council to give effect to certain principles and follow particular processes when making decisions that affect Māori' (Auckland Council, 2021b, 13 [c]). Further:

The council is committed to operating in a manner that recognises and respects the significance of Tiriti/Treaty... To honour this commitment, the principles of te Tiriti/the Treaty should be used as a guide to inform the council's approach when making decisions about matters affecting Māori. (Auckland Council, 2021b, 13 [d])

The phrase 'when making decisions about matters affecting Māori' presumes a relationship in which the council has the final say. Te Tiriti/the Treaty may be considered if the council so chooses. The state's ways of making decisions take priority simply because they are the preferences of the state. Māori are stakeholders, not political communities. Similarly, the Whangarei District Council's Te Ao Māori Decision-Making Framework (Kahukuraariki Trust, 2021) states that it:

would like to understand what climate change and impacts on te taiao mean for iwi and hapu in Te Taitokerau. Along with governance and kaupapa Māori decision making models. The principal objectives of the co-design hui and workshops are to gather insights from tangata whenua, haukainga, hapu, iwi... to inform the development of the decision-making framework. (p. 3)

Co-design is not, however, a Māori-led process. The argument is not that co-design is misplaced or misguided but that it is not an alternative to sharing kawantanga, which means that there should be structured opportunities for Māori to initiate and lead discussions on environmental management, as one example.

When councils set the terms of engagement, they position themselves as senior partner. Co-governance arrangements may be evaluated from a similar perspective. They may provide an

appropriate response in many circumstances, but co-governance should not be a default position that undermines the possibility that some local government functions belong with Māori communities alone, nor should it undermine the expectation that councils include Māori people and values in their decision-making. The fact that a public institution is not exclusively Māori does not mean that Māori are not entitled to a distinctive and substantive voice in its affairs. There is a Tiriti/Treaty right to participate in kawanatanga that is compromised when Māori do not contribute to setting the rules of engagement. For example, Muru-Lanning (2012) argued that the Waikato River co-governance model provides a ‘way of viewing the river which is foreign to most Māori and one in which they cannot easily participate’ (p. 130).

Meaningful deliberation on the distribution of responsibilities between councils and mana whenua communities must consider human responsibilities to the natural environment where rivers and mountains, for example, are ancestors rather than property that is owned and tradable for material advantage. Mana whenua responsibilities to the natural environment may be described as a ‘familial relationship’ (Bennett et al., 2021, p. 64). The relationship means that mana whenua are not simply stakeholders but people whose contributions to public life come from a distinct and enduring perspective. The contrast with the idea of ownership of a tradable asset raises fundamentally different processes of resource management. Approaching policy questions from such different perspectives is a tension that the Review must address.

An important test of the public acceptability of any decision-making arrangement is the ease with which people may participate in it. Ease of participation from a cultural perspective, among other perspectives, is an important test for the Review when considering its recommendations. Yet, as Pirsoul and Armoudian (2019) argued, these co-governance arrangements are important because they ‘engage indigenous people to exercise self-determination with governments that have not traditionally participated with them’ (p. 4828). Notwithstanding the argument that Māori form political communities rather than stakeholder communities, Ansell and Gash’s (2008) definition of

collaborative governance can aid in considering how Māori communities and councils could manage matters of common concern:

A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets. (p. 544)

The question for the Review is, then, how to establish decision-making bodies that are representative, well informed and, above all, organised, to allow people to easily participate. Ease of participation requires that no decision-making body or process is culturally foreign. A consequent question for the Review is which kinds of structures and participatory arrangements would give Māori reason to say that the system of local government belongs to them as much as to anybody else. It should, after all, be an important presumption of the Review that group membership should not automatically be a matter of democratic disadvantage. To this end, it is significant that Waimakariri District Council (2021) argued that the *Local Government Act 2002* provides scope 'for both local authorities and Māori organisations to move beyond engaging on matters of environmental and cultural importance only' (para. 4). Exploring this idea's full potential may require broader and more flexible ways of thinking about the relationships between rangatiratanga and citizenship. For example, just terms of association, which means that the terms on which citizens and groups of citizens engage with one another and with the state, are widely accepted as fair and reasonable. Just terms of association do not occur by chance but through the conscious recognition that, 'We cannot develop political principles by starting with the assumption of a completely just society ... but must begin from within the general historical and social conditions in which we exist' (Young, 1989, p. 261). Just terms of association may, for example, preclude a council's incursion into rangatiratanga. With respect to te Tiriti, this would mean that rangatiratanga constrains kawanatanga and is complemented by culturally meaningful and politically worthwhile citizenship.

