

# THEORISING REPRESENTATION IN THE MĀORI SEATS

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## The crucial role of accountability

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### Abstract

The guaranteed Māori seats are a distinguishing and controversial feature of New Zealand's democracy. In recent years, a number of reports, commentators and politicians have called for the seats to be abolished on the grounds that they are no longer "needed" in New Zealand's proportional electoral system. These claims are usually grounded in principles of equality. This paper makes the opposite claim: that principles of equality create convincing and coherent justifications for the Māori seats. Drawing on feminist theories of representation, particularly the work of Iris Marion Young, Melissa Williams and Anne Phillips, this paper argues that the Māori seats provide crucial mechanisms of accountability that ensure the fidelity of Māori representatives to their constituencies. This notion of accountability has been largely absent in debates about the Māori seats and challenges arguments against the seats that are based solely on perceived "need" relative to proportionate presence.

### Keywords

reserved seats, Indigenous seats, Māori seats, Indigenous political theory, representation

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## Introduction

The guaranteed Māori seats are a distinguishing and long-debated feature of New Zealand's democracy. Introduced in 1867, the seats created a Māori electoral roll to overlay the general roll. Only Māori could vote or stand for election in the seats. Initially, the seats were intended as a temporary measure until the imposition of individual title over Māori land would allow Māori to meet the property qualification to vote in the general roll (Wilson, 2009). However, in the 140 years since their inception the seats have become a permanent feature of New Zealand's parliamentary landscape. In 1996, with the introduction of a mixed member proportional (MMP) electoral system, the four fixed seats increased to a number proportional to the number enrolled on the Māori roll; currently there are seven.

Debates over the effectiveness of the seats for Māori and their justification by notions of equality and fairness are raised continuously in the New Zealand public political arena (Bargh, 2010; McDowell, 2013). The number of Māori members in the New Zealand Parliament has increased significantly, particularly since the introduction of MMP, and so some researchers, commentators and politicians suggest the Māori seats are longer necessary to ensure Māori proportional presence in Parliament (Constitutional Advisory Panel—Te Ranga Kaupapa Ture, 2013; Peters, 2017). Some go further, arguing that in an MMP environment the seats are a form of “reverse discrimination” (Joseph, 2008, p. 5; see also Brash, 2004).

The Māori seats are frequently defended as a symbol of the status of Māori as *tangata whenua* or as an important recognition of the position of Māori as a Treaty of Waitangi/Tiriti o Waitangi partner (Geddis, 1996; Waitangi Tribunal, 1994; Xanthaki & O'Sullivan, 2009). This paper takes an alternative perspective and considers whether there are arguments rooted in political equality that could in fact justify the Māori seats. In the often heated nature of

discussion of the Māori seats, particularly in mainstream commentary and the blogosphere, there seems to be little acknowledgement that it is possible to defend the seats via basic liberal-egalitarian principles; principles that are typically put to use in decrying the seats (Cooke, 2017; “Hobson's Pledge”, n.d.). We attempt below to provide a potentially complementary justification for the Māori seats. We do not consider this argument to conflict with other reasoned claims to the Māori seats based on Indigenous, Treaty, historical or other rights. What we mean by “rights” are moral claims made by political actors for duties to be imposed on others. In this case, we argue that a rights claim for the Māori seats imposes a duty on the New Zealand state to create and maintain those seats (see Steiner, 1994, p. 2). Also, we should not be seen as commenting on more ambitious constitutional transformations such as put forward by Matikie Mai Aotearoa—The Independent Working Group on Constitutional Transformation (2016).

This paper opens by outlining key arguments that have been raised against the Māori seats in recent years, particularly since the introduction of MMP. We then turn to consider theories of representation and equality. We examine theories that account for difference in understandings of representation, particularly from the work of feminist theorists such as Iris Marion Young (1990), Melissa Williams (1998) and Anne Phillips (1995a, 1995b), as well as Will Kymlicka (1995). Drawing on these theories, we consider whether these claims of separate representation might apply to Māori, and what measures might be appropriate.

