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## Difference, Deliberation and Reason

### Introduction

Liberalism is concerned with freedom, autonomy and the development of human capacity. Therefore, if one presumes that freedom and autonomy should belong equally to everybody, then political systems and processes need to be arranged for inclusivity and equal democratic participation. Substantive indigenous voice is important because political systems and political decisions reflect the values of those who have designed or made them. Democratic inclusivity means that it is fair and reasonable for indigenous values and epistemologies to influence decision-making. However, indigenous policy is often made without reference to indigenous people's evidence of what works or to their views of the values that ought to inform policy, which makes exclusion one of the causes of the unfair distribution of power.

Public reason and participatory parity may help to create political systems in which indigenous people can see their own values and priorities reflected. However, public reason requires an informed public, the lack of which was a particular concern to the TRC. The commission showed that reason means that public policy is informed by truth and evidence, not prejudice. This chapter argues that all people should have equivalent opportunity to contribute to public debate and thus to the 'formation of [public] values and priorities' (Sen, 1999b, p. 153). This is because

politics is concerned not just with abstract or theoretical rights but also with helping to bring people 'as close to good functioning as their natural circumstances permit' (Nussbaum, 1987, p. 5).

## Self-Determination as Inclusive Citizenship

The Declaration shows that, for all its negative consequences, colonial settlement has not reduced indigenous peoples to a 'state of absolute disempowerment' (Collingwood-Whittick, 2012, p. 125). Instead, and as a politics of possibility (O'Sullivan, 2017), indigeneity is concerned with human potential—with the right to self-determination through inclusive and differentiated citizenship and with self-determination's transformative capacity to contribute to people's enjoyment of lives that they have reason to value (Sen, 1999a). From this perspective, decolonisation may include assimilating 'the colonizer into Aboriginal processes of power-sharing' (Watson & Venne, 2012, pp. 88–89) in which indigenous agency is taken for granted. Indigenous peoples might then consider the ways in which postsettler states may be reconfigured for inclusivity. A liberal theory of indigeneity's distinctiveness is its focus on group rights and cultural context as essential constituents of individual liberty.

Differentiated citizenship can be structured to promote democratic participation in which all people enjoy the full rights of liberal democratic citizenship, and indigenous people enjoy guaranteed authority over their own affairs. From this perspective, an inclusive liberal polity can be structured in congruence with self-determination and in association with the Declaration. This conceptualisation of differentiated citizenship is consistent with Ivison's (2002) postcolonial liberalism, which argues for:

a space within liberal democracies and liberal thought in which ... Aboriginal perspectives and philosophies can not only be heard, but [also] given equal opportunity to shape (and reshape) the forms of power and government acting on them. (p. 1)

Differentiated citizenship is politically valuable to indigenous self-determination. It acknowledges the expression of political rights in language that is amenable to international sympathy and the liberal insistence that 'individuals or groups cannot simply assert that they want something; they must say that justice requires or allows that they have it' (Horscroft, 2002, p. 263).

Colonialism brings a distinctive context to people's experiences of citizenship. That context in turn requires distinct processes for agreeing on public values to provide people with meaningful political voice. Politics is not concerned only with who holds which public office but with the exercise of political authority for the common good. The politics of indigeneity that the Declaration may support is not concerned with superior rights but with giving expression to liberal rights in a meaningful context. Liberalism cannot find difference repugnant to the integrity of the state, for as Young (1989) argued:

The responsible citizen is concerned not merely with interests but with justice, with acknowledging that each other person's interest and point of view is as good as his or her own, and that the needs and interests of everyone must be voiced and be heard by others.  
(p. 262)

Patton (2005) identified three elements of a just noncolonial politics 'derived ... from the requirements of reparative, distributive and relational justice' (p. 256). The first requires states to repair, as far as they can, the consequences of historical injustice. The second requires non-discrimination in public policy such that any lingering 'views about the hierarchy of peoples and cultures' (p. 257) are dismissed. The third, which is concerned with the nature of political relationships (Patton, 2005), is potentially the most important and far-reaching in giving effect to the Declaration.

