

How would local government arrangements need to change to promote tino rangatiratanga/mana motuhake?

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

The Review into the Future for Local Government’s Terms of Reference refer to a Treaty partnership. They also invite boldness.¹ Boldness could mean thinking beyond the limits of partnership; thinking more broadly about the meanings of democracy, citizenship and self-determination. Thinking more about the texts of the Treaty and te Tiriti, rather than the principles, as Cabinet did in its 219 Circular *Te Tiriti o Waitangi/Treaty of Waitangi Guidance*.²

Partnership is central to the bicultural discourse developed during the 1980s and 1990s. A discourse which gave Māori people and Māori culture a place in public life. It was important in that respect. But that the partnership is always one of senior and junior. Iwi, hapu and other Māori entities or Māori generally are junior partner to the Crown. The Treaty partnership isn’t concerned with rangatiratanga or mana motuhake.³ This is because as junior partner Māori don’t have independent political space. As partner, they are beyond the Crown. Not active participants in its affairs, not helping to shape society through a distinctive cultural lens so that colonialism’s impact might diminish.⁴

¹ Te Tari Taiwhenua, Department of Internal Affairs (2021). *Review into the Future for Local Government*. <https://www.dia.govt.nz/Future-for-Local-Government-Review>

² Department of the Prime Minister and Cabinet (2019). *CO (19) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance*.

<https://dpmc.govt.nz/publications/co-19-5-te-tiriti-o-waitangi-treaty-waitangi-guidance>

³ O’Sullivan, D. (2017). *Beyond Biculturalism: the politics of an indigenous minority*. Wellington. Huia Publishers.

⁴ Ibid.

Partnership may, nevertheless, be thought about differently so that Māori may do more than ‘contribute to local government decision-making processes’ as the current Local Government Act requires.⁵ Contribution is a limited political authority. Yet boldness, by definition, lends itself to thinking more widely about how and why people might want to do more than ‘contribute’. To thinking about how and why people might want to lead and participate in working out the functions of local government, to working out where these functions should lie within the system, and how and why they should be managed.

For example, should each and every one of local government’s functions lie with Councils? Are there some which might more properly belong to iwi, hapu, marae or other Māori entities? How would these functions be managed to reflect rangatiratanga?

What additional functions might need legislative sanction so that independent Māori entities may ‘promote the social, economic, environmental, and cultural well-being of its district or region in the present and future’⁶ as the Act currently sets it out?

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 ‘to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.’⁷ so that preferred decision-making processes are used as iwi, for example, carry out their functions? How will decision-making bodies be accountable to their communities? What will rangatiratanga look like in practice?

⁵ Parliamentary Counsel Office (2002). *Local Government Act 2002*, s. 4.
<https://www.legislation.govt.nz/act/public/2002/0084/latest/whole.html#DLM170880>

⁶ *Ibid.*, s. 5(d).

⁷ *Ibid.*, s. 10(a and b).

Aristotle said that the citizen is simply one who deliberates.⁸ But where, how and why we deliberate is a determinant of the system's fairness and effectiveness. Strengthening the Māori capacity to deliberate, in Māori forums, and to determine matters of distinctive Māori interest is one side of what I've written about as differentiated liberal citizenship.⁹ The other side of differentiated liberal citizenship asks what does it mean to be a Māori citizen of the state? What does it mean for participation in public life to have evolved from the 'subjecthood' promised in 1840, to the modern idea of the citizen as shareholder in the political authority of the state?

Justice Williams' remarks on this question show why one can't be a citizen and a partner at the same time. Partnership allows the bicultural construction of the Crown as an ethnically homogenous non-Māori body to limit people's opportunities to influence society's development and the values by which it functions. In contrast, citizenship embodies an evolving set of political rights and capacities. Self-determination means that one needs to be present wherever public decisions are made; wherever other citizens exercise those rights and capacities Māori must be present.¹⁰ Present with what the political theorist Nancy Fraser calls participatory parity,¹¹ with the same opportunity as anybody to influence public decisions. As Williams explained, this means 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.¹²

From this perspective, the Crown is an inclusive and unifying institution. It is neither the Pākehā political community, nor the dominant party in a bicultural partnership. How, then, are Māori part of the Crown as electors, candidates and officeholders in local government?

⁸ Aristotle (1988). *The Politics*, Cambridge, Cambridge University Press.

⁹ See for example, O'Sullivan, D. (2017). *Indigeneity: a politics of potential – Australia, Fiji and New Zealand*. Bristol. Policy Press.

¹⁰ Ibid.

¹¹ Fraser, N. (2003). *Redistribution or recognition?: A political-philosophical exchange*. New York. Verso Books.

¹² Waitangi Tribunal, Te reo Māori [Prepublication copy of Chapter 5 of Ko Aotearoa tēnei] (Wai 262, 2010, p. 51).

Amendments to the Local Government Act removing impediments to the creation of Māori wards are an important part of the answer. Māori wards allow voters and candidates to engage to address matters that are contextualised by culture and colonisation.

But once elected, participatory parity means having the same opportunity as anybody else to influence outcomes. 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 for example, one was not on the losing side because the process was culturally foreign and thus inconsistent with the opportunity for the fair and reasonable expression of one's ideas. Neither culture nor indigeneity were democratic disabilities. Colonialism was not a factor.

In which ways, then, might tikanga influence Council standing orders, Councils' relationships with their communities? And the broader ways in which Māori citizens may contribute to decision-making over matters that do not belong exclusively to Māori decision-making bodies, but where distinctive Māori perspectives may be relevant?

The ways in which Māori voters may wish to participate in the different tiers of government may 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 where one does not have a mana whenua connection. Importantly, for example, non-mana whenua Māori influences on who represents mana whenua concerns, in relation to local environmental management, is inconsistent with rangatiratanga. There is an important argument for different Māori and General rolls for different tiers of government.

Mana whenua is an important constituent of the Critical Tiriti Analysis policy development and evaluation framework I developed with Associate Professor Heather Came at AUT and Professor Tim McCreanor at Massey University.¹³ The framework says that policy makers should ask:

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? Eliminating racism is a matter of participatory parity and involves asking how the system will ensure that Māori values, aspirations and tikanga are present.

Critical Tiriti Analysis presumes that public institutions ought not operate in ways that Aileen Moreton-Robinson describes as making 'Whiteness' 'the definitive marker of citizenship; and a form of property born of social status'. Differentiated liberal citizenship is one way of avoiding this possibility.

To summarise the point: 'Differentiated citizenship means that Māori are both part of the Crown and separate from it. The Crown and iwi and hapu exercise relative and relational political powers, which means that Māori are not junior partners in a bicultural project (O'Sullivan, 2007) but equal participants and shareholders in public sovereignty. Equal participation in public affairs provides the foundation for developing non-colonial political relationships'.¹⁴

¹³ Came H, O'Sullivan D, McCreanor T. Introducing critical Tiriti policy analysis through a retrospective review of the New Zealand Primary Health Care Strategy. *Ethnicities*. 2020; 20(3): 434-456.

¹⁴ O'Sullivan, D. (2020) *'We are all Here to Stay': Citizenship, Sovereignty and the UN Declaration on the Rights of Indigenous Peoples*. Canberra: ANU Press, p. 156