## Proportional representation and the “need” for the Māori seats

During the 2017 election campaign, the Māori seats (again) became a focus of debate. In a speech entitled “The Battle for New Zealand”, New Zealand First leader Winston Peters (2017)

called for a binding referendum on whether New Zealand should keep the seven Māori seats and identified it as a bottom line in negotiating coalition agreements. Peters described the seats as “elitist” and a form of “tokenism”, although he later said that Māori themselves should determine the future of the seats.

Calls to abolish the reserved Māori seats are not new, although strong opposition to them has waned somewhat in recent years. A 1 News Colmar Brunton Poll in August 2017, for instance, suggested a majority of New Zealanders—55 per cent—wanted the seats to stay, while 36 per cent wanted them removed immediately or in the future (“Majority of New Zealanders”, 2017). Nevertheless, persistent antipathy towards the seats remains. Following Peters’ announcement, for example, a *Listener* editorial reasoned that there is “no denying that they are a form of race-based politics, albeit well-intentioned” and that it is “not unreasonable to think the seats have had their day and are now paternalistic” (“A Maori Seats Referendum Is”, 2017). At a local level, opposition to Māori seats on local councils has been particularly virulent, suggesting that debates about Māori representation remain a highly contested feature of New Zealand’s democracy (Human Rights Commission, 2010).

Tensions over the Māori seats were reflected in the 2013 report of the above-mentioned Constitutional Advisory Panel, which was chaired by Professor John Burrows QC and Sir Tipene O’Regan. In listening to submissions, the panel noted there was support among some for the Māori seats to be retained or increased. However, it also reported that they received a “large number of submissions supporting the removal of the Māori seats”. Although some submissions did not provide reasoning, the report noted many rejected the concept of guaranteed minority representation, aspiring to “one law for all”, and suggesting that separate seats is “unfair” and “undemocratic” (Hayward, 2011, p. 41).

Amongst the most frequently raised arguments

against the Māori seats is the claim that they have become redundant with the advent of a proportional representation electoral system in New Zealand. The recommendations of the Royal Commission on the Electoral System (1986, hereafter “Royal Commission”) are often cited by those who advance those views. The Royal Commission suggested that a proportional electoral system would ensure Māori are adequately represented in Parliament and so dedicated Māori seats would no longer be required.

In many respects, the Royal Commission’s (1986) projections have eventuated. Since the introduction of MMP, Māori have gained proportional presence in New Zealand’s Parliament. Unlike Australia and Canada, where Indigenous groups are strikingly under-represented in national legislatures (Murphy, 2008), Māori have gained representation to a level roughly proportional to their population since 2002. For example, the 2011 election returned 18 Members of Parliament (MPs) that identified as Māori, or 14.8 per cent of the total, and the 2014 election 22 MPs, or 18 per cent (Statistics New Zealand, 2014).

Of course there is nothing to guarantee that this proportionate presence would be maintained if the Māori seats were to be abolished. Nevertheless, the increase of Māori MPs following the introduction of MMP has led some commentators and researchers to argue that the seats are no longer necessary to ensure Māori representation in Parliament. For instance, in a report for the New Zealand Business Roundtable, Philip Joseph (2008) argued that the separate seats were “superfluous” and “unnecessary to secure effective representation of Maori”. Moreover, he went on to argue that retaining the seats under MMP represents an “insidious form of reverse discrimination” with “the potential to undermine the expressed will of the people” (p. 5).

One possible argument against this account is to claim that these discussions around proportionate presence are somewhat beside the

point, as the Māori seats are a reflection of the Indigenous rights of Māori in Aotearoa. These arguments were acknowledged by the Royal Commission (1986), which found that for many Māori the seats were considered an important expression of their position as tangata whenua; and by the *Māori Electoral Option Report* (Waitangi Tribunal, 1994, s. 3.1), which suggested that the seats were considered to be an exercise—although limited—of the tino rangatiratanga guaranteed to Māori under the Treaty (see also Xanthaki & O’Sullivan, 2009). More recently, the Constitutional Advisory Panel (2013) similarly reported that some submissions considered the Māori seats to be a significant, although not necessarily sufficient, symbol of commitments made by iwi and the Crown at Waitangi; and that they ensured a distinctive Māori voice in the issues considered by Parliament. Reflecting on the rationale used to defend the seats over time, Andrew Geddis (1996) has argued that justifications have shifted away from a “need” model that ensures Māori presence in the legislature and towards a more “symbolic” role that acknowledges the status of Māori as a Treaty partner.