Relational justice addresses the limits of distributive justice. On its own, distributive justice can have assimilationist tendencies. It is not necessarily attentive to the historical, political and cultural contexts of material need and does not consider that greater need in the distribution of material resources can be the outcome of the colonial experience itself. While indigenous political claims often have distributive implications, their foundation is in a broader moral argument for the recognition of prior occupancy. However, liberal societies are most responsive to those with the greater political voice. A strong relationship between indigenous peoples' relative population size and political influence is to be expected. Conversely, the broader liberal theory that the Declaration embraces ought to give moral reasoning greater influence, including, especially, indigenous moral reasoning in the determination of just policy objectives. Moreover, it ought to allow the claims of indigeneity to carry political authority in ways and for reasons that are independent of relative population size.

Mansbridge (1996) argued that liberal theory need not assume that a majority is always more likely to be objectively correct in its claims, nor must liberal theory insist that majority interests necessarily exist at the expense or exclusion of all others. Under liberal democratic arrangements, a group's relative population size ought not be the determinant of its capacity for self-determination, nor should size explain its relative wellbeing. Indigeneity is a political theory that makes no such presumption. Instead, it shows liberal democracy's theoretical capacity to frame the possibilities of indigenous citizenship to promote substantive political participation and to make self-determination an attainable human right.

Limited indigenous voice means that indigenous preferences are unlikely to be reflected in policy outcomes. Therefore, it is inadequate to characterise geocultural attachments as a choice 'not conducive to the kinds of full participation in Australian society that everyone should have', as former Australian prime minister Tony Abbott did, for example (as cited in Dorfmann, 2015, p. 13). Abbott made the argument in support of the Western Australian Government's proposal to cease providing municipal services to indigenous communities it deemed unviable (Dorfmann, 2015).

The underlying argument was that self-determination should not be available to all indigenous peoples and that such people's material wellbeing ought to be conditional on surrendering historical connections to country. Yet the Declaration holds that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (UN, 2007b, art. 10)

Abbott styled himself the 'Prime Minister for Indigenous Affairs'; however, by his actions, he showed himself to be mainly interested in those indigenous people who were willing and able to exercise a choice to assimilate. The Declaration, however, maintains that 'Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture' (UN, 2007b, art. 8[1]). Further:

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. (UN, 2007b, art. 9)

It can be difficult to rank a series of proposals as more or less just when justice itself is contested and not neutral. Indigenous policy is often made on the basis of assumptions, not evidence. The collection of data on what works in Australian Indigenous policy is a newly accepted priority, and the notion that the role of public policy is to improve Indigenous people's lives is a recent development, as the earlier discussion of the Australian National Audit Office's (2017) report on the government's Indigenous Advancement Strategy showed (see Chapter 1). Conversely, prejudice is self-justificatory: it removes the need for evidence-based policy (O'Sullivan, 2015, 2017).

The test of liberal democracy's capacity to facilitate indigenous citizenship is not simply its mediation of difference but also its establishment of common ground that is not threatened by indigenous peoples' unique identities. 'Deliberative democracy requires the most expansive possible conditions of entry to formal or official political arenas' (Knight & Johnson, 2011, p. 283); yet liberal societies commonly exclude 'others' to protect what their majority populations hold in common, which is why institutional structures are determined according to a particular set of cultural values that are not neutral.

Institutional values stem from the cultural expectations of those who have designed them and reflect the values of those who determine the purposes that public institutions should serve. Institutional designers may have predetermined expectations about who is to be included and who is not. By contrast, institutional cultures might create the expectation that people will engage with each other to settle national policy priorities. Although deliberative democracy is 'a complex ideal' (Bohman, 1997, p. 321), it assumes ordered and inclusive terms of political association precisely because it has an essential liberal concern for the less powerful.

