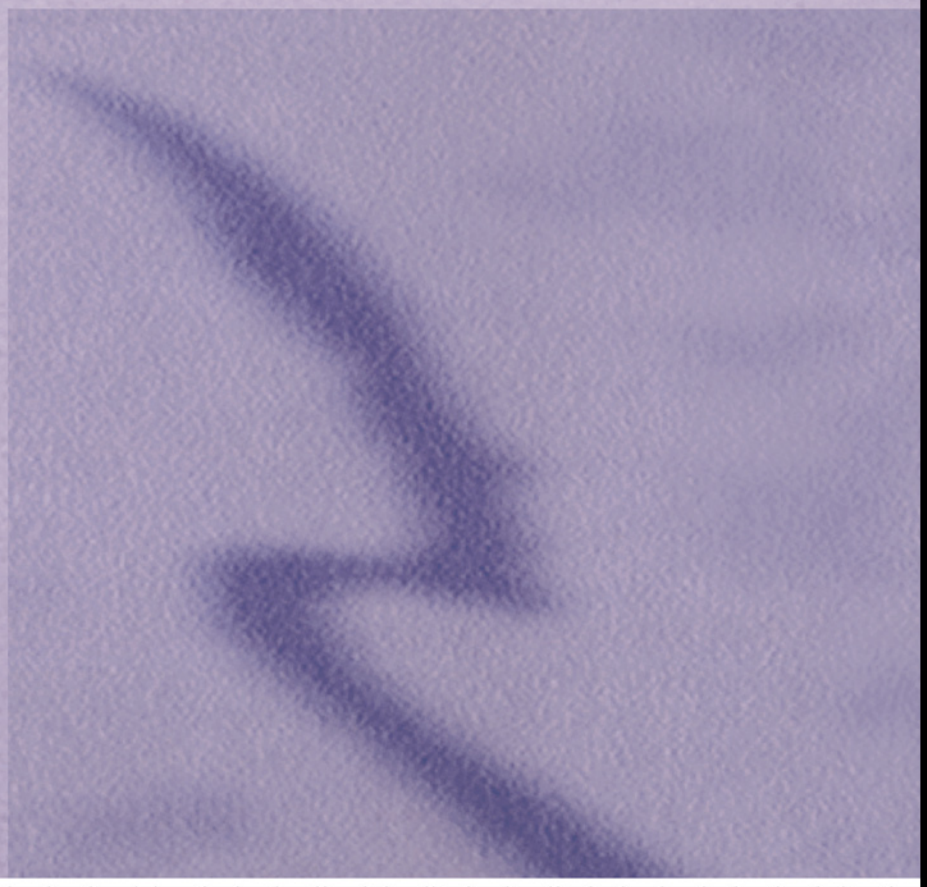
Sub-State Nationalism

A comparative analysis of institutional design

Helena Catt and Michael Murphy

Routledge Research in Comparative Politics



Sub-State Nationalism

Today, a major feature of the political development of western democracies is the growth of indigenous, ethnic and national groups striving for political selfdetermination. This book analyses the institutional responses individual governments have made to these demands. In 1999 alone, devolved selfgoverning bodies were elected in Nunavut, Scotland and Wales; worldwide indigenous people have acquired different forms of local self-government, comanagement and inclusion in national institutions. Moreover, in regions such as Quebec and Northern Ireland, existing institutional arrangements are still being revised, and negotiated, so that sub-state nationalists can ward off secessionist demands, or the threat of instability or violence.

Sub-State Nationalism provides a much needed categorisation and genuinely comparative analysis of the political voice gained by sub-state national groups in multinational democratic groups. The book covers international case studies drawn from Australia, Canada, New Zealand, Australia and the USA. It covers the empirical question of what voice these groups have, and how its institutions are structured; and the analytical question of how such knowledge contributes to our theoretical understanding of the politics of group rights and representation.

The authors present a broad variety of institutional structures designed to provide a voice for sub-state national groups; they also provide a systematic, comparative analysis of institutional designs—examining the form of representation and the access afforded to the policy process. The chapters consider the extent to which different structures embody the demands of the normative literature on group representation/self-determination, or the stated demands of sub-state nationalists. In turn, this analysis opens up new avenues of theoretical enquiry into the changing nature of state sovereignty; the distribution of legitimacy and power; the efficacy of institutional strategies of devolution, power-sharing, co-management and inclusion as a means of coping with the challenges faced by multinational democracies around the globe.

