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## **Self-Determination—the Power and the Practice**

### **Introduction**

Self-determination may, but does not usually, imply disrupting the territorial integrity of the state. However, it always presumes that the state cannot exercise singular or unilateral authority. Self-determination is a contested and complex concept. Quane (2011) has described it as ‘notoriously difficult to pin down’ and has argued that there is ‘little if any guidance as to what it means in actual practice’ (p. 69). Yet, neither of these characterisations are wholly correct nor, as this chapter will show, is Kingsbury and Grodinsky’s (1992) observation that ‘the right to self-determination is at present, a rather blunt ... and underinclusive instrument’ (p. 393).

The Declaration does not define self-determination; however, it does provide general principles for developing the concept into policy practice. Consequently, one may think not of the right—but of the power—of self-determination. The power of self-determination includes, but is not limited to, an indigenous nation’s self-government of its own affairs. It is a power that depends on political influence wherever decisions are made, which means that self-determination within the state is also fundamentally important to a meaningfully shared sovereignty.

Indigenous political authority within the state is not diminished by distinctive indigenous nationhood. The two sites of political authority are mutually reinforcing and provide opportunities for indigenous peoples to contest the coercive powers of the state. Self-determination rationalises shared political sovereignty.

Shared sovereignty affirms the indigenous citizen's political equality. It presumes that it is just for indigenous people to influence the aspirations, values and workings of the state. In this way, the state at least potentially expresses, rather than curtails, indigenous political aspirations. Shared sovereignty is a decisive statement against assimilation and coercion. It can be reflected in various ways; for example, through guaranteed representation in parliament or a voice to parliament, as is being claimed in Australia.

The Declaration helps societies to conceptualise what further capacities and powers shared sovereignty might entail and offers protections against the uncertainties of majoritarian democratic exclusion. Shared sovereignty is present when indigenous values substantively influence public policy. Shared sovereign authority reflects self-determination by presuming indigenous people's fundamental equality. It presumes that their cultural values and political aspirations rightly influence the conduct of public affairs. For example, as Justice Williams, the first Maori appointed to the New Zealand Supreme Court, argued:

Fundamentally, there is a need for a mindset shift away from the pervasive assumption that the Crown is Pākehā (Anglo-Celtic), 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, *Tē roo Māori*, 2010, p. 51)

Describing her experience as a moot court judge, Stephens (2017) explained what this remark could mean in practice:

Of the six mooters, four of the students mooted in Māori. Each of them was able to move fluidly between an unconscious ownership of the legal system and of tikanga Māori, and a blistering critique of the same systems. Just one small symbolic and up-ending moment of something better. There are other such moments waiting to coalesce. (The Crown is also Māori, para. 5)

This illustrates the sentiment that ‘we are all here to stay’, or alternatively that Maori are not going to assimilate.

This chapter defines self-determination as political capacity or power, rather than simply a body of rights. It does so with reference to cross-jurisdictional examples, and examples from across policy domains, to show the political importance of indigenous peoples pursuing self-determination both within the state and within the indigenous nation. The examples also show what some indigenous policy actors imagine contributes to the self-determination of communities. Through these examples, this chapter demonstrates that there is both clarity on the meaning of self-determination and well-developed arguments to support its assertion.

## Defining Self-Determination

In Canada, the right to self-government recognises an indigenous right to self-determination over matters ‘internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources’ (Government of Canada, 1995, Part I – Policy framework, para. 1). The Declaration affirms this policy objective:

Indigenous peoples, in exercising their rights to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (UN, 2007b, art. 4)

However, self-government does not reflect self-determination’s full scope. Self-government is not, for example, the same as shared sovereignty. Neglecting self-determination within the state restricts indigenous political influence—an influence that, for meaningful self-determination to occur, must be exercised wherever policy decisions are made.

Self-determination arises from geopolitical attachments. There are ways in which self-determination can only be realised with respect to those attachments. However, geopolitical rights to land, culture and independent political authority are not the sum of the right to self-determination. These rights over a defined territory do not diminish the claim to a share in national public sovereignty. As Kingsbury and Grodinsky (1992) observed, it serves no purpose to make self-determination a ‘one-shot

right, vindicated and exhausted by liberation from domination' (p. 393). It is self-determination—not self-government—that justifies guaranteed indigenous parliamentary representation and full participation in setting policy priorities, for example.