Liberal democracy is reasonably concerned with *all* and not just *some* citizens' deliberative capacity. In this way, politics may counter the market failure that would occur if public life were the sum of uncoordinated individual choices (Elster, 1997). However, politics does not always and necessarily admit that people live in subnational communities. Nor does it always acknowledge that intergroup relationships need to be managed towards fair distributive outcomes. As Bohman (1997) asked, 'What sorts of social inequalities are relevant to democratic deliberation? How large can actual inequalities be before they undermine the democratic ideal?' (p. 321). Inequality in terms of who loses, and why, explains the

weakness in Waldron's (2004) argument that fair and reasonable political arrangements could supersede injustice. The idea is that just terms of association allow a polity to treat the past as though it never occurred.

Self-determination finds an inevitable and irremovable contradiction in the argument that:

Claims about historical injustice predicated on the *status quo ante* may be superseded by a determination to distribute the resources of the world in a way that is fair to all of its existing inhabitants. (Waldron, 2003, p. 71)

Self-determination's concern for relational justice, or just terms of association, means that it is not simply a state that is reached and secured as a single event. Just terms of association require that the causes of unequal distributions of power are admitted.

Bohman (1997) argued that democratic systems can manage unequal distributions of power as long as these 'fall within the limits of the rule of law' (p. 322). However, this holds only if the rule of law is itself just; that is, if the burdens and possibilities of the law are distributed fairly and impose no structural discrimination on particular groups of people. Political equality means equal capacity to influence and to acknowledge that, even if one's preferences do not always prevail, they have the opportunity to carry influence and that the decision-making process is fair and reasonable in considering all perspectives.

None but the most routine political decisions can be equally acceptable to everyone. Democracy does not work in the absence of philosophical disagreement. Conflicting perspectives and aspirations are not always and necessarily undesirable, nor must conflicting perspectives and aspirations preclude finding sufficient commonality for social cohesion and political community to occur. Ideas must be exposed to contest. However, the question of who loses and whether that is because of unfair decision-making processes is important. Liberal societies ought to be guided by the values implicit in Rousseau's (1984) social contract—that 'no citizen should be rich enough to be able to buy another, and none so poor that he has to sell himself' (p. 75)—from which deliberative democracy is developed. Inequality of power means that some people cannot meet the conditions of deliberation as peers.

In a remark to a TRC hearing, the then Minister of Indian Affairs and Northern Development, Chuck Strahl, explained the procedural significance of indigenous deliberative exclusion:

Governments like to write ... policy, and they like to write legislation, and they like to codify things and so on. And Aboriginal people want to talk about restoration, reconciliation, forgiveness, about healing ... about truth. And those things are all things of the heart and of relationships and not of government policy. Governments do a bad job of that. (quotation is as it appears in the source, as cited in TRC, 2015, p. 20)

In Australia, the UN special rapporteur noted that:

While [Australia] has adopted numerous policies aiming to address Aboriginal and Torres Strait socio-economic disadvantage, the failure to respect the right to self-determination and the right to full and effective participation ... is alarming. The compounded effect ... has contributed to the failure to deliver on the targets of the areas of health, education and employment in the Closing the Gap strategy and has contributed to aggravating the escalating incarceration and child removal rates of Aboriginal and Torres Strait Islanders. (UN, 2017b, Self-determination and participation, para. 15)

## **Self-Determination, Democracy and Reasoned Public Decision-Making**

Democracy requires competing philosophical ideas for its effectiveness (Benhabib, 1996), but it needs to manage these in ways that recognise the distinctiveness of the indigenous position vis-a-vis the postsettler state. The form that democracy takes influences policy outcomes. Indigenous peoples must have reason to acknowledge that there is, in fact, a national common good and that they can benefit from contributing to it. Questions must be asked. For example: Can the common good be understood in ways that are not homogenising? Are conflict and the common good points on a continuum or are they mutually exclusive possibilities? Is conflict inevitable and public reason impossible because, as Schumpeter asserted in his elitist theory of democracy, 'citizens in modern democracies [are] politically uninformed, apathetic, and manipulable' (Bohman & Rehg, 1997, p. x)?