Rangatiratanga means that there are spaces of political authority that predate the state, and, by virtue of both te Tiriti and the United Nation's Declaration on the Rights of Indigenous Peoples (UN, 2007), these spaces of political authority are also independent of the state. Therefore, the state is not

‘the only empowered space’ (Davis, 2021, p. 379) in the political system, which is important because when the political system does not ‘explicitly recognise Indigenous empowered spaces in policy-making’ (Davis, 2021, p. 381), policy failure and, therefore, democratic failure, is likely to occur.

Valadez (2010) argued that the ‘just response’ to democratic failure ‘is to grant the indigenous groups powers of autonomous governance that remove the source of the political disadvantages they face by being forced to be part of a common civic body with the settler society’ (p. 60). This approach rationalises rangatiratanga as an alternative to citizenship rather than a complement. It creates conflict between te Tiriti’s second (rangatiratanga) and third (citizenship) articles as though the two are incompatible. It removes the possibility that Māori may participate in kawanatanga with the expectation of influence. It also removes the presumption that Māori are reasonably entitled to expect kawanatanga to serve their interests just as well as it serves the interests of other citizens. If governments (including local governments) may govern, but only on the assumption that Māori are entitled to participate, there should be limits on the exclusion of Māori values and aspirations from public decision-making.

UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples does not create new political rights; rather, it simply puts well-established human rights norms into a context that responds to colonialism and the distinctive claims of culture. New Zealand is one of 148 UN member states to accept the Declaration, which means that the rights it elaborates are very much within the mainstream of international political thought. The Review provides an opportunity to think about what they mean for New Zealand in practical political terms.

When New Zealand announced its support for the Declaration in 2010, the Prime Minister John Key said that it ‘both affirms accepted rights and establishes future aspirations’ (Key, 2010, para. 6). New Zealand’s statement in support of the Declaration acknowledged, ‘that Māori hold a special status as tangata whenua... and have an interest in all policy and legislative matters’ (Key, 2010, para. 4).

Consistent with these norms, the Declaration assumes that there is no hierarchy of human worth that justifies some people having less opportunity than others to influence public decisions with reference to their own cultural values. As the Declaration puts it:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. (UN, 2007, article 5)

The Declaration affirmed the state's right to govern. However, the right is constrained by pre-existing treaties and political rights and capacities that should be 'interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith' (UN, 2007, Resolution 61/295). Recognising treaties means that the Declaration gives international sanction to rangatiratanga as a constraint on kawanatanga. It also affirms that 'citizenship and its capacities belong to indigenous people as to any people—that is, inherently: they are not granted by the state's benevolence' (O'Sullivan, 2020, p. 20). They are not the Crown's gift to its partner. A reasonable political and cultural response may be to find ways of living together differently (Maaka & Fleras, 2009).

Differentiated liberal citizenship is a framework for thinking about how to live together differently. Its purpose is to help determine how to share political authority in ways that improve people's lives, particularly by ensuring that everyone has the same opportunity to influence decisions about the things that matter to them. This diminishes the idea of the Tiriti relationship as an adversarial 'us' and 'them' contest. Ideally, such a contest is unnecessary because democracy does not require all power and authority to reside in the same place. Nor does it insist that all public institutions make their decisions in the same ways and according to a single set of cultural values. The democratic imperative is to find ways for people to participate in public life with parity of esteem.

Participatory Parity, Deliberation and Reason

Parity of esteem is the outcome of what Fraser calls 'participatory parity'. The Review's recommendations could be tested against the two conditions that participatory parity requires:

First, the distribution of material resources must be such as to ensure participants' independence and 'voice.' ... The second... requires that institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social parity. (Fraser & Honneth, 2003, p. 36)

Participatory parity increases citizenship's political authority and capacities. As a starting point, its conditions mean that, like the wider political system, local government should take it for granted that Māori contribute with reference to their own values and aspirations and from their own cultural perspectives. As voters, candidates and elected councillors, Māori need not express themselves through the language and value systems of the majority population. Insisting on this approach means that being Māori is a democratic disability, and the right to participate in kawanatanga is not as strong as it is for other citizens. Therefore, the ways in which council meetings are conducted could be one factor that determines participatory parity. Just as Jones' (2014) principles of Māori constitutionalism may help society think about how to divide local government responsibilities among councils and Māori communities, may they also guide the drafting of council standing orders?

1. Whanaungatanga—'the centrality of relationships to Māori life'.
2. Manaakitanga (and kaitiakitanga)—'nurturing relationships, looking after people, and being very careful how others are treated'.
3. Mana—'the importance of spiritually sanctioned authority and the limits on Māori leadership'.
4. Tapu/Noa—'respect for the spiritual character of all things'.
5. Utu—'the principle of balance and reciprocity' (p. 191).