Self-determination within the state allows indigenous peoples to defend their independent authority against public intrusion. For example, in Canada, it allows indigenous people to defend against the effective veto that the minister of Aboriginal affairs and northern development enjoys over the decisions of a First Nations government (UN, 2014). This effective 'veto' includes reporting requirements to the federal minister that First Nations perceive as overly zealous and that perpetuate negative stereotypes. As the UN special rapporteur noted, indigenous nations are then positioned as 'inconsistent and corrupt ... [which] ... undermine[s] rather than promote[s] public support for self-government' (UN, 2014, p. 14).

The special rapporteur's observations parallel arguments used to discredit the Aboriginal and Torres Strait Islander Commission (ATSIC) in Australia. ATSIC was a public body exercising capacities of self-determination. The Howard Government (1996–2007) abolished it in 2005 because it 'separated' Indigenous people from the national body politic; though, in practice, Indigenous peoples had never been so included (O'Sullivan, 2017). Had Howard sought to further include Indigenous people, rather than abolish ATSIC, he would have listened to the strong political voice in favour of retaining the commission, or some other institution, to maximise Indigenous authority over their own affairs. It is for this reason that this book's central argument is that self-determination can only occur through independent indigenous nationhood if it also occurs *within* the state—that is, if indigenous peoples are included to share national sovereign authority.

Self-determination implies order and philosophical certainty. Its foundational principles insist that indigenous peoples have the capacity to decide what is morally important and to determine the political objectives they wish to pursue. Such decisions cannot be made by a guardian (in a guardian–ward relationship) or by the senior partner in a bicultural project. As Dodson has argued:

at the heart of all the violations of our human rights has been the failure to respect our integrity, and the insistence on speaking for us, defining our needs and controlling our lives. Self-determination is the river in which all other rights swim. (as cited in Scott, 1996, p. 814)

Self-determination is a state of political capacity. It is the freedom to determine one's identity and significant because 'Autonomy and self-realisation are the key concepts for a practice with an immanent purpose, namely, the production and reproduction of a life worthy of human beings' (Habermas, 1997, p. 41). The right of self-determination is important because it is preliminary to recognising and strengthening the broader human rights that indigenous people hold in common with all others. The scope of political freedom must be the same for all people.

Corntassel's (2012) understanding of self-determination is that 'By focusing on "everyday" acts of resurgence, one disrupts the colonial physical, social and political boundaries designed to impede our actions to restore our nationhood' (p. 88). However, Corntassel (2008) has also argued that self-determination is much more than political struggle. He explained that 'resurgence means having courage and imagination to envision life beyond the state' (Corntassel, 2012, p. 89) *and* having the capacity to make distinctive and substantively equal contributions to its public life. Further, it means that:

evolving indigenous livelihoods, food security, community governance, relationships to homelands and the natural world, and ceremonial life can be practised today locally and regionally, thus enabling the transmission of these traditions and practices to future generation. (Corntassel, 2008, p. 119)

When people are self-determining, the state cannot be all powerful and singularly constraining. Self-determination limits the state's political jurisdiction by placing moral limits on the exertion of power and recognises that the state is neither a neutral entity nor one with a natural tendency towards benevolence. Self-determination cannot satisfy itself with state affirmative action policies for indigenous peoples but must advance an inherent right to participate in public affairs.

Self-determination does not threaten state sovereignty; instead, it threatens the exclusive presumptions that have traditionally positioned indigenous peoples beyond the public in whose name sovereignty is exercised and by whom its character is determined. The contemporary Indigenous

Australian claim to a voice to parliament is a claim to self-determination through a more substantive participation in state sovereignty. Just outcomes presuppose just decision-making processes.

Self-determination is not a private right; therefore, the 'project of indigenous self-determination ... [is not] a phenomenon outside of general political structures' (Kuokkanen, 2012, p. 226). The state ought not be an institution that 'consults' with indigenous peoples but an entity in which they actively and substantively participate. Sovereignty is thus shared, and political arrangements ought to allow the just and orderly distribution of that sovereignty. The Declaration provides a framework for the distribution of political authority because:

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. (UN, 2007b, art. 2)

The Declaration provides a framework for thinking about self-determination as not just a body of rights but also a body of capacities and powers.