However, it is also possible to justify the Māori seats by revisiting theories of representation that are based on liberal-egalitarian principles in a context of compelling and political difference between groups. Explicitly laying out these arguments is vital because the absence of a coherent and compelling defence of the Māori seats on the grounds of political equality in representation leaves the seats exposed to claims that they are no longer necessary since the introduction of MMP. In pursuing these arguments, it is worth restating that our intent in this paper is not to detract from claims for the Māori seats based on Indigenous or Treaty right, but rather to add a complementary layer of argument, one that uses the same liberal philosophy that detractors of the seats typically use to oppose them.

## Political equality and difference

On the surface, the basic idea of representation in liberal democratic societies appears quite simple and uncontroversial. Its epitome is the slogan “one person, one vote”, and it holds that as long as all citizens have an equal opportunity to influence the electoral process, the outcome of the process is fair, whatever it happens to be (Achen & Bartels, 2016, p. 1). Liberal representation is perceived not only as theoretically coherent; it is also thought to contain important elements of justice that must be preserved in any adequate account of fair representation. According to this logic, institutionalising group representation, such as the Māori seats, would seem, superficially at least, to conflict with this ideal of citizenship and democracy in which each individual counts equally as one. Yet, in practice, “one person, one vote” does not necessarily contribute to representation that could be considered just.

It has long been acknowledged in political science and theory that a number of groups continue to be marginalised within our legislative bodies, whether through lack of physical presence in legislatures or the types of issues and assumptions that are prioritised in policy (Mansbridge, 1999; O’Sullivan, 2017; Young, 1990). A number of theorists have therefore argued that theories of representation require supplementation because this liberal theory of democracy does not do justice to the claims of marginalised groups for self-representation in legislative bodies (Kymlicka, 1995; Mansbridge, 1999; Phillips, 1995b; Williams, 1998; Young, 1990). These scholars argue for guaranteed legislative presence of marginalised groups such as ethnic minorities or women because the dominant theories of democracy tend to be blind to contemporary inequalities and disparities. They argue that the inequalities can only be reduced if social difference is taken into account in political systems.

When justifying the case for some measures to ensure group representation, such as the

Māori seats, the work of two political theorists is especially helpful. The first is the feminist political theorist Iris Marion Young, who in *Justice and the Politics of Difference* (1990) provides a searing critique of liberal impartiality—the Enlightenment ideal that we should all be treated as abstract individuals regardless of sex, race or class. Young argues that the conception of fairness as equal opportunity is asymmetrical; to pretend that who or what we are is irrelevant is dangerous as it leaves democracy at the mercy of existing power relations. Instead, Young proposes equalising political influence. The point, she argues, is not so much that the legislature should reflect society, but rather that the historical domination of some groups by other groups has left a trail of barriers and prejudices that make it difficult for historically disadvantaged groups to participate effectively in political processes. Young therefore concludes that equalising political influence sometimes requires different treatment for disadvantaged groups.

From a different stance, but with similar conclusions, are arguments offered by the Canadian theorist Will Kymlicka in *Multicultural Citizenship* (1995). Kymlicka argues that groups that do not share the dominant culture of a society suffer various kinds of disadvantage as a result of their minority status, which has come to be known as the culturalist defence of group-differentiated rights (see Hayward, 2011, pp. 195–197). Kymlicka (1995, ch. 5) argues that cultural structures provide the essential context within which people become aware of options open to them and can intelligently judge their worth. Based on the essential role culture plays for the individual, Kymlicka argues that separate rights are justified because it is harder and more expensive for members of some groups to maintain their culture and so live a life they consider worthwhile. He concludes that true equality requires “not identical treatment, but rather differential treatment in order to accommodate differential needs” (p. 113).