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1 Democracy and Post-Communism Political change in the post-communist world *Graeme Gill*

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Sub-State Nationalism

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Introduction

Growth in the number of indigenous, ethnic and national groups striving for some form of political self-determination is a major component of political development in western democracies. In 1999 people in Nunavut, Scotland and Wales each elected members to new bodies created to meet their demands for self-government. Elsewhere settlements are being sought: the groundwork for devolution and power-sharing has been laid in Northern Ireland; nationalists in Quebec and Catalonia continue to press Canada and Spain respectively for the augmentation of their existing powers to preserve and promote their distinct societies, cultures and economies; indigenous peoples in Australia, New Zealand, the Americas and worldwide have achieved varying degrees of constitutional recognition, institutionalised representation and local autonomy. These are just some of the examples at the start of the twenty-first century of the demands for self-rule forwarded by sub-state national groups and the steps taken by ruling governments to recognise these demands through institutional design.

Developments such as these are of enormous importance in a practical sense to political leaders, policy-makers, and those citizens upon whose lives such measures have a direct and tangible impact. They are of at least equal interest to academics and researchers for the theoretical challenges they present. This book is an attempt to come to terms with this dual theoretical and practical political challenge. More precisely, its purpose is to provide a categorisation and comparative analysis of the political voice gained by sub-state national groups in multinational democratic states. The study itself centres on four Westminster democracies (Australia, Canada, New Zealand and the United Kingdom) plus the USA, but it is intended to speak to the issues faced by a much broader range of multinational democracies around the world. On the broadest of levels the book answers two questions, one empirical and one analytical. Empirically, the question is what is the specific nature of the voice provided, and how are institutions structured? On the analytical level, it examines how such knowledge contributes to our theoretical understanding of the politics of group rights and representation. In both cases answers are followed with responses to a third broad question: what are profitable areas of future research?

Rather than merely describe the different institutional arrangements that exist, we seek to provide a rigorous comparative analysis that concentrates upon the form of the political voice delivered to the sub-state national groups. In so doing this work brings together material, ideas and methods from a range of traditionally distinct literatures. At the core of the study is a matrix that provides a means of categorising the form of political voice delivered by a variety of institutional arrangements. Actual institutional cases are fitted within the matrix and then used for analysis. The core matrix used for this analysis is briefly described in the next section but we begin first with a discussion of the component institutional, theoretical and comparative strands of our overall analytical approach.

One central strand of our analysis concentrates upon the impact of institutional structures. The emphasis is upon those institutional arrangements created by governments with the intent of ensuring a political voice for the group concerned. This study is not looking at inherent claims or practices of authority, just those created by central governments for sub-state national groups. In using structures and their impact as the basis for comparison this work falls within the new institutionalist framework, which is premised on the idea that structure plays a major role in determining the behaviour of people. Common to the different variants of new institutionalism is consideration of the impact of rules, in particular who is affected by the rules, the type of decisions that can be made and the sequence of debate and decision points prescribed by the rules (Dowding 1994:108). Such questions are central to the analytical matrix used in this study. While many in the field use a broad definition of institutions, a structural sub-set is used here concentrating upon bodies that have been created through legislation or standing orders.

Another central component of the study of institutions is focused on the contextual and historical factors surrounding their maintenance and design. Historical, sociological and normative institutionalists in particular are interested in the social context at the time of creation and the ways in which the choice was framed (Peters 1999). For instance, which institutional forms were seen as possible and which problems were deemed the most important to address? Sociological and historical models view institutional design as building on the past and affected by historic decisions, rules and norms (Peters 1999:106). Country-specific views and norms will also be important factors in choosing new structures and a well-designed structure is one that fits comfortably with existing institutions and societal norms (Goodin 1996:28–34). Decisions tend to be taken in reaction to immediate issues and problems and in any case politicians cannot be expected to predict future needs and design