## **Self-Determination—Beyond the Right, Towards the Power**

Self-determination's translation from a right to an effective and substantive power is politically important. The point that matters is indigenous peoples' intertwining *capacities* for self-determination and citizenship. To that end, one may define self-determination with reference to Nussbaum (2008) and Sen's (2002) theory of human capabilities, which presumes that:

Human beings live and interact in societies, and are, in fact, societal creatures. It is not surprising that they cannot fully flourish without participating in political and social affairs, and without being effectively involved in joint decision-making. (Sen, 2002, p. 79)

The right to self-determination is affirmed as one that belongs simultaneously to individuals and to peoples. According to Taylor (1994), self-determination's character and purpose 'requires that it be sought in common' (p. 59).

The right to self-determination is one of procedural justice. It flows from relational justice *between* the state and indigenous entities *as well as* relational justice *within* the state. It presumes a state in which indigenous people participate as free and equal citizens, not consigned to perpetual victimhood (MacDonald & Muldoon, 2006) but to substantive respect through collective and individual citizenships that are responsive to immediate political context and actively shaped by indigenous peoples. The Declaration says that:

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress. (UN, 2007b, art. 20)

Further:

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (UN, 2007b, art. 23)

Deliberative capacity is important. According to Anaya (2009), self-determination's:

essential idea ... is that human beings, individually and as groups, are equally entitled to be in control of their own destinies, and to live within government institutional orders that are devised accordingly. (p. 187)

Rights are recognised by the state, but they are neither claimed nor provided by its benevolence. As the Organization of American States put it in 1948, 'the essential rights of man are not derived from the fact that he is a national from a certain state, but are based upon attributes of his human personality' (para. 2). Following on from this, Anaya (1993) explained:

Self-determination is not separate from other human rights norms; rather, self-determination is a configurative principle or framework complemented by the more specific human rights norms that in their totality enjoin the governing institutional order. (p. 323)

Self-determination is the opposite of an assimilationist order in which indigenous aspirations are excluded and indigenous people are positioned beyond the political on the presumption of deliberative incapacity. Self-determination's distinctive moral quality is that it offers indigenous peoples protection in justice—if not always in practical politics—against the vagaries of majoritarian democracy.

Self-determination is diminished if one site of indigenous authority is privileged over the other. While 'the perceived size and nature of the respective spaces vary' (Broderstad, 2014, p. 72), the two spheres are mutually reinforcing of the other's authority. For example, in New Zealand, the Tuhoe iwi's desire to increase its scope of activity, influence and authority through taking responsibility for state welfare policy is intended to reduce the incidence of welfare dependence, raise educational attainment and reduce unemployment (Moore et al., 2014, p. 42). A gradual increase in the relative size of the Tuhoe middle class would be one of the outcomes that occurs over time—a further determinant of self-determination and general wellbeing.

The Crown and Tuhoe have formally acknowledged each another's mana (status and authority; Moore et al., 2014) to reflect a relationship between independent Maori authority and the state as one of 'quasi-international quality' (Gover, 2015, p. 346). This relationship is one in which state power is constrained by negotiation, the obligation to act in 'good faith', judicial intervention and Maori recourse to the moral persuasiveness of international norms of justice. The Tuhoe proposal aspires to fulfil many of the functions of the modern state. The intended relationship is also one of participatory parity, in which 'no political matter may be decided other than by the people, lest that matter (no matter how obvious or true or right) become a source of domination over the people' (Bellamy, 2007, p. 5).