Young’s and Kymlicka’s arguments take quite different paths, but come to a remarkably similar conclusion: that particular measures are needed to ensure group representation. In both cases, arguments for differential treatment in democracies are derived from the principle of political equality, and take issue with the distorting consequences of trying to pretend away group difference or affiliation. Equality of representation is not necessarily guaranteed by the equal right to vote, and both theorists present strong arguments for group representation—in our case, of Māori in the New Zealand Parliament—based in a principle of political equality.

### Claims of representation

Any proposal for group representation, however, must answer difficult questions about which disadvantaged group or groups might receive differential representation. For example, a potential issue with Young’s (1990) argument is that it could be applied to an almost indefinite number of groups that have received some form of discrimination (Phillips, 1995a). Extending this point to the case of the Māori seats, it could conceivably be argued that if the case of political equality is normatively strong enough for Māori to receive particular representation measures, the groups eligible for this representation on the basis of political equality could also include a potentially endless list of other minority, gender, religious or class-based groups. The question then becomes (if we do not consider Indigenous or Treaty-based arguments): Is it fair that Indigenous people have the option of being included in a separate political system that guarantees their representation in Parliament when disadvantaged non-Indigenous people do not have this choice?

This is a question that has received a great deal of attention within political theory, and a number of political theorists have tentatively suggested criteria by which to draw the line

between groups that should gain reserved representation and groups that should not. One of the most compelling cases put forward is by Melissa Williams in *Voice, Trust and Memory: Marginalised Groups and the Failings of Liberal Representation* (1998). Williams sets out criteria that she argues sustain the strongest claims to political recognition through representation in legislative bodies, and which she suggests provide a standard for distinguishing stronger group claims for representation from those that are weaker. She describes these as “objective” and “subjective” forms of group identity. Objective sources of group identity, she explains, draw on the crucial link between the historical treatment of a group, especially dispossession and oppression, and the continuance of contemporary patterns of social, economic and political inequality along that group. These objective sources rely on the empirical evidence provided by “generally accepted” sources that discrimination occurred, thereby making a direct appeal to a notion of shared public reason (Williams, 1998, pp. 177–178). Subjective sources of group identity, meanwhile, draw on a shared memory of discrimination and a conviction of shared political interests in the present.

Central to Williams’ (1998) criteria of objective and subjective sources of identity is the role of history in contributing to marginalisation. However, her use of history is not simply a matter of these groups being owed compensation for “past iniquities and past iniquities”. Instead, Williams argues that the strongest claims of group representation are those where there is a clear and strong connection between past discrimination sanctioned by dominant social groups and often enforced by the state, and continuing inequality and marginalisation in the present.

Māori are strong candidates for Williams’ criteria for particular representative measures. The numerous detailed reports released by the Waitangi Tribunal over the past three decades have provided clear and compelling evidence that the current relative poverty of

Māori is the direct result of past and ongoing injustice. Contemporary claims of Māori self-determination and *tino rangatiratanga* similarly show ongoing collective awareness of past discrimination and a conviction of shared political interests in the present. Following from Williams’ argument, so long as inequality and disparity persists among Māori as a clear result of past discrimination, separate Māori seats to ensure representation are justifiable.

### The limits of proportionate presence

If a group can be identified as deserving particular representative measures, the next question is how they should be represented and given a voice within the legislature. Many theorists of representation take as their starting point the argument that parliaments should as much as possible “look like” their citizens (often referred to as “descriptive” representation), for instance in terms of ethnicity, gender, religion and age (see, e.g., Phillips, 1995b; Williams, 1998; Young, 1990). These theorists argue that those citizens from groups that are chronically under-represented in legislative bodies are not fairly represented in decision-making processes. From this perspective, these theorists provide convincing and coherent arguments for particular measures to ensure the proportionate or descriptive presence of under-represented groups within legislative assemblies. In Canada and Australia, where Indigenous groups have gained little to no representation in legislative assemblies, these arguments for guaranteed representation are strong (Murphy, 2008).

Yet, as has been noted already, arguments for descriptive representation in New Zealand do not, at least initially, fit the case of the Māori seats. As critics of the seats have pointed out, the number of MPs who identify as Māori has increased significantly under MMP, to a level roughly proportional to the Māori population, arguably making the seats no longer necessary to ensure descriptive representation.

Of course, a valid argument is that reserved seats are needed to ensure Māori presence in Parliament but, as we will discuss, these arguments rely on the same logic of proportionate presence.