structures that predict areas or issues that will become important. For instance when deciding on the balance of jurisdiction between provinces and the central government in Canada, politicians did not predict the importance of, and growth in, social service provision and government involvement in economic development seen in the 1990s (Pierson 1996). Hence structures designed in relation to their own contemporary context may not meet the needs of future generations, and so must be flexible enough to adapt Sometimes a structure cannot bend sufficiently and the need for new institutions is due primarily to problems with the existing rules of the game, rather than resource allocation within that institutional context (Krasner 1984:234). In contrast, rational choice institutionalists assume a market in polit ical systems and players sufficiently versed in the impact of different structures that they can choose design features to produce particular outcomes (Peters 1999:58–9). The empiricists also assume that design is a conscious choice and much of their work seeks those structures which are perceived as working (Peters 1999:92–4). Across the models of institutionalism there is an interest in the extent to which institutions facilitate effective decisions and solve the problems that they were created to address. This focus is combined with a more sober recognition that the chosen structures may fail in both regards (Shepsle 1989). In the third part of the book these issues are discussed when considering the extent to which the structures meet the national groups' demands and are applicable to other national groups. The question of context is also considered, in particular the extent to which governmental responses to the demand for a political voice are deemed to be country or group specific.

Theoretical studies of the politics of groups' rights and representation comprise a second important strand of thought that underpins our approach. Under a variety of rubrics including multiculturalism, diverse constitutionalism, liberal nationalism, and the politics of difference contemporary theorists have sought a normative and an institutional response which reconciles the stability and integrity of liberal democratic states with demands for internal selfdetermination. These works encompass investigations of the normative implications of group-differentiated forms of self-government (Tamir 1993; Kymlicka 1995; Tully 1995) and representation (Young 1990; Phillips 1995; Williams 1998); debates over criteria established to differentiate between aliens and citizens of the national group (Brubaker 1989; Nuhoglu 1994; Carens 1995); questions relating to the distribution of citizen rights and responsibilities within the group (Rawls 1971; Galston 1991; Kymlicka and Norman 2000); or the challenges of balancing group-differentiated citizenship with the integrity and governability of multinational states (Habermas 1982; Diamond and Plattner 1994; Gagnon and Tully 2000). More generally there is a growing body of work looking at the increasing appeal and spread of democracy and calls for its renewal and re-institutionalisation in the face of the dual pressures of globalism and localism (Held 1995; Bellamy and Castiglione 1996; Archibugi *et al*. 1998).

This body of theoretical literature has advanced the debate over groupdifferentiated rights and representation along several fronts. It has contributed both to the articulation of demands for group-differentiated forms of citizenship and rights, and to the advancement of innovative justifications of these demands, highlighting in the process their significance not only to the academic community but to political leadership as well. Our aim is to build upon this work by delving into some of the intellectual terrain which has remain largely unexplored by the dominant theoretical paradigms. In particular, we seek to address the widening gap between the theory and practice of self-government and representation for sub-state nationalists. For some time states have been negotiating and implementing different institutional arrangements designed to provide a political voice for national groups within their borders. In these cases, national groups have in some sense gained the recognition and presence that is stressed by writers who favour group rights. However, in other aspects there is little in common between the theoretical literature and political reality. Many states have already confronted or simply bypassed the question of justifying selfgovernment for their sub-state national groups in favour of the implementation of various forms of self-rule (Canada 1995a). The question remains, however, whether the many innovative institutional solutions implemented by governments meet the standards established by normative theorists and by the representatives of the various national groups in question.

This study seeks a head-on confrontation with this problem by establishing a closer and more equitable partnership between theory and practice. Our methodology grounds theoretical discussion in concrete case studies, working back and forth from both sides in a manner which John Rawls might refer to as a 'reflective equilibrium' (Rawls 1971:578–9). As such, it avoids on one side the pitfall of objectivism—the abstraction from particular cases of a set of rigid and universal principles and institutions to govern all cases—and on the other side subjectivism—the radical refusal to consider similarities or affinities across a range of different cases. Additional benefits of this methodology include its rejection of the misleading distinction between indigenous nationalism and more standard examples of sub-state nationalist mobilisation, and its treatment as a global phenomenon that which most previous works have treated as a series of localised political struggles.

Comparative analysis forms the third strand of our analysis, and here several questions are germane. The most basic issue here relates to the relative degree of authority and influence enjoyed by different groups whose demands are met with a broad spectrum of institutional means. A second key question asks how these schemes differ in terms of the legitimacy they command, both in the eyes of the national group and the citizens of the larger state. A third comparative question is the extent to which solutions will fit a variety of circumstances. There is a tendency either to ignore or to dismiss the solutions developed for a particular national group in one country as categorically inappropriate in another. For example, institutional responses to the movement for indigenous self-determination in Canada are often understood to be inappropriate in New Zealand and Australia and vice versa. This perspective is based on the misconception that Aboriginal self-determination in

Canada entails exclusively wide-ranging powers of self-government for Aboriginal populations concentrated on a large and relatively isolated land-base. On the contrary, options for indigenous self-determination in Canada cover the entire spectrum of institutional possibilities, ranging from powers of consultation and the delivery of services, through various forms of municipal powers and resource management boards, to larger-scale public or ethnically constituted forms of selfgovernment. By drawing attention to this greater variety of differences within differences and to the range of potential institutional responses available, this study hopes to contribute to a more fruitful exchange of ideas and solutions across different cases and contexts.