An ill-informed public with a news media that does not accept a mission of public education is an obstacle to deliberative democracy. Public ignorance of the historical conflicts that arise between indigenous peoples and the state undermines reasoned public debate. According to Miller (2016), in the assessment of conflict, it is often true that:

Politicians, journalists and ordinary citizens understood neither how nor why the crisis of the moment had arisen, much less how its deep historical roots made it resistant to solutions ... [This] does not bode well for effective public debate or sensible policy-making. (p. ii)

Deliberative democracy works best when elitist democracy's underlying presumptions are wrong and when the determinants of political authority are distributed equally so that all people may share the deliberative capacities of citizenship. This is because, as Aristotle (1988) put it, deliberation is citizenship's defining characteristic.

Deliberation through the public reason that participatory parity allows is essential 'to the formation of [the] values and priorities' (Sen, 1999b, p. 153) that a society wishes to privilege. At the same time, political agreement is not always necessary: people must be free to express their own conceptions of justice and be confident that these will be considered and have the capacity to influence public deliberation. As Bohman (1997) argued, 'the achievement of consensus in public deliberation depends on the discussion being guided by an ideal of impartiality' (p. 266). It also depends on equal access to education because, as Rawls (1993) argued, the capacity to deliberate requires that citizens 'have, at least to the essential minimum degree, the moral, intellectual and philosophical capacities that enable them to be fully cooperating members of society over a complete life' (p. 183). Schooling plays an important role in developing skills of critical reasoning and 'public reasonableness'. Education helps to create the public expectation that a well-functioning liberal democracy depends on deliberation grounded in these attributes (Gutmann, 1993). However, the attributes that participation assumes may not be culturally neutral and may be unequally available to different citizens. For example, the TRC (2015) found discrepancies in education funding for indigenous children educated on reserves vis-a-vis all others and recommended focused strategies to remove educational disparities between indigenous and other Canadians.

From the TRC's perspective, reconciliation requires that all citizens are well informed about colonial conflict and the particular aspects of political relationships and deliberative opportunities that indigenous politics seek to change. Its recommendation for museums and archives brings public memory into reconciliation in an overt and structured way. Public memory cements indigenous experiences into the national story. For example, indigenous people's 'inalienable right to know the truth about what happened and why' (TRC, 2015, p. 332) in residential schools is complemented by the wider community's duty to know that same truth so that they can reasonably deliberate and understand the claims that indigenous people make as members of the sovereign citizenry. The TRC also emphasised journalism's role in developing an informed public equipped with the knowledge to deliberate reasonably, which is not, in fact, a simple process. As one witness to the TRC (2015) explained:

Journalism's first obligation is to the truth. ... Journalism does not pursue truth in an absolute or philosophical sense, but it can—and must—pursue it in a practical sense. ... Even in a world of expanding voices, accuracy is the foundation upon which everything else is built—context, interpretation, comment, criticism, analysis and debate. The truth, over time, emerges from this forum. ...

Its practitioners must be allowed to exercise their personal conscience. Every journalist must have a personal sense of ethics and responsibility—a moral compass. Each of us must be willing, if fairness and accuracy require, to voice differences with our colleagues. ... This stimulates the intellectual diversity necessary to understand and accurately cover an increasingly diverse society. It is this diversity of minds and voices, not just numbers, that matters. (quotation is as it appears in the source, p. 296)

However, journalist Duncan McCue argued that editorial positions 'are often rooted in century-old stereotypes rather than reality' (as cited in TRC, 2015, p. 295) and that:

Yes, protests often meet the test of whether a story is 'newsworthy,' because they're unusual, dramatic, or involve conflict. Yes, Aboriginal activists, who understand the media's hunger for drama, also play a role by tailoring protests in ways that guarantee prominent headlines and lead stories. But, does today's front-page news of some traffic disruption in the name of Aboriginal land rights actually have its roots in a much older narrative—

of violent and 'uncivilized' Indians who represent a threat to 'progress' in Canada? Are attitudes of distrust and fear underlying our decisions to dispatch a crew to the latest Aboriginal blockade? Is there no iconic photo of reconciliation, because no one from the newsrooms believes harmony between Aboriginal peoples and settlers is 'newsworthy'? (as cited in TRC, 2015, p. 295)

Reconciliation requires reasoned deliberation by a public whose positions may differ but who are at least accurately informed.

