

SELF DETERMINATION — by Anahera Herbert-Graves

When considering constitutionally protected indigenous governments from around the world, [Matike Mai o Aotearoa \(the Independent Working Group on Constitutional Transformation\)](#) received feedback on the Sami Parliament in Norway, the Bolivian Constitution, and several First Nations governments in North America.



But one example of indigenous governments that the Working Group did not cover are the indigenous [devolved governments](#) in countries like the United States, Canada, Australia, Mexico, France, Spain and the United Kingdom. In the UK these include the [Northern Ireland Assembly](#), the [Scottish Parliament](#), and the [National Assembly for Wales](#).

The reason these governments were not covered by the Working Group is that none of them have any constitutional protection, even the Scottish Parliament which enjoys a quite high degree of independence.

Instead each of them were created and granted limited statutory powers by the [Government of the United Kingdom](#); and they can be dissolved and have their powers amended or repealed altogether by that same government.

These do not represent the kind of constitutionally protected right to self determination that we are working towards as part of constitutional transformation. However, in spite of their limitations and shortcomings, they all were created in response to the desire of their indigenous people for self government, a desire shared by the indigenous peoples of New Zealand.

¹In reality all governments, including indigenous ones, are imperfect. But as acknowledged by the late [Lakota Sioux](#) jurist [Vine DeLoria](#), who was often a critic of the policies of some Tribal Governments, the values and rights they represent are important because –

“Whatever the shortcomings of these government structures they are for many...an honouring of ancient treaties and an even more ancient constitutional tradition and authority...and because of the genius of our people, and the genius of all Indigenous Peoples I know, they are a vehicle through which we can exercise our sovereignty and find some way to maintain our law and our rights...better to have that than have [someone else] exercising it for us”.



After the discussions on Indigenous Governments from around the world, the Working Group concluded that there is value in studying the principles and practices that other Indigenous Peoples have used to give constitutional form to their equivalent of mana and rangatiratanga. Although often limited in their jurisdiction and funding they provide working examples of how a different form of governance can function and work alongside other governing systems.

More importantly they are expressions of the right to govern. They give effect to the same constitutional ideals for self determination our people acted upon for centuries and which Te Tiriti guaranteed we should continue to do.

Next week we will begin consideration of the kinds of values upon which we may transform our constitutional arrangements in New Zealand.

¹ Twenty-fourth edited extract from p. 68 of [He Whakaaro Here Whakaumu Mō Aotearoa – The Report of Matike Mai o Aotearoa](#)