Blending the three approaches means that comparative case material is described and analysed in terms of institutional design and interpretation of group rights and representation. Of particular interest is the desire to understand the impact of different institutional arrangements and this can only be gained through rigorous comparative analysis. Step one in this process is to develop a classification framework, or matrix, based on the nature of the political voice that is delivered to the national group.

The matrix

The matrix is constructed around two separate variables measuring the type and the extent of the political voice in question (see Table 1). Together these variables encapsulate the various ways in which members of the sub-state national group may have their views heard in the political processes of the state. The core questions relating to the rules that comprise an institution (Dowding 1994:108) are incorporated in the matrix. 'Type of voice' draws on ideas of group representation, and speaks to issues of who chooses the group's representatives and how many of them are present in a particular decision-making body. 'Extent of voice' draws upon the policy-process literature and is concerned with where in the decision-making process the group's representatives are granted access.

Looking first at the categories for type of political voice, at one extreme a group has control when they can guarantee to win a vote either because all members of the political unit are from the sub-state national group or when parallel consent or veto arrangements are used. When there is not a controlling situation then the group may be guaranteed proportionate presence: the number of representatives will alter as the population base grows or shrinks. At the other extreme a symbolic voice means that the state designates one or more places for a group on appropriate bodies in recognition of the group's distinctive needs. Whatever the size of the national group's presence, another vital democratic question is the way in which the people are chosen. Is the representative selected or elected: a voice from the group or for the group? If the representatives are a voice for the group then they are acting on the group's behalf and so there must be accountability back to the group members, usually through elections. In other

Table 1 Classification of political voice

	TYPE					
		Controlling	Proportionate elected	Proportionate selected	Symbolic elected	Symbolic selected
E						
X	Can set the agenda					
T	Can propose solution					
E	Make decisions					
N	Implement & deliver					
T						

cases the members are chosen because they are from the group and are thus deemed capable of representing the perspective of group members. Using the five categories shows a progression from group recognition with people chosen by government, through the ability to hold representatives accountable using elections, to a larger presence and the guarantee of control over at least some issues. Therefore the categories, while not being a true continuum, cover the main types of political voice and show a progression of impact. This part of the matrix is explained in detail in Chapter 1.

Whoever has the voice for the group, the other crucial factor is the extent to which these people have access to the decision-making process. Many calls for self-determination relate to the idea of a distinctive set of needs or beliefs and thus a desire to play a part in policy creation on certain issues. Here the publicpolicy-process literature is used to create meaningful categories. Although not conducted in a purely linear fashion, all policy-making will go through each of the following stages: an issue is

raised; possible solutions are discussed; a decision is made; implementation and delivery details are worked out (Dahl 1956; Catt 1999a). For input at the earliest point the members of the group in the political institution need to be able to raise an issue that concerns the group and have it accepted as part of the working agenda. If the group members cannot place an issue on the agenda, then can they suggest alternative solutions for issues that are already on the agenda? Failing this then the next stage is the ability to take part in the official decision once the issue has been clarified into a proposal. Again there are possibilities of helping to refine the proposal and in voting on the presented package. If group members have played no part in these three stages then do they have a role in the delivery or implementation of the decision? In particular can they play a role in determining provision for members of their group and introduce some variation in the general policy to suit the needs of the group? In creating the classification framework there is an assumption of a continuum: if you can place an issue on the agenda then you will be able to participate in all other aspects of the process too. Therefore the question is the earliest point that group members are guaranteed access, either on all issues or on specified ones. Chapter 2 covers this variable in detail. While both of the variables can be constructed in terms of a continuum they do not constitute strict hierarchies. As discussed in Part III, a sub-state national group could conceivably achieve its aims through implementation and symbolic representation, each at the bottom end of their continuum.