Deliberative democracy is grounded in reason; its relationships are necessarily respectful. Each party is required to be attentive to the other and to consider another's perspectives as legitimate because they are reasoned, even if one disagrees with their substance.

Reasonableness is subjective and emotive, especially when prejudice is presented as reasonable or—as Pauline Hanson, leader of the overtly racist One Nation Party put it—as the views of 'mainstream Australia' (Jackman, 1998, p. 167). If some people are free to promote policies grounded in prejudice, then indigenous peoples must be free to find platforms of resistance within the democratic system itself. Public reasonableness removes presumptions of 'self- or group-interest, prejudice or bias, and of such deeply entrenched errors as ideological blindness and delusion' (Rawls, 1999, p. 478). Public reasonableness is theoretically attractive for its insistence on inclusion and presumption that liberal politics would, as a matter of course, consider different culturally framed perceptions of the good life.

Christiano (1997) explained the contribution that public reasonableness would make to policy outcomes and showed how it would differ from prevailing indigenous experience:

When I submit my views and my arguments to you for your consideration and response and I listen to your ideas and arguments with an eye to learning something from you, I express a kind of respect for you, I am treating you as a kind of rational and intelligent being who has something to offer. (p. 251)

The converse is a common indigenous democratic experience:

If I am discussing some topic with you or someone else and you say something germane to the discussion [that] I simply ignore, I express a kind of contempt for you. (Christiano, 1997, pp. 251–252)

The idea that ‘the force of the better argument’ (Habermas, 1997, p. 24) determines the prevailing position does not account for the marked philosophical differences that can reasonably exist among peoples. It is only the reasonableness of one position that can test the unreasonableness of another. However, ‘Imposing substantive criteria of reasonableness as an *ex ante* filter on admissibility would prevent that very process of reasonable argument’ (Knight & Johnson, 2011, p. 286). Reasonableness ‘is defined ... in terms of a willingness to entertain and respond to objections’ (Cohen, 1994, pp. 1537). Alternatively, unreasonableness is to advance ‘institutions and policies that cannot be justified to others’ (p. 1538). Public reasonableness may require some people to accept that their relative advantage over others is unjust:

Political equality requires that when the time comes to make one’s final decision on a question, the asymmetries in the social distribution of power and resources should not play a role in that decision. (Knight & Johnson, 2011, p. 294)

Plural perspectives will have been admitted into the conversation. No perspective is given greater or lesser status simply because of whose perspective it is, or to whom its underlying cultural values belong. There has been an obviously fair process for dealing with difference. Prejudice has been illegitimised because ‘equal opportunity of influence requires that asymmetries not give unfair advantage’ (Knight & Johnson, 2011, p. 293). However, indigenous experience shows that it is difficult to reach a point at which each participant has ‘equal opportunity to influence others’ (p. 295). Indeed, Knight and Johnson argued that ‘real opportunity of influence is unachievable under democratic procedures because the very nature of the process makes the outcome uncertain and subject to the exigencies of political debate and deliberation’ (pp. 295–296).

Rawls (1999) likened justice to procedural fairness, so that even if one does not accept a particular decision, one can still accept the process by which it was made. Social cohesion requires that people are able to see that procedural fairness occurs, which means that public reason is only achievable through participatory parity. Conversely, as Knight and Johnson (2011) put it, liberal societies are distinguished by party political systems developed because people are, in fact, routinely motivated by ‘self-interest, blinded by prejudice, or deluded by ideology’ (p. 284). However, the presumption that self-interest and ideology are objectively wrong, rather than simply reflective of difference, is problematic. If plurality is objectionable, colonialism’s inherent inequality is reinforced.