A relational account of self-determination, and also of politics itself, 'encourages the view that indigenous peoples must seek influence in a variety of different political forums in which they have become integrated with non-indigenous communities and governments' (Murphy, 2008, p. 203). In contrast with the Tuhoe approach, which offers some

promise as an example of differentiated citizenship (discussed in detail in Chapter 8), the right to self-government in Canada, being only concerned with the right to political authority inside the indigenous nation, is limited, especially when set apart from opportunities for indigenous people to express a distinctive citizenship of the Canadian state. The policy requires:

1. The restoration of indigenous presences on the land and the revitalization of land-based practices;
2. An increased reliance on traditional diets among Indigenous people;
3. The transmission of indigenous culture, spiritual teachings and knowledge of the land between Elders and youth;
4. The strengthening of familial activities and re-emergence of indigenous cultural and social institutions as governing authorities within First Nations; and,
5. Short-term and long-term initiatives and improvements in sustainable land-based economies as the primary economies of reserve based First Nations communities and as supplemental economies for urban indigenous communities. (Alfred, 2009, p. 56)

Self-government allows nation-to-nation relationships between indigenous groups and the Canadian state to develop. These relationships remain points of principle in Canadian politics. However, the Trudeau Government's (2015–) rhetorical support for wider self-determination is still to find policy substance. For example, in 2016, the Canadian Human Rights Tribunal found systematic discrimination against indigenous children that governments ought to have addressed. The case exemplified the absence of indigenous self-determination *within* the state as a factor contributing to disputes over the nature and quality of child welfare services. This example of Canadian self-determination's weak structural capacity highlights its inability to consider indigenous aspirations beyond territorially defined communities and shows that it 'would be careless to assume that colonialism in Canada has ended' (Richmond & Cook, 2016, p. 10).

Self-determination's concern with the large and complex task of realising indigenous authority within and over the tribe, nation or iwi is important in its own right; however, these bodies are also regulated and influenced by state policy and legislation. This, in turn, affects the lives of indigenous people as citizens of the nation-state. Conversely, indigenous people are

justifiably wary of the state and its tendency to assimilate. The state is only sporadically a force for indigenous good; yet, it is also the case that political systems and values evolve with time. Liberal democracy means that people should not expect perpetual exclusion from a share in public sovereignty. Alertness for new and different opportunities is part of what it means to be a self-determining people able to influence 'the nature and levels of interactions with the non-indigenous world' (Thornberry, 2002, p. 9).

No conception of justice is fixed, and the moral persuasiveness of instruments such as the Declaration must be allowed the opportunity to influence public values. It is only in accepting self-determination's relative and relational character—in recognising the significance of one people's engagement with another—that self-determination becomes politically worthwhile. It is a matter of reasonable democratic expectation that indigenous peoples 'increase their influence through their increased ability to collaborate with the wider community through close relations with non-indigenous people' (Broderstad, 2014, p. 73). Indeed, the strength of these relationships is a principal determinant of self-determination and is also preliminary to developing relationships of 'respect and trust' (p. 73).

## **Self-Determination as Political Capacity**

Chief Percy Guichon of the Tsilhqot'in people understood self-determination as a relative and relational capacity:

We do live side-by-side and we need to work on a relationship to create or promote a common understanding among all our constituents ... we need to find the best way forward to consult with each other, regardless of what legal obligations might exist. I mean, that's just neighbourly, right? ... We share a lot of common interests in areas like resource development. We need to find ways to work together, to support one another on these difficult topics. (quotation is as it appears in the source, as cited in TRC, 2015, p. 301)

The capacity for self-determination is intertwined with the capacity to share sovereignty. While self-determination can constrain state sovereignty, indigenous self-determination can also be part of that sovereignty so that sovereignty is reconciled with a liberal democratic indigenous citizenship. Alternative, strictly compartmentalised views about the nature and

location of political power exclude indigenous peoples from public affairs. The state is then prevented from dealing with difference. An important omission because:

Dismissing others' norms out of hand, or refusing to engage them seriously, or giving up easily and declaring stalemate quickly all negate the cosmopolitan spirit of the proximity principle because such actions deny that one must inevitably share with others the circumstances of living ... Another group's social practices are just as much 'a repository of human wisdom' as one's own, and cosmopolitan moral responsibility demands that each person try to enrich her own 'parochial' claims by entertaining these alternate sources of wisdom and modifying one's practices in light of others' persuasive standards of conduct. (Klausen, 2014, p. 37)

The question of great policy importance that self-determination asks is: how might people simultaneously 'stand in the dreaming, and in the market' (Grant, 2016)? How do they stand in the market as indigenous citizens of a plural democracy—whether it be the market for housing, education or work, or the market for culturally cognisant health care? Standing in the market as a self-determining citizen might also presume policing concerned with protection rather than victimisation, and markets for schooling that do not treat culture as foreign and troublesome.