Our hope is that the matrix will be useful for classifying and then analysing all arrangements that states have made, or are contemplating, for national groups within their boundaries. Placing different arrangements within the matrix focuses attention on the form of the political voice and also facilitates analysis with the matrix categories acting as either the variable to be explained or used as an explanation: dependent or independent. Using matrix placement as an independent variable the different types of institutions can be assessed and compared in terms of their legitimacy, stability and ability to deliver on well-being for the group. Used as a dependent variable, questions about the extent to which one institutional arrangement can be used for a variety of groups can be assessed. For instance, are the workable solutions for dispersed groups necessarily different than those for a geographically concentrated group and does the relative size of the group matter? This new matrix provides both a high degree of theoretical sophistication and a keen sensitivity to the nuances of institutionalised representation in applied contexts.

The cases

One of the most difficult decisions in a comparative study is which cases to use. Having too few limits analysis while too many hinders completion of the study. Another important consideration is the basis of comparison: should one concentrate upon those cases with similarities or with vast differences? In this study the aim was to have a large number of examples taken from a small number of countries. Each case is an institutional structure that has been created with the intention of providing a political voice for a sub-state national group. To accommodate both a wide range of cases and sufficient similarity of political context to allow comparison, the cases in this study are taken primarily from four countries: Australia, Canada, New Zealand and the United Kingdom. So cases relate to Aboriginals, Torres Strait Islanders, Inuit, Québécois, Canadian First Nations, Maori, the Scots, the Welsh plus the Unionist and Nationalist communities in Northern Ireland. These countries are linked by their common colonial experience, with Britain occupying the role of the dominant foreign power in each case. Due in large part to this fact, they also share a political history and tradition rooted in the Westminster system, although Australia and Canada are federal. The commonality of political traditions with ideas such as parliamentary sovereignty, one party government, committee consideration of legislation, and an official opposition provide a framework for the analysis and allow comparison to concentrate on differences without a constant need to look at the differential impact of the basic political structure. A few examples are also used from the USA as it shares with three of the case countries a history of British settlement and thus the need to deal with displaced indigenous populations. Also significant is that governments in each of the five countries have sought to allow these substate national groups some means of self-government or self-administration within a circumscribed set of jurisdictions. Furthermore, in each case there is a substantial degree of cross-party acceptance of a need for political arrangements for the sub-state national group, although the method used to provide a voice is frequently the subject of debate.

Many will seek to challenge the combination of indigenous groups with more widely recognised examples of sub-state nationalism, but we feel this objection is misguided. Despite obvious differences in terms of economic and political capacity, demographics, and territorial concentration, these two groups share several characteristics which justify their pairing in a comparative study. These include similarities in terms of their self-identification as separate societies with distinctive languages, cultures and traditional forms of economic activity and governance. Moreover, they articulate a similar claim to collective self-determination, anchored both in their distinctive character and in their historic occupation and sovereign control of their traditional territories. This latter claim is of particular importance in distinguishing indigenous peoples from other culturally distinctive groups such as immigrant minorities, with whom they have been mistakenly categorised in previous theoretical discussions (Kymlicka 1995: chap. 2; Requejo 1999; Murphy 2001a).

While using examples from just five countries, three of them contain more than one national group so together they encompass many national groups ranging in size and spatial distribution. There are the indigenous peoples of Australia, Canada, New Zealand and the USA each of which claims inherent rights to self-government. Prior to European settlement in Canada and the USA, the indigenous inhabitants existed as a diverse collection of distinct societies, each with its own language, culture, laws, and forms of government. The conjunction of these elements forms the primary basis for their claim to prior sovereignty, though many of the groups signed treaties with the state which, in their understanding, enshrine their continuing status as independent and selfgoverning peoples. Likewise, in New Zealand most of the Maori chiefs signed the Treaty of Waitangi with the crown to specify the political relationship among the two peoples, and Maori interpret the Treaty as a recognition both of their distinctive forms of life and their *tino rangatiratanga* (complete self-determination) respecting their communities and territories (Sharp 1997; Durie 1998). Aboriginal tribes in Australia have no treaty, indeed the claim that Australia was a *terra nullius* prior to European settlement was maintained through most of the twentieth century and Aboriginals were not included in a census until 1967. Nevertheless, calls for self-determination similar to those voiced by indigenous peoples worldwide are common currency in the ranks of their activists and leadership, and in academic analyses of their struggle (Dodson 1996; Reynolds 1996; Zimran and Fletcher 1996).