Incorporating these cultural and political values into the workings of local government could help people live together differently. One of their strengths could be that they do not require rigid distinctions between Māori communities and ethnically exclusive non-Māori councils. Difference need not position people outside the political system but should allow Māori to assert their differences positively and for their own purposes. If, for example, te Tiriti imposes an obligation to actively protect Māori interests (Te Puni Kokiri, 2001), it is reasonable to expect that Māori define those interests. This may be achieved as an outcome of rangatiratanga in Māori political communities and through deliberative approaches to decision-making in state institutions.

Deliberative democracy is a process of reaching decisions through reasoned and informed arguments. Deliberative systems consist of 'a loosely coupled group of institutions and practices that

together perform three functions ... seeking truth, establishing mutual respect and generating inclusive, egalitarian decision-making' (Mansbridge et al., 2012, p. 22). These objectives could inform council decision-making processes and the model standing orders that are equally informed by tikanga Māori that the Review may wish to recommend.

Deliberative democracy shows how differentiated citizenship and participatory parity may develop to make local government work fairly, inclusively and effectively. This is because it works by 'putting communication at the heart of politics, recognising the need for reflective justification of positions, stressing the pursuit of reciprocal understanding across those who have different frameworks or ideologies' (Ercan & Dryzek, 2015, p. 241).

Consequently, it is not only Māori people but Māori ways of thinking that fairly contribute to public affairs. This means being present *as* Māori, wherever decisions are made, in ways that make cultural sense. Presence is key to having a meaningful say in society's development. A meaningful say in the formation of public values and the setting of shared political priorities would indicate that Māori citizens are, in practical terms, shareholders in Crown sovereignty (O'Sullivan, 2021). This is a different political concept from those forms of partnership that distance Māori from local government. The idea that Māori are not part of local government means that participatory parity cannot be achieved because participation is always at somebody else's invitation and on somebody else's terms. As Local Government New Zealand's accurate but limiting observation showed, 'Councils operate under a number of statutory regimes that require interaction and a relationship with Māori' (Yule, 2017, p. 4). Alternative language to presume active and legitimate Māori participation from the *inside* as well as the *outside* is an idea that the Review could consider. Local Government New Zealand's further remarks provide a foundation for considering this point: 'Councils need to recognise, and be responsive to, the nature and diversity of their communities, in particular, they should recognise the mandate and structures established by Māori within their communities' (Yule, 2017, p. 4).

However, recognition is a two-way process. If local authorities recognise 'the mandate and structures' of Māori communities, what are those communities recognising in return? What is it,

exactly, that would make local authorities morally legitimate from those communities' perspectives? It is important that the Review's final recommendations are widely accepted, including by Māori citizens. Therefore, people must be asked what legitimacy looks like.

Participatory parity means making public decisions according to principles of public reason. Political equality requires 'reciprocity in reason giving' (Valadez, 2010, p. 60) and acceptance that 'my views are not more worthy than yours simply because they are mine'. In contrast, colonialism requires no reasons. Its presumption that some people's interests have greater moral worth than other people's rights is its self-justification. It is important to distinguish and protect fundamental rights from self-interest. While self-interest is legitimately the subject of democratic contest, it becomes unreasonable at the point where, just because a group is not Māori, its wishes take moral priority over the rights of rangatiratanga and the right to parity of esteem. As Valadez (2010) explained: 'A just democratic society can bear the burden of particular groups being coerced to follow collective decisions with which they fundamentally disagree only if the realistic possibility exists that in future negotiations their point of view will win the day' (p. 60). The burden may also be bearable if individuals understand that, in relation to their own affairs or decisions that belong within the domain of rangatiratanga, there are rights of higher standing than the self-interest of others. There is no parity of esteem if some individuals' 'primary reason' for 'losing out' is 'the significantly different cultural views they hold in such areas as empirical beliefs, normative principles and practices, and epistemic procedures for validating empirical and normative claims' (Valadez, 2010, p. 60). When Māori repeatedly lose for these reasons in a democratic contest, then being Māori is a democratic disability. It is, therefore, democratically important for the Review Panel to ask which values, systems and procedures would ensure that group membership is an unlikely democratic disability for any citizen or groups of citizens? As Valadez (2010) argued: 'Fair decisions are not reached, for example, when the most powerful groups in the society use their economic or social power to compel others to go along with their interests or agenda' (p. 261).

Participatory parity requires reason. Arguments must be presented in ways that others may reasonably be expected to consider. Public reason presumes good faith in the pursuit of common interest, which means that ‘reasons that violate peoples’ fundamental rights, for example would not be considered as legitimate for justifying public policies to which all are bound’ (Valadez, 2010, p. 61).