If the right to self-determination requires authority over policy development and delivery, it is not simply an abstract claim but one that requires institutional arrangements designed specifically to give effect to that authority at all levels of the policy process. For example, Durie (2001) argued that, in New Zealand, self-determination means that Maori might 'live as Maori' or, as Bishop et al. (2010) framed it in an educational setting, *achieve* as Maori. For these reasons, the Maori Statistics Framework draws on Sen's (2002) capabilities approach to development to propose Maori wellbeing as a 'function of the capability of Maori individuals and collectives to live the kind of life that they want to live' (Wereta, 2001, p. 5).

Launched in 2010, the New Zealand social policy measure Whānau Ora develops a form of self-determination in which *whanau* (families) can:

- be self-managing
- live healthy lifestyles
- participate fully in society
- confidently participate in Te Ao Māori [the Maori world]

- enjoy economic security and successful involvement in wealth creation
- be cohesive, resilient and nurturing
- be responsible stewards of their living and natural environments. (Kukutai, Sporle & Roskrug, 2017, p. 17)

As Kukutai et al. (2017) explained, 'This whānau capacity model emphasises progressive advancement rather than the management of adversity, and focuses on functional capacities' (p. 18).

Contemporary studies of Maori wellbeing show a desire to participate in public affairs. This means that the state cannot be positioned as 'theirs' in a 'them' and 'us' relationship. The state might then acknowledge that:

From a Māori worldview, western concepts of wellbeing that are founded on the presumption of universality and the primacy of the individual, have limited relevance for contemporary measuring and monitoring of well-being for Maori. (Kukutai et al., 2017, p. 15)

Wellbeing reflects cultural epistemology. For Maori, 'there is not a strict dividing line' (Kukutai et al., 2017, p. 15) between individual and *whanau* wellbeing.

Whānau Ora is concerned for *whanau* capacity to care for members whose wellbeing is afflicted by ill health or unemployment and presumes that the individual's wellbeing is the *whanau's* collective moral concern. The Whānau Rangatiratanga Framework's capability dimensions are:

- Sustainability of Te Ao Māori
- Social capability
- Human resource potential
- Economic self-determination. (Social Policy Evaluation and Research Unit, 2016, p. 12)

Its *whanau rangatiratanga* principles are:

- Whakapapa/Thriving relationships
- Manaakitanga/Reciprocity & support
- Rangatiratanga/Leadership & participation
- Kotahitanga/Collective unity
- Wairuatanga/Spiritual & cultural strength (Distinctive Identity). (p. 5)

As Kukutai et al. (2017) explain, Boulton and Gifford’s study of *whānau* resilience found that Maori people emphasised:

- the desire that their children experience a better life than theirs
- the importance of establishing a foundation for their children
- providing children with stability and security
- providing a ‘decent’ environment for them to grow up in
- instilling cultural values
- having role models and maintaining healthy attitudes and lifestyles
- having good personal health
- maintaining balance between mental, physical and spiritual wellbeing
- ...
- the importance of happiness in everyday life
- having a clear sense of belonging or identity, and active participation in Te Ao Māori and mainstream contexts
- a duty of mutual care and support within each whānau
- whānau solidarity and intergenerational connectedness
- financial security
- spiritual wellbeing
- a sense of future success and potential (Boulton & Gifford, 2014). (Kukutai et al., 2017, p. 21)

Ratima et al.’s (2007) related proposal to increase the size of the Maori health workforce shows that, while self-determination can be incredibly complex, it can also be very simple. Increasing the size of the Maori health workforce does not reflect the constitutional or structural transformations that many indigenous scholars and policy actors seek; however, it does reflect political values and practices that influence people’s capacity to live lives that they have reason to value. According to Ratima et al. (2007), the distinguishing characteristics of a policy to increase the Maori health workforce include:

- Māori led, focused and targeted interventions;
- consistent investment over a prolonged period;
- emphasis on the development of dual cultural and clinical competencies;
- integration of student support programs within a university environment;