Among the more classic examples of national groups included in the study, we find similar arguments underlying their political claims. Scotland and Wales were separate countries prior to Union with England and assert this as one part of their claim to self-government In each case there are also arguments of a distinctive civic or political culture. Scottish claims to a distinctive culture are based on the different educational, legal and church structures contained in the 1707 Act of Union and, more recently, in more collectivist political beliefs (Brown *et al.* 1998: 18–21; Curtice 1999; Keating 1999:176). In Wales there is an argument that there is an historic radicalism (Phillips 1997:103) but this is not universally accepted. The Welsh language, spoken by a small but growing proportion of the population, is another source of nationalist sentiment, and its protection is seen as a crucial part of self-determination (Curtice 1999; Paterson and Jones 1999). Claims for self-determination in Quebec are grounded in the belief among nationalists that the terms upon which they initially entered the Canadian federation were altered without their consent. What makes this even more objectionable from a Québécois nationalist perspective is that it has altered the federal compact in such a way as to threaten Quebec's legislative and constitutional capacity to preserve itself as a distinct national culture among its overwhelmingly Anglophone neighbours (Thomson 1973; Taylor 1993; Laforest 1995). Quebec nationalism is also inextricably tied up with a distinctive Francophone identity, and a corresponding desire to preserve and promote the French language and culture through state institutions. The Quebec case is complicated by the presence of two competing political claims inside the province. First, there is a large Anglophone enclave centred in the Montreal region whose primary attachment is to the larger federation, and which is hostile to the idea of Quebec independence. Second, numerous indigenous groups claim their own right to self-determination and are equally hostile to any attempt to remove their traditional territories from the Canadian federation (Grand Council of the Crees (Eeyou Astchee) 1998). The Northern Ireland case exhibits similar complexity: there is recognition that the territory as a whole is distinct from the rest of the United Kingdom, yet within its borders there are two distinct but geographically intermixed groups each claiming a need for a political voice, with no other dominant group present Moreover, despite an extraordinary degree of cultural similarity among the two groups, a fact that they themselves tend to recognise, each manifests a distinct and powerful national identity which differentiates them from the other. These competing national identities coincide almost precisely with the religious divide, but the nationalist conflict relates to territorial dominance and the proper boundaries of the state rather than differences over religious doctrine (or culture) (McGarry and O'Leary 1995:171–213; Moore 1999:34–8). The Protestant majority wants to maintain its position as part of the Union of Great Britain and Northern Ireland whereas the Catholic minority wants to break links with Britain, and many want re-union with the Republic of Ireland in the south creating one nation in the island of Ireland. Each side fears domination and oppression by the other if political rule is not in their hands.

The five countries provide a wide range of institutional examples for the matrix, encompassing the new, the well-established, the dissolved and ideas that were never implemented (see Appendix). Each state seems to find distinctive solutions for each national group's claim to self-government. In Britain each of Scotland, Wales and Northern Ireland has a distinct assembly; and within Canada there are different arrangements for Quebec and each of the First Nations. Political arrangements also range across the levels and forms of government so that some are part of the central government, such as special parliamentary committees, others equate with local government, and others again refer to policy on one issue. The institutions also range in the length of time they have existed and the extent to which they are seen as successful by the national group and government Institutional theorists assume that structures will need to be changed because society changes and designers make mistakes. Therefore, where possible, historic structures that are no longer used are included amongst the cases. For instance in looking at Northern Ireland it is instructive to include Stormont as well as the Northern Ireland Assembly created through the Belfast Agreement.

The book chapters

The book is divided into three parts, following the analytical process. The matrix is constructed and explained in Part I, the cases are fitted in Part II, and the types are used as variables within analysis in Part III. Chapter 1 develops the idea of types of political voice and specifies what the variable is meant to measure. It begins by articulating and defending the conceptual foundations of group-differentiated approaches to representation in general, moving from here to an exploration of our particular interest in the phenomenon of sub-state national groups. In the process, several key issues within the debate on group representation are addressed, including criteria for membership and participation in the group's decisions; what sorts of internal divisions exist within the national group based on characteristics such as gender, culture and language; and the relevance of the distinction between ethnic and civic forms of nationalism. Chapter 2 follows the same process for the variable measuring the extent of the political voice, and here the associated issues mainly relate to arguments about jurisdiction. Examples include arguments about which types of policy are covered and which people are affected; the relative vulnerability of delegated as against constitutionally guaranteed powers; and what happens in cases of overlapping and concurrent powers. Near the beginning of Part II, Table 2 provides basic details on all of the cases, and the chapters which follow flesh out the ways in which each case fits within the matrix. The cases are split between those that form a separate legislative body (Chapter 3) and those that provide a voice which is more circumscribed and integrated with existing governing structures (Chapter 4).