The claim that equal representation for Māori solely depends on their descriptive representation in Parliament is flawed, however. Williams (1998) explains the limitations of this focus on proportionate presence particularly clearly. According to her, descriptive representation does matter since groups—whether based on ethnicity, gender or age—not only have a social significance to their members, but also define the contours of important patterns of social, political and economic inequality. However, proportionate presence cannot be the only measure of equal and effective representation in a legislature. As Williams argues, a focus on descriptive representation alone implies that members of groups somehow share an identity of interests or concerns for which their representatives can advocate. Within any social grouping, she points out, there is wide diversity of both opinions and interests. Williams contends that no defensible claim for group representation can rest on assertions of the essential identity of a minority, since such assertions do violence to this diversity as well as to the agency of individuals within the minority group.

What, then, would be a more robust understanding of representation that goes beyond proportionate presence? Here the work of Anne Phillips in *The Politics of Presence* (1995) is particularly useful. Phillips reminds us that there are two aspects to political representation. One is the idea behind descriptive representation, of legislators belonging to one's group. The second is accountability, the mechanisms to establish the political desires of a group and to ensure that "representatives" of a group act on the basis of those desires. As Phillips (1995b, pp. 86–88) puts it, "Accountability is always the other side of representation, and, in the absence of procedures for establishing what any

group wants or thinks, we cannot usefully talk of their political representation." Young (1997) agrees with Phillips about the importance of accountability in representation, arguing that "having such a relation of identity or similarity with constituents says nothing about what the representative does" (p. 354).

These arguments about accountability are critical in the case of the Māori seats. It would be absurd to claim that a representative, simply because they are Māori, represents the interests or perspectives of Māori generally, just like it would be absurd to claim that a woman representative is automatically representative of all women. In the absence of any electoral accountability, the idea that the mere presence of Māori in Parliament would by itself ensure the representation of Māori interests is implausible, given the heterogeneity of interests and perspectives among Māori. As the second author has pointed out elsewhere, to think otherwise is to repeat colonial tropes of thought that essentialised Māori experiences and individuals (MacDonald, 2016).

A crucial rationale for the Māori seats, therefore, is the mechanisms of accountability they provide to ensure the fidelity of Māori representatives to their constituencies, rather than simple descriptive (or proportional) representation. By setting up a separate Māori electoral roll that is superimposed over the general roll, Māori legislators are elected solely by Māori voters. What matters in this model is not *who* is elected but *how* they are elected. MPs in Hauraki-Waikato, Ikaroa-Rawhiti, Tāmaki Makaurau, Te Tai Hauāuru, Te Tai Tokerau, Te Tai Tonga and Waiariki are elected by, and hence directly accountable to, Māori constituents in those areas in a way that Māori list MPs are not. This notion of accountability—often overlooked in debates about the Māori seats—directly challenges arguments against the seats based solely on a perceived "need" based on a proportional presence. Although Māori do not "need" the seats to gain proportional representation in New Zealand's Parliament per

se, they are nevertheless necessary to provide mechanisms of accountability between Māori constituents and their MPs to ensure those MPs provide genuine representation.

### Individual equality and autonomy

Finally, there are a few specific criticisms of the seats that the literature on representation and equality can help to address. As we noted earlier, critics of difference-conscious policies often focus on the possibility that particular forms of group recognition will perpetuate social conflict. The danger, they argue, is that in affirming difference and institutionalising group-conscious policies the mechanisms will reinstate stigma, divisiveness and exclusion within society (Barry, 2001). The argument is that society should instead aim to eradicate conflict by pursuing an ideal of equality that treats all citizens alike.

The concerns of exclusion and stigma are genuine, and the risks involved in attending to difference have been taken seriously by representation theorists like Young (1990) and Phillips (1995a, 1995b). The concern is that mechanisms established with the purpose of equalising the balance of power could potentially perpetuate inequality; or those mechanisms may not respond readily enough to change when structural inequalities have ceased to be a problem. Another possibility is that selective representation could strengthen tendencies towards essentialism—the assumption that members of certain groups have an essential identity that all members of that group share and in which no others can partake (see, e.g., Mansbridge, 1999, p. 637; Young, 1990, p. 169).