Public reason does not guarantee that prejudice will not influence decision-making; however, it does make it difficult to hide racism. All ideas are open to scrutiny and contest in a transparent and systematic fashion. An individual’s refusal to bring serious and well-informed arguments to points of disagreement cannot be concealed. The simple and important principle is that: ‘Rash opinions are unreasonable because they disregard another’s right to be heard and considered’ (O’Sullivan, 2020, p. 22). Ultimately, differences of opinion are settled by vote; however, rather than being satisfied with the idea of one person having one vote of equal value, public reason privileges the idea of one informed reason—one argument of influence. Participatory parity requires that people support their opinions with reasons that other citizens may scrutinise and critique. The willingness to consider other people’s reasons is particularly important when reasons are formed from a cultural framework different to one’s own. The idea is that democracy works best when decisions are made with a deep understanding of other people’s perspectives, as well as when people are open to modifying their own positions after considering other people’s reasons.

Public decisions are better informed if all actors involved are required to justify their positions and seek to understand the positions of others. Providing reasons can help identify points of agreement, even when individuals are approaching policy problems from fundamentally different worldviews; however: ‘Once interests become the focus of deliberations rather than shared reasons, power plays a more prominent role in negotiations’ (Valadez, 2010, p. 64). For Māori, influence cannot be assured when positions motivated by prejudice and discrimination are given the same weight as positions that are simply motivated by different perspectives of what a reasonable outcome looks like. In contrast, as Davis (2021) argued, ‘Even in deeply divided societies, deliberative democracy has demonstrated it

can help promote recognition, mutual understanding and even solidarity across deep differences' (p. 377).

Deliberative democracy supports active community participation in decision-making. This process may help individuals decide what councils ought to do and what functions Māori communities ought to serve. Although public disagreement on this question may be expected, it should be remembered that managing disagreement is democracy's foundational and essential task. Under deliberative arrangements, deliberators must commit to listening to others' points of view before settling on a final position.

We Do Not Make Decisions Until We Understand Each Other

Listening to others is democratically important because, as Bell (2018) explained in her summary of Walker's argument:

councils are not obliged to hear or even read the histories of Treaty injustices perpetrated in their territories and to which they themselves have frequently been party. This means their memory does not extend beyond the electoral cycle and the lifetimes of the legislation that binds their activities. Councillors in meetings with *iwi* leaders will more often than not know nothing of the history of the land over which they are empowered to exercise governance rights. How then can *iwi* leaders negotiate with such amnesiac subjects as equals? (p. 87)

Public decisions should, instead, be well informed and the rules of engagement should mean that we do not make decisions until we understand each other. In this way, a majority and, usually, a non-Māori position, possibly grounded in prejudicial self-interest, does not prevail simply because it 'has the numbers'. It must first have been open to scrutiny, contest and modification through reasoned argument. How, then, could council standing orders be drafted to ensure that decisions are not made until we understand each other? Are there principles and practices of Māori decision-making that are transferable to the council chamber?

Hendriks (2016) argued that deliberative systems must focus on connecting 'citizens and elites' (p. 43), such as connecting the marae and the council chamber in a more systematic and comprehensive fashion than occurs when, if by chance, a member of the marae is also a member of the council. This is particularly significant because, while a council is an important decision-making

body, it is only one part of a wider decision-making system. Connecting citizens and elites is the 'means by which public space can influence empowered space' (Dryzek, 2009, p. 1385). From the perspective of maximising opportunities for participatory parity, these connections require the influence of Māori public (and private) spaces on the entire decision-making system.

Processes to ensure that Māori interests are not silenced by the weight of numbers in areas where other citizens have different or even conflicting perspectives are democratically important and explain the significance of substantive Māori presence. As Williams (2000) explained:

if decision-making is competitive and majoritarian, there is nothing to prevent the more powerful and numerous participants from ignoring marginalized-group voices ... This means that the only hope is that marginalized-group presence will have a lasting effect on policy outcomes is that decisions are based not only on the counting of votes but also on the sharing of reasons. (p. 125)

However, the idea that a collective Māori voice is marginalised reflects a system that has failed to protect both rangatiratanga and citizenship. Marginalisation ought not to occur if communication between councils and Māori communities unfolds as a relationship between mutually recognised spaces of political authority rather than as communication between an agent of the Crown and its partner or stakeholder. Further, if Māori are citizens rather than partners or stakeholders in a consultative exercise, a different set of political capacities is imagined, and the political relationship takes on a different form. Stakeholders can be a problem for policymakers to solve. Partners, while permitted an opinion, do not have a formal voice in the decision. Meanwhile, participants are not problems for the state to solve but shareholders in the right to make the decision.