- provision of comprehensive support to tertiary students, including financial assistance, access to Māori mentors and peer support, and inclusion in communities of learning;
- congruence with industry needs;
- supported transitions into and between study and work;
- attention to the broader determinants of Māori health workforce participation; and
- action across the workforce development pipeline (including secondary schools). (p. 543)

In Ratima et al.'s work, self-determination prefigures a postcolonial order despite—as Watson and Venne (2012) put it in the Australian context—'the road back to country' being 'long and filled with colonial encounters' (p. 87). However, the point of that long road is usually remarkably clear. For Brands (2014), self-determination means that, in Australia, by 2030, there would be:

- [t]rue reconciliation—a treaty, constitutional recognition, resulting in [an] Australian society in which Aboriginal and Torres Strait Islander people and cultures have pride of place
- [r]eal community control in [the] community controlled sector
- [s]ignificant improvement in health outcomes and life expectancy
- [r]eal cultural equity, no racism
- incorporation of Aboriginal knowledge into the mainstream (i.e. 'Nunga streaming' not 'mainstreaming')
- foregrounding and privileging of Aboriginal models of health (e.g. spirituality)
- greater control of, and informed choice about, education and employment
- celebration of diversity and difference
- integration of Aboriginal values [into] the landscape
- no 'othering'
- Aboriginal representation at all levels of government and society
- Aboriginal people ... influencing decisions, across all dimensions of society
- a return to values and ethics (individual and community), meaning less focus on consumerism and capitalism, and [more on] sustainable and ecological ways of living. (p. 12)

Anderson (2014) imagined displacing Australia's neo-colonial order with a post- or even noncolonial one. Accordingly, by 2030, a representative 29-year-old Indigenous Australian woman would:

- [have] higher education qualifications [and be] ... technically, socially and culturally savvy
- [be m]entally and socially in touch with community and family
- [be a n]on-smoker, [and have a] good BMI [Body Mass Index] [and] no drinking problem
- [be in a s]table relationship
- [have] choice and control over fertility, childcare and employment
- [be w]orld-aware but with a sense of individual purpose
- [be w]ell-travelled [and have] global visions
- [be e]conomically independent
- [be g]rounded in mixed cultures
- [build] on family history for positive outcomes. (Brands, 2014, p. 13)

Alternatively, 'we can imagine an Australia [that] turns its back on diversity, [that] increases the divide between rich and poor, and [that] sees little or no real improvement in the health and wellbeing of its First Peoples' (Anderson, 2014, pp. 4–5). The representative 29-year-old woman's life would then be distinguished by:

- [f]amily breakdown/violence
- [a]busive relationship[s]
- [s]chool dropout
- [s]ubstance abuse
- [i]mprisonment
- [h]ousing crisis
- [having c]hildren at risk/social service involvement
- [s]tress/mental illness
- [c]hronic disease
- [p]remature death
- [having a] family and community deeply affected by her loss. (Brands, 2014, p. 13)

Anderson's view of self-determination defines the conditions of equality. Since equality is not a neutral concept, it is not understood by all people in the same ways and for the same purposes. Rather than an abstract state, equality is a political value whose functions and proper distributions are culturally contextualised.

There are examples of Indigenous Australians exercising self-determination in policy development and implementation. Indigenous-led peak bodies have influence across policy domains. However, 'the Government could achieve significant progress in realising the rights of indigenous people if it consulted and worked much more closely with these organisations' (UN, 2017b, para. 5). In this context, it is significant that the National Congress of Australia's First Peoples 'has been dismally disregarded by the Government' (para. 6). Conversely, Aboriginal community-controlled health organisations (ACCHOs) show that people think about the right to health as a right that is realised through citizenship-as-capacity—that is, through self-determination.

The first Aboriginal medical service was established in Sydney in 1971. Its purpose was to support 'self-determination through community control ... initiated, designed and controlled by Aboriginal people' (Foley, 1991, p. 4). Almost 50 years later, '[ACCHOs] are leading the way in our community, in translating what [the Declaration] means, in practice, through community control' (Davis, 2013, p. 12). ACCHOs give the Declaration practical application. As Davis has observed, they pursue 'self-determination through the right to health' (p. 11) and, in doing so, provide a model that the UN Permanent Forum on Indigenous Issues has advanced as a model of international best practice.