Part of the problem with such criticisms is they assume recognising groups in representation will lead to conflict. Young (1990, p. 169), for instance, notes that critics tend to suggest group-differentiated representation would lead to a politics of “categorical opposition” between identities. As Phillips (1995a) explains,

that is not the point of questioning the adequacy of representation for marginalised groups: “No-one would want to flee the abstractions of an undifferentiated humanity only to end up in its opposite. . . . The kind of politics in which people were elected only to speak for their own group identity or interests” (p. 293).

Against the idea that representational mechanisms will ossify, Williams (1998) identifies the importance of acknowledging the actual historical and contemporary realities of the institutional arrangements that provide for the minority group’s representation. In the case of the Māori seats, for instance, any citizen can be enrolled in a Māori electorate by claiming Māori descent or choose to be included on the general roll. This choice can be exercised the first time the person enrolls to vote, or every five years during a four-month Māori Electoral Option period. Since 1993, the total Māori enrolments in the Māori Electoral Option have increased steadily, raising the number of seats to seven. However, it is also worth noting that around half of eligible Māori choose to not enrol on the Māori roll (Xanthaki & O’Sullivan, 2009). The choice that is provided to Māori voters by the electoral option is markedly different to that offered to voters in majority-minority districts in the United States. There minorities cannot choose minority and non-minority rolls (Xanthaki & O’Sullivan, 2009).

Another critique levelled at the Māori seats is that the retention of the separate seats diminishes the influence of all Māori members of Parliament in both the Māori and general seats via a type of “psychology of electoral separatism” (Joseph, 2008, p. 13). So long as a large number of Māori remain on a separate electoral roll, the argument goes, political parties will be less likely to ply for the Māori vote and to bring Māori issues to the mainstream. For example, the Royal Commission (1986) observed that the “Labour Party’s domination of the Māori seats since 1943 has meant that neither it nor any other party has any real electoral incentive to commit resources to the development of



policies for the Māori people, or to campaign vigorously for their votes” (p. 92). The result, the Commission suggested, is that “by confining Māori voting power to separately elected seats, separate representation has weakened the influence of the Māori MPs” (p. 92).

Perhaps this was true under the old first-past-the-post electoral system, and certainly the seats were used historically to suppress Māori voice in New Zealand politics (McDowell, 2013). But the competition that has developed in the Māori seats since the introduction of MMP suggests that these conclusions no longer apply as forcefully as they once might have done. Parties elected in Māori seats have changed multiple times since the introduction of MMP, from Labour, to New Zealand First, to the Māori Party. The number of Māori who choose to enrol on the Māori roll similarly suggests that many see value in the seats (Sullivan, 2010). There has also been an increase in the incidence of split voting, where voters on the Māori roll might support a Māori Party candidate in the Māori seats and give their party vote to the Labour Party, suggesting that parties have strong incentives to court both the Māori electorate and party vote (Smith, 2010).

## Conclusion

Particularly since the introduction of MMP and the increase in MPs who identify as Māori, there have been persistent calls to abolish the Māori seats as they are no longer “necessary”

for Māori representation in Parliament. While the seats can be defended as a symbol of the status of Māori as *tangata whenua* or as a Treaty partner, this paper adopted a different stance by considering liberal-egalitarian theories of representation that are not blind to difference and marginalisation, particularly the work of feminist theorists Iris Marion Young, Melissa Williams and Anne Phillips.

This paper argued that these theories highlight two key justifications for the Māori seats in particular. First, the Māori seats provide an important avenue for representation given the historical treatment and dispossession of Māori, the continuance of contemporary inequality among Māori, a shared memory of the discrimination, and a conviction of shared political interests in the present. Second, this paper discredited arguments that the seats are not “needed” now that there is proportional representation, as the Māori seats also provide crucial mechanisms of accountability that ensure the fidelity of Māori representatives to their constituencies.

## Glossary

Aotearoa	Māori name for New Zealand; lit., “land of the long white cloud”
iwi	people or tribe
tangata whenua	people of the land
tino rangatiratanga	self-determination, autonomy

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