How, then, are Māori part of the Crown as electors, candidates and officeholders in local government? Amendments made to the *Local Government Act 2002* in 2021, which removed impediments to the creation of Māori wards, are an important part of the answer. There is potentially an argument for Māori, or perhaps mana whenua wards, being required of all local authorities. Representation, complemented by the vesting of appropriate local government functions in Māori communities, is significant because:

it is at the local authority level where Māori resources are most immediately affected, where decisions are made that directly affect their ancestral lands, waterways, seas, and within them, their

wahi tapu (the sacred sites and places of special significance that have been ritually restricted. (Mutu, 2004, p. 160)

The Royal Commission on Auckland Governance (2009), which preceded the creation of the Auckland Council in 2010, argued that:

the provision of three safeguarded seats for Māori is consistent with the spirit and intent of the Local Government Act 2002, which requires local authorities to establish processes for Māori to contribute to decision-making. It will ensure that there is an effective Māori voice at the decision-making table, and that the special status of mana whenua, and their obligations of kaitiakitanga and manaakitanga, are recognised. (p. 6)

Formally recognising kaitiakitanga and manaakitanga as ‘obligations’ requires a particular assumption about the nature of Māori citizenship. The assumption is that one of citizenship’s distinctive characteristics for Māori is that they have the necessary political capacities to exercise these obligations in ways that are consistent with their own values and aspirations. This is quite different from a presumption that supposes that a local authority would consult with Māori to work out how the authority itself would address environmental imperatives.

Distinctive voices, through group representation, respond to the idea of one person having one voice of equal value. The distinction is that Māori wards allow voters and candidates to engage on matters contextualised by culture and colonisation. However, once elected, participatory parity means having the same opportunity as everybody else in terms of influencing outcomes. Webster and Cheyne (2017) found that Māori councillors sought to establish ‘an environment that was more conducive to debate and consensus decision-making’ (p. 156). They also found that failing to provide for mana whenua contributions alongside those of other Māori citizens ‘risked further alienating Māori from local government’ (p. 156). Once again, what should standing orders look like, and which other council operating procedures may be revised?

Participatory parity’s test is whether, after being on the losing side in a democratic contest, one can still say that the decision-making process was fair—that one was not on the losing side because the process was culturally foreign and, therefore, inconsistent with opportunities for the fair and reasonable expression of one’s ideas, that neither culture nor indigeneity were democratic disabilities

and that colonialism was not a factor. Instead, participatory parity is supported by deliberative democracy that ‘provides a framework which can be deployed to make Indigenous political authority more visible’ (Davis, 2021, p. 377). Deliberative democracy supports a politics of presence in which individuals contribute not as junior partners to the Crown but as participants in a process in which their voices are as legitimate as anybody else’s. However, for this democratic ideal to work in practice, society must work out how reasons should be shared at different points in the local government system. The following questions must be answered: in which forums or institutions should they be shared? How and by whom should the processes for the sharing of reasons be worked out? In what ways can tikanga influence councils’ relationships with their communities? Should the Review propose model standing orders? How, too, may tikanga influence the broader ways in which Māori citizens contribute to decision-making over matters that do not belong exclusively to Māori decision-making bodies but where distinctive Māori perspectives may be relevant (e.g., decisions about the shared environment or the management of library and museum collections)?

Participation and Democratic Accountability: More than a Contribution

These questions logically lead to thinking about the broader objective of how Māori may do more than ‘contribute to local government decision-making processes’, as the *Local Government Act 2002* requires (Parliamentary Counsel Office, 2002, s. 4). Contribution is a limited political authority. However, boldness, conversely and by definition, lends itself to thinking more widely about how and why people may wish to do more than contribute, including to thinking about how and why people may wish to lead and participate in working out the functions of local government, working out where these functions should lie within the system and how and why they should be managed. Should, then, the Act be amended to allow Māori to ‘contribute to local government decision-making processes according to preferred tikanga’? What additional functions may require legislative sanction so that independent Māori communities may ‘promote the social, economic, environmental, and cultural well-being of its district or region in the present and future’ (Parliamentary Counsel Office, 2002, s. 5[d]), as the Act currently sets out? To this extent, how will experts in tikanga lead the drafting of

the amended Act? How too will they do so ‘to enable democratic local decision-making and action by, and on behalf of, communities’ and ‘to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future’ (Parliamentary Counsel Office, 2002, s. 10 [a and b])?

Further, how will decision-making bodies be accountable to their communities? What will rangatiratanga look like in practice? These questions are important because, despite their likely contribution to more effective local government, Māori wards are not the full expression of the right to self-determination. Māori voter turnout in local government elections typically is not as high as it is for non-Māori voters (Bargh, 2021). Low voter turnout could reflect low Māori confidence in the system but could equally reflect a Māori preference to participate in public life in different ways. Both possibilities must be considered when reviewing the system’s democratic strength.