Australian self-determination is not the 'failed experiment' of the Howard Government's (1996–2007) rationale for abolishing ATSIC in 2005. Instead, it is a contemporary aspiration that Australian Indigenous peoples actively pursue as far as prevailing policy paradigms will allow. Among the constraints that ACCHOs face is that, like New Zealand's various tribal bodies, they may influence public policy but are not usually able to make it. In 2016, the National Health and Medical Research Council's (NHMRC) Translating Research into Policy and Practice Forum facilitated significant and substantive Indigenous contributions to policy debate. However, it had no formal capacity to develop these ideas to give them official sanction. The forum showed that, while there were mechanisms for Indigenous voices to be heard, they were unable to hold

influence. Its recommendations and priorities emphasised citizenship as an underlying political theme that must be considered as part of the policy process.

The capacity to influence depends on the strength of one's citizenship. The remedial nature of contemporary policy priorities reflects citizenship's historic weaknesses. The forum's overarching aim was to 'identify evidence gaps ... and policy gaps, informed by ... systematic reviews' (NHMRC, 2016, p. 1). The forum stressed 'Community grounded responses to social and emotional well-being' (p. 2). Its principled recommendation for pregnancy and childbirth was a plea for the opportunity to make personal choices equivalent to that which urban dwelling women take for granted: 'policies should reflect and respect women's choice to stay in community and to decide who can be present at the birth' (p. 2).

The forum's report of proceedings is a claim for citizenship. It is not a claim for privilege or additional rights, nor is it a claim for differentiated citizenship. It is simply a plea for public policy to work effectively for Indigenous members of the Australian nation. As a further example, in terms of access to data and bureaucracy, the report stressed that the focus was on 'better sharing of data, particularly across portfolios, and its use by bureaucrats' (NHMRC, 2016, p. 4). Acutely aware of what had eluded the bureaucracy in the past, the forum identified a connection between broad principles, aspirations and data 'to prioritise needs and policy, and identify research gaps and needs' (p. 4).

The inadequate collection of population data weakens the relationship between policy and self-determination. According to the forum, it is important to know how 'existing data can be better used to improve understanding of, and provide insight into, the health and wellbeing (and the health care needs) of young Aboriginal and Torres Strait Islander Australians' (NHMRC, 2016, p. 3). The forum identified housing, criminal justice and education as determinants of health and proposed better policy integration. The absence of a specific 'Aboriginal community controlled education sector' (p. 3) was also noted.

Education is the only Council of Australian Governments Closing the Gap target in which progress is consistently made (Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2018b). Its importance as an underlying determinant of self-determination means that education warrants constant policy attention. Education is also the

underlying determinant of indigenous access to the middle class, which is itself a determinant of better health, housing and general wellbeing (O'Sullivan, 2017). Much is known about success in indigenous education, yet there are also many instances of policy failure. Just as Indigenous peoples in Australia have clear expectations of the health system, there is clarity of thought among Indigenous actors on what they expect education to provide to them as Indigenous citizens of the state.

The National Congress of Australia's First Peoples (2018) argued that the Declaration and the right to self-determination should inform education policy. However, it also noted that 'Our children continue to be denied access to culturally appropriate and effective education, which prevents them from flourishing later on in life' (p. 2). Earlier, the congress summarised the principles that informed its expectations of schooling: 'The maintenance and advancement of our cultures and full participation of our Peoples in national economic, political and social life' (National Congress of Australia's First Peoples, 2013, p. 7). It argued that schools that help to achieve these objectives will:

- Foster a genuine shared sense of responsibility with the communities they serve, and a respectful and committed sense of partnership;
- Recognise and value the diversity of Aboriginal and Torres Strait Islander cultures and languages;
- Value and foster the maintenance of Aboriginal and Torres Strait Islander cultures by incorporating Indigenous knowledge in their curriculum;
- Are free from discrimination and hold institutionally-supported high expectations for students;
- Have a high quality, experienced, skilled and stable workforce. (National Congress of Australia's First Peoples, 2013, p.7)