Everybody ought to contribute to the development of the values by which state institutions operate. It is unjust to exclude some people from the definition of collective values if the values that are ultimately adopted then become determinants of people's access to public services. There is a relationship between indigeneity and participatory parity that aspires to 'institutionalised patterns of cultural value [that] express equal respect for all participants and ensure equal opportunity to achieve social esteem' (Fraser & Honneth, 2003, p. 36). People must have had the opportunity to contribute to a policy's development if they are to accept its legitimacy. Participation, then, is a necessary precondition for just and efficacious policy outcomes. Participatory parity presumes two conditions:

First, the distribution of material resources must be such as to ensure participants' independence and 'voice.' ... the second condition 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)

Understood in this way, difference becomes a normative liberal presumption and a point against which justice can be measured. Sharing a dispersed sovereignty is no longer problematic.

## **Politics Is 'Not Simply the Allotment of Commodities'<sup>1</sup>**

Linguistic, cultural, resource and participatory rights are 'external protections' (Kymlicka, 1995, p. 126) against domination. They are important liberal concerns even though they belong to groups before they can belong to individuals. Their deprivation constitutes 'a morally arbitrary disadvantage compared to those who can live and work in their own language and culture' (p. 126).

Indigeneity is a theory of the indigenous right to exist as distinct peoples. It is a political strategy of self-determination that makes wellbeing a concept that is political as much as it is material. It gives expression to Aristotle's (1988) argument that human flourishing is the point of political activity, which Nussbaum (1987) understands as 'the capability to function well if one so chooses' (p. 20).

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1 Quotation from Nussbaum (1987, p. 1).

Political arrangements are most worthy when they maximise human capacity (Aristotle, 1988). From this perspective, one can deduce a political aspiration consistent with the politics of indigeneity and supported by the Declaration. According to Nussbaum (1987):

The aim of political planning is the distribution to the city's individual people of the conditions in which a good human life can be chosen and lived. This distributive task aims at producing capabilities. That is, it aims not simply at the allotment of commodities, but at making people able to function in certain human ways ... The task of the city is, then, to effect the transition from one level of capability to another. (pp. 1–2)

There are innumerable conceptions of the good life. A 'deliberator would seem to inquire and analyze' these culturally framed and expressed conceptions 'as though analyzing a diagram' (Aristotle, 1995, p. 383). One analyses through a sociocultural and political lens. Analysis is necessary because a certain and constant 'right way to act is undefined' and each must deliberate by 'grasping [for] the truth, involving reason, and concerned with action about human goods' (Aristotle, 1995, p. 403).

Indigeneity's capabilities include the capacity to deliberate, which is not simply an abstract right but one that is present to varying degrees—a function of the obstacles and possibilities that are structured into a political community. In thinking of equality, it is only with reference to cultural and political contexts that one can answer Sen's (1979) question: 'equality of what?' (p. 1).

Equality is not neutral. It is culturally contextualised and defined with reference to one's ideological disposition. For example, personal conceptions of equality may influence the professional practice of those whose work affects others' access to equality as they themselves define it. Bureaucratic discretion means that teachers, nurses, doctors, police officers and others in frontline public employment have the capacity to distort policy intent to make it conform to their own values: to their own conceptions of equality and to the weight that equality should carry as a policy objective (Lipsky, 2010; O'Sullivan, 2015). This is why, for example, the TRC (2015):

Call[ed] upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, [the Declaration], Treaties and Aboriginal rights, and Indigenous

teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. (p. 323)

Decisions about whose health care to privilege, whose learning to prioritise and who to prosecute have a significant influence on people's experience of public policy. These are not merely administrative decisions; they are deeply political in their rationale and in their consequences (O'Sullivan, 2015). However, in examining street-level bureaucracies as the places where people experience government that 'they have implicitly constructed', Lipsky (2010, p. xi) excluded the particular experience of indigenous peoples who have rarely implicitly constructed those bureaucracies (i.e. schools, hospitals, universities and police stations). This omission illustrates the democratic significance of indigenous participation at every level of the policy process, not only the legislative. The bureaucracy that the indigenous legislator may have helped to construct is more likely to use its bureaucratic discretion against indigenous interests if indigenous people are not present to influence its operations. Therefore, it is significant that, in 2018, Australia accepted that there ought to be periodic indigenous-led evaluations of its Closing the Gap policy (see Chapter 2).