Representation is an important part of the democratic process. However, as the Constitutional Advisory Panel (2013) noted, representation ‘is reliant on individual personalities’ (p. 44), and the Treaty is not an agreement between personalities. Indeed, Bargh (2021) argued for Māori membership of councils not as ‘representatives’ but as ‘Treaty partners’ (p. 70). However, from this perspective, the local authority must be understood as a Crown institution with a distinctive non-Māori character and the Māori councillor as an emissary to the Crown rather than a shareholder in its authority. Yet, conversely, it is true that Tiriti partnership normalises a Māori presence in local government not just as individuals who vote and serve on councils but as people whose collective rights of rangatiratanga must be acknowledged.

If local government were to be recognised as a Tiriti partner, are its responsibilities simply those delegated by Parliament? In other words, would it be reasonable for Auckland Council to continue to describe itself as a ‘delegate of the Crown’ (Auckland Council, 2021a, para. 4), or should there be scope for Māori communities and councils to define the nature of that relationship for themselves through a deliberative forum of some kind? What scope should they have to define their own just terms of association, bearing in mind that too much flexibility can lead to minimalist interpretations of the right

to participate? Further, if it is the council's duty to arrange participation, it is automatically positioned as the senior partner.

Accountability and Decision-Making

Should the Waitangi Tribunal have explicit jurisdiction in relation to local government? Would this provide an additional check on the misuse of power and an additional pathway to government accountability to Māori? In what other ways should councils and Māori decision-making bodies be accountable to the people they serve? Formally drawing te Tiriti into local government would mean that the agreement cannot be seen 'as a binary, quasi-diplomatic partnership between two centralised and homogenous polities' (Gover & Baird, 2002, p. 40); mana whenua may, therefore, be protected as the authority of distinct Māori political communities.

The ways in which Māori voters wish to participate in the different tiers of government may also differ. The choice to vote on the Māori Parliamentary electoral roll may not imply a wish to vote in a Māori Regional Council constituency in an area in which one does not have a mana whenua connection. Importantly, non-mana whenua Māori influences on who represents mana whenua concerns in relation to local environmental management compromise rangatiratanga. There is an important argument for different Māori (or mana whenua) and general rolls for different tiers of government, as well as for different local government bodies—city, district or regional councils—or Māori entities.

Participatory parity means that Māori are entitled to participate in different ways as mana whenua and as Māori citizens. For example, in the Rotorua District, the Te Arawa Partnership Board, whose membership is elected by people of mana whenua standing, has representatives on District Council committees. The right to vote is not restricted to mana whenua people resident in the District. The principle of mana whenua rather than Māori representation is an important one that changes the ways in which one thinks about the political capacities of citizenship. This means that New Zealand citizenship and place of residence are not the sole criteria that determine how one participates in public life. Whakapapa is also a determinant. Further, the shift from first past the post to mixed-

member proportional as the system used to elect the national parliament shows that the choice of electoral system can make a significant difference to representation. The choice councils make between first past the post and single transferable vote electoral systems has no influence on the number of Māori elected to councils (Vowles & Hayward, 2021), but within a Māori ward, single transferable vote may contribute to the election of more representative Māori candidates and more diverse Māori membership of councils. Should councils retain the choice of electoral system, or should a more representative system be prescribed?

Empowering councils to establish randomly selected deliberative assemblies to deal with matters of particular public importance could usefully add to existing forums for developing public opinion, testing ideas and bringing people of different backgrounds together to determine and develop points of common interest. This could be particularly useful if it brings together people who may not ordinarily deliberate together but whose different perspectives could benefit social cohesion.

Māori have well-established decision-making processes. Recognising their scope of authority and modes of decision-making is one way of giving effect to rangatiratanga while also ensuring that they make a distinctive 'democratic contribution to the larger democratic system' (Davis, 2021, p. 376). Formally linking Māori deliberative forums to the state could strengthen communication and accountability. However, these connections must be consistent with the community's preferred tikanga and must not limit a community's scope to exercise rangatiratanga over its own affairs and according to its own values. At the same time, the quality of a community's relationships with councils is a factor that determines its influence. These relationships are also important for protecting the distinction between a Māori community exercising rangatiratanga and members of that same community contributing a distinctive voice to kawanatanga. Indeed, iwi and local government already function in 'overlapping spaces' (Bell, 2018, p. 77). In 2017, Local Government New Zealand found that 'council-iwi participation arrangements' occurred under 'five broad categories': 'engagement and consultation processes; relationship arrangements/memoranda of understanding; representation and advisory structures; formal agreements and joint entities and local government tools and practices'

(Local Government New Zealand, 2017, p. 7). Each involves conceptually different political relationships. For example, 'advisory structures' implies a relationship of junior and senior partner, while 'joint entities' implies a more equal relationship.