In New Zealand, the Waikato-Tainui people has a well-developed strategy to inform its people's education (see Waikato-Tainui, 2015). Its influence is important but ultimately constrained by its lack of capacity to operate schools and determine what and how they will teach. The Key (2008–2016) and English (2016–2017) governments' charter schools policy was intended to facilitate such capacity. Charter schools were established in New Zealand in 2011; however, the model was heavily criticised for failing to meet the stated policy expectations (Thrupp, 2016) and was abolished by the Ardern Government in 2017. The educational quality of

charter schools was potentially compromised, as they were not required to employ registered teachers nor to follow the national curriculum (Jenkins, 2018). Yet, according to some Maori commentators, neither of these things—teacher registration and national curriculum—routinely supported Maori achievement. They claimed that charter schools, unlike public schools, provided opportunities for Maori to exercise authority over their education. An ethnic divide on the policy was noticeable within the government’s senior coalition partner, the Labour Party. Its decision to abolish charter schools was not supported by Maori members attracted to their self-determining potential (Paterson, 2017).

Charter schools were intended to improve student achievement, with a particular focus on children who had not succeeded in the state system. Maori featured disproportionately among the policy’s target group—namely, those who had:

1. Low academic baselines and lack of core skills for learning
2. Histories of disengagement from education
3. Complex socio-economic and health needs that create barriers to education
4. Lack of education role models to support economic and educational success. (Jenkins, 2016, p. 9)

The flexibility that charter schools enjoyed was intended to promote innovation. However, their focus on Maori children with histories of underachievement in mainstream schooling meant that there was no scope for teaching according to Maori pedagogies and epistemologies for the benefit of any Maori citizen who wished to be educated in that way. Charter schools were an admission of state failure and a haphazard and incomplete response that did not obviously add to the provisions for schooling in the Maori language and culture that were already well established within the state system.

Indigenous education systems are important expressions of the right to self-determination; however, so too is mainstream education’s cultural responsiveness and ability to serve indigenous aspirations. For example, Te Kotahitanga, a successful project to improve Maori achievement in secondary schools, was developed on the presumption that it is important for education systems to understand indigenous peoples and their cultures. Its philosophy of Maori policy leadership presumed that the solution to entrenched Maori educational failure lay not with the system itself but

with the people the system determined as lacking in the capacity to define and pursue success, and their capacity for self-determination (Bishop et al., 2010). Te Kotahitanga shows the importance of Maori policy and professional leadership inside the state because, in the case of Maori education, non-Maori state schools are the places where most Maori receive their early formal education. It is through schooling that people develop many of their capacities for citizenship and the relationships and skills to work out the terms of their membership of the political community.

## Conclusion

The capacity to engage with others is an essential constituent of the right to self-determination. Indigenous peoples must contribute equally to working out the terms of their membership of the nation-state and must also have the capacity to exercise self-determination within their own political structures. Self-determination is not absolute autonomy. As Kuokkanen (2012) explained:

The aboriginal political discourse regarding self-determination would be more useful to communities if it incorporated an understanding of the individual as relational, autonomous and self-determining. That is, they developed a perspective of individual self-determination as necessary to move collective self-determination beyond rhetoric to a meaningful and practical political project that engages aboriginal peoples, and is deliberately inclusive of indigenous women. (p. 237)

Self-determination recognises that 'real power' lies in 'inherent *responsibilities*' (emphasis in original, Corntassel, 2012, p. 91). It does not constitute reconciliation as a 'politics of distraction' (p. 91) but as a politics of possibility. One knows that self-determination is occurring when indigenous peoples find that there is a reconfiguration of state power opening new and meaningful spaces of political opportunity. Those spaces are opened when public sovereignty is truly the people's authority and when all people—not just some—share that authority and have a meaningful say in determining what it means to be a citizen—what it means to be one who deliberates.

Possibilities are opened further when indigenous peoples work out for themselves what it means to be an indigenous citizen; in particular, when they work out the institutional values and arrangements that are needed for indigenous people to deliberate in ways that make sense to them and that recognise their distinctive aspirations. Chapter 7 uses sovereignty as a theoretical framework for discussing these questions and examining what it means to argue that greater self-determination requires a different kind of sovereignty. It follows Chapter 6, which examines self-determination in selected jurisdictions that were not opposed to the Declaration when it was adopted in 2007 but have not necessarily committed to its comprehensive implementation in their own jurisdictions.

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