Politics is 'not simply the allotment of commodities, but [is concerned with] making people able to function in certain human ways' (Nussbaum, 1987, p. 1). Equal capacity for democratic inclusion requires plurality in how, by whom and for whom public policy is developed. Equal opportunity requires that individuals and some groups of individuals are differently treated, even though it is wrong to suggest that this must involve privileged consideration in the distribution of political authority and public resources.

Deliberative democracy is 'a (broadly speaking) procedural ideal correlative to a bottom-line demand for political self-government by the people—where "by the people" is taken to mean "by everyone"' (Michelman, 1997, p. 149). However, indigenous peoples may be politically vulnerable in situations in which their distinctive interests are not easily explained according to the expectations of 'public reasonableness'. Distinctive arrangements may be required to satisfy procedural justice. A political system's sustainability depends on sufficient numbers of the polity's citizens having reason to support it or simply the incapacity to resist. Its objective of autonomy:

is realized by citizens when they act from principles of justice that specify the fair terms of cooperation they would give themselves when fairly represented as free and equal persons. (Rawls, 1993, p. 77)

Differentiated liberal citizenship, which is discussed in detail in the next chapter, occurs only if sovereignty belongs to the people and the people accept plurality in the distribution of political power and authority.

Plurality recognises that indigenous social units and political structures may develop to serve an indigenous public. Just as sovereign political authority might rest in many locations, so too does policy capacity. For example, Martinez Cobo (1981) argued that self-definition is preliminary to indigenous control over indigenous nationhood: ‘There must be no attempt to define them according to the perceptions of others through the values of foreign societies or the dominant sections in such societies’ (p. 92).

The capacity to manage relationships with the state and others is among sovereignty’s most important characteristics. Indigenous political institutions must be equipped for this task, which is difficult, as colonialism’s very purpose has been to undermine these bodies as institutions of resistance.

The state can make space for indigenous agency, but it cannot create that agency. The Declaration shows that there is scope for what Maaka and Fleras (2000) called ‘sovereignty without secession’ (p. 92). It will not achieve what Watson and Venne (2012) and Carroll (2012) view as just, but it does propose transformational possibilities. Many indigenous peoples find these possibilities important and worth pursuing, even though they conflict with Champagne’s (2013) argument that the choice to participate in state institutions is a choice to assimilate. Champagne contrasts assimilation with the restoration of indigenous political structures as a choice to exclude oneself from the politics of the state. However, the contrast is a false dichotomy in that it represents an unnecessary choice that indigenous peoples often reject in favour of some form of differentiated citizenship.

## Conclusion

The right to self-determination is the 'right to effective, democratic governance within States, making it possible for the population as a whole to determine their political status and pursue their development' (Solano, 2002, pp. 17–18). These principles are foundational to a liberal theory of indigeneity grounded in the extant rights of prior occupancy and developed for the reclamation of political authority in both proportionate and distinctive ways 'to confront prevailing prejudices and create opportunities to contextualise the meaning of indigenous liberty' (O'Sullivan, 2014, p. 66). Public sensitivity to others' needs and aspirations is important, especially when these are framed by conceptions of the common good that differ from one's own.

Deliberative democracy presumes recognition, including in the distribution of political capacity. It presumes that peoples can understand one another better if there is respect for the legitimacy of difference. Consequently, democracy's structure and form matter enormously. It is to illuminate differentiated liberal citizenship's value that the following chapter contests the illiberal foundation of the New Zealand Independent Working Group on Constitutional Transformation's *He whakairo here whakaumu mō Aotearoa* report and recommendations for a rigid bicultural polity. Examples of differentiated citizenship's practice and potential are provided, not as a panacea for the realisation of self-determination, but as alternatives to isolated indigenous nationhood.

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