Local Government New Zealand (2017) argued that engagement and consultation processes 'recognise the mana of Māori in their local area' (p. 11). However, as recognition is a mutual process, there must be formal mechanisms to correct the relationship when this presumption does not hold. It is not necessarily respectful of mana whenua for Local Government New Zealand (2017) to argue that, even when not legally required, consultation 'is appropriate and necessary to ensure that local authorities can make informed decisions in relation to Māori values and interests' (p. 11). The assumption that councils should make decisions in relation to these 'values and interests' must be carefully reconsidered in relation to both rangatiratanga and distinctive Māori citizenship. The justification for a council rather than a Māori political community making such decisions must be clearly set out and defensible in relation to local tikanga and the democratic principle that *all* and not just *some* people have the right to participate in decisions over matters affecting them. While councils are the bodies that make decisions, Māori, as citizens, are still entitled to participate and should not simply be advisers, consultants or partners to non-Māori decision-makers. A transparent process informed by local tikanga to determine which functions of local government should be conducted by Māori communities would help address this problem while contributing to the evolution of the relationships between Māori and local government that Local Government New Zealand (2017) noted. A transparent process would also help address the observation that: 'One challenge faced by local authorities and Māori across the country is to coordinate and integrate the many streams of engagement within even one local authority and the Māori group' (Local Government New Zealand, 2017, p. 11).

Policy Implementation and Evaluation

The political relationships that determine who has power and who does not are often made explicit through public policymaking. It is, therefore, important to ask how indigenous knowledge may 'be

operationalised to make better... policy' (Davis, 2021, p. 376)? It is by participating in policy development, implementation and evaluation that one shares in the process of deciding what success and failure look like. It may be important to legislate mana whenua participation at each of these levels to ensure that participation is not simply a matter of council discretion. For example, Lipsky's (1980) study of street-level workers' discretion and its influence over policy implementation demonstrated the importance of mana whenua participation at every point in the policy process:

public policy is not best understood as made in legislatures or top-floor suites of high-ranking administrators, because in important ways it is actually made in the crowded offices and daily encounters of street-level workers. (p. xii)

Bennett et al.'s (2021) argument that 'Coloniality' in resource management 'permeates many interactions with iwi' (p. 63) shows what may occur in the absence of mana whenua participation. How Māori participate in councils as employees and contractors is important because it is through the bureaucratic decisions of people at this level of the policy system that council decisions are put into practice. Mana whenua participation would, for example, help reduce the distance between council employees and Ngai Tahu environmental kaitiaki that Bennett et al. (2021) found: 'Kaitiaki universally recommended improving the equity, transparency, and sincerity of working relationships as a way of improving engagement processes' (Bennett et al., 2021, p. 68). Further, 'Best practice engagement provides for matauranga and tikanga Māori to be genuine guiding elements within processes' (Bennett et al., 2021, p. 68). This requires meaningful presence. Similarly, in their study of the Integrated Kaipara Harbour Management Group, Hepi et al. (2018) proposed that the 'challenge facing cross-cultural integrated catchment programs' was not so much 'how to integrate indigenous knowledge into resource management' but 'how to integrate indigenous knowledge holders into planning and decision-making' to 'enable Indigenous knowledge holders to articulate management in their own terms as an expression of self-determination' (p. 497). To this end, at the point of policy evaluation, Critical Tiriti Analysis (CTA; Came et al., 2020) is an evaluative method that could be integrated into local government policy processes. CTA could help the political system work out how policy should be made and by whom. It is an evaluative method that gives effect to differentiated liberal citizenship

through a series of questions that should be asked to establish consistency with the rangatiratanga and citizenship that te Tiriti affirms (Came et al., 2020). Its opening presumption is that public institutions ought not to operate in ways that make whiteness ‘the definitive marker of citizenship’ (Moreton-Robinson, 2004, p. 79). Its questions include:

- How exactly will Māori-led decision-making and leadership (which is a bigger aspiration than partnership) be put into practice?
- How will barriers to Māori advancement, such as institutional racism, be eliminated?
- How [will the policy] ensure that Māori values, aspirations and tikanga are present (Came et al., 2020)?

CTA may be read in conjunction with the Cabinet Circular *te Tiriti o Waitangi/Treaty of Waitangi Guidance* (Department of the Prime Minister and Cabinet, 2019). The Circular sets out a series of questions that advisers must consider in preparing advice to ministers. CTA suggests additional and alternative questions that would better assist advisers to ensure consistency with te Tiriti (Came et al., 2020) and usefully guide the Review Panel. These questions are largely procedural and complement the questions of practical policy significance that this paper has raised to facilitate discussion of its two underlying assumptions about where power lies and how decisions are made in local government. The questions are as follows:

- How have Māori contributed to this advice and the priorities it presumes?
- What evidence is there that this policy preserves Māori authority and contributes to peace and good order?
- In which other ways have Māori contributed to the preparation of this advice?
- What do Māori say are the issues to consider?
- What do Māori say are their interests in this issue?
- What contributions have Māori people and ideas made to the drafting of this advice?
- Could this policy disadvantage Māori in ways that it does not disadvantage others?
- Why is the (local) government presuming to make this decision?
- Why does the decision not, in part or whole, belong to the sphere of tino rangatiratanga? (O’Sullivan et al., 2021).

These questions allow the Review Panel to assess the extent to which Māori understandings of rangatiratanga have informed its deliberations. They also allow the Panel to assess the extent to which Māori people have participated in its deliberations, not as partners, but as Māori shareholders in kawanatanga.

Summary and Conclusion

This discussion paper began with two overarching assumptions. The first was that not all local government functions need to be conducted by councils. Instead, could some functions be better conducted by iwi, hapu, marae or other Māori political communities? The second was that Māori are entitled to make culturally distinctive contributions to councils' work because, like all citizens, Māori are shareholders in kawanatanga. As such, Māori are as entitled as anybody else to expect councils to work in their favour. This paper then raised a series of questions to assist further discussions on the merits and potential application of these ideals. It was presumed that thinking boldly could include thinking about democracy not as an imported concept concerned only with 'the counting of votes' (Davis, 2021, p. 377) but as a concept that has many potential forms and that evolves over time to meet new expectations and contexts. This definition of democracy could, if people so choose, assure Māori communities of meaningful influence according to their preferred forms of decision-making. The paper examined the following questions with reference to rangatiratanga and the standing of mana whenua and other Māori political communities, as well as to differentiated citizenship, deliberative democracy and participatory parity:

- Which local government functions could be better conducted by iwi, hapu, marae or other Māori political communities?
- Could these functions be managed to reflect rangatiratanga and support more effective governance? In short, who does what, how and why?
- Which kinds of institutions, making decisions according to which kinds of values, would best help policymaking become a site of both respectful inclusion and respectful difference?
- What would a system of local government look like if everybody contributed in culturally meaningful ways?
- Are principles and practices of Māori decision-making processes that are transferable to the council chamber?
- How can local government be arranged to ensure that group membership is an unlikely democratic disability for any citizen or groups of citizens?
- Which further principles should inform the drafting of council standing orders?
- How would standing orders ensure that decisions are not made 'until we understand each other'?
- How would one draft model standing orders, and what would they contain?
- Should other council operating procedures be revised?
- If councils recognise 'the mandate and structures' (Yule, 2017, p. 4) of Māori communities, what should Māori recognise in return?
- What exactly would make councils morally legitimate from Māori communities' perspectives?
- How are Māori part of the Crown as electors, candidates and officeholders in local government?

- Which electoral system would Māori voters prefer to use—first past the post, single transferable vote or something else?
- Should there be Māori representation on councils or mana whenua representation?
- Should people be able to choose different roll types (General or Māori/mana whenua) for parliamentary elections and local government elections?
- Should the *Local Government Act 2002* be amended to allow Māori to contribute to local government decision-making processes according to preferred tikanga?
- How should councils ensure that there is mana whenua participation as employees involved in policy implementation and evaluation?
- What additional functions may need legislative sanction so that independent Māori communities can ‘promote the social, economic, environmental, and cultural well-being of its district or region in the present and future’, as the Act currently sets out?
- Should the Act provide for these functions to be performed according to preferred tikanga? To this extent, how will experts in tikanga lead the drafting of the amended Act?
- How will they do it ‘to enable democratic local decision-making and action by, and on behalf of, communities’ and ‘promote the social, economic, environmental, and cultural well-being of communities in the present and for the future?’
- How will decision-making bodies be accountable to their communities?
- Is local government a party to te Tiriti, with its decisions subject to claims before the Waitangi Tribunal? If so, does parliament or do councils and mana whenua work out the terms of the relationship?
- What else could help create a non-colonial system of local government?
- Which structures and participatory arrangements would give Māori reason to say that the system of local government belongs to them as much as anybody else?

The answers to these questions could help define what rangatiratanga and kawanatanga should look like with respect to local government and distinguish the responsibilities that belong to each, as spheres of political authority, while helping to define the relationships between them. In this way, the overarching questions of who does what, why and how may be comprehensively and systematically considered. These questions are pertinent because the idea that Māori and other citizens share so little in common that a fair system of local government cannot be designed is to give up on human imagination, the capacity for goodwill and te Tiriti’s implicit aspiration that ways of living together differently (Maaka & Fleras, 2009) can be found. Perhaps found through the sharing of reasons (Williams, 2000), including the sharing of Māori reasons.

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