Analysis, using the matrix as a variable, forms the basis of Part III. Starting with a comparison of the matrix with the normative literature, analysis then turns to questions of legitimacy. The question which drives Chapter 5 is whether the institutions categorised in the matrix deliver the forms of political voice called for in the normative literature on group rights and self-determination. Specific sub-themes include group presence, institutional access, jurisdiction and structural autonomy. Structural legitimacy based on ideas of institutions which follow accepted norms and are voluntarily used is the dominant theme of Chapter 6. This includes a discussion of the tensions between western liberal democratic norms and the traditional processes used by many indigenous groups. Chapter 7 discusses the practical applicability of the matrix as a means of shopping for institutional solutions to suit national groups characterised by a variety of different needs and circumstances. Specific scenarios to be considered include situations where there is an absence of trust, or where the group in question is territorially concentrated, dispersed or urban-centred. Potential modifications to existing institutional solutions involving their relocation in the matrix are also considered. In the conclusion we provide a brief summary of the findings and highlight some profitable areas for further normative and institutional research on the question of sub-state national self-determination.

Part I

Creating the matrix

1
What type of political voice?

Step one in the construction of the matrix is a detailed analysis of the variable measuring the type of political voice. Having a voice in the political system necessitates participation in person or through a representative. As the cases used here all work on the principle of representatives making decisions on behalf of the larger group, discussion will concentrate upon ideas surrounding representation. The chapter begins by confronting the charge that groups are not viable units of analysis in democratic or indeed any political theory. After laying this charge to rest we construct a working definition of the particular type of group we are studying, giving it the label of 'sub-state national group'. In particular, this definition is concerned to address questions regarding what differentiates a sub-state national group from other ethno-cultural groups, and how group membership is determined. In the course of addressing these questions, we take up some of the more pressing conceptual and empirical objections to group-differentiated political theories. Examples from the five country studies serve to interrogate and thereby clarify our analysis. The second part of this chapter considers a variety of arguments about group representation and in particular two key questions: how many representatives are needed, and how are they to be chosen? Our goal is to canvass the range of answers provided to these questions in the existing literature, drawing the necessary links among them in order to derive a set of distinct and analytically useful categories for classifying political voice. These categories are summarised in the final section of the chapter.

Are groups viable political units?

Opponents of group-differentiated political theories have marshalled a broad and diverse set of arguments in defence of their claims (Kukathas 1992; Waldron 1992; Barry 1998; Offe 1998; Jones 1999a; Lusztig 1999). In this section we take up one particular line of critique which strikes at the heart of our enterprise in this book. This is the charge that the process of identifying groups for the purpose of conferring special rights is arbitrary if not unintelligible, and therefore practically unworkable. These charges are most common among liberal political theorists, who naturally assume that the process of identifying individuals (as opposed to groups) for the purpose of assigning particular rights and entitlements is comparatively unproblematic in theoretical and practical terms. We intend to show that the confidence with which this assumption is made is not matched by the strength of the arguments available for its defence. Specifically, this sharp distinction between the processes of individual and group definition is grounded in indefensible assumptions about the nature of language and conceptual clarity. Definitions of the individual for the purpose of rights assignation are no less arbitrary and contestable than corresponding definitions of groups. This fact has simply been obscured by the failure to subject individualist accounts of rights to the same degree of scrutiny as group accounts, which constitutes an unjustified logical double standard. A more coherent and productive debate between proponents of individual and group rights can be joined by dropping this double standard, and focusing instead on how these two different types of rights can be combined and balanced in theoretical and practical terms.

We begin with an example from the Canadian debate. In the context of a discussion of Aboriginal rights, Bryan Schwarz concludes that the process of group definition is crude, arbitrary, inherently inegalitarian, and inevitably perniciously discriminatory (Schwarz 1991). In his view, fair and equal treatment of people is infinitely more satisfactorily achieved by focusing on the level of the individual:

> For all the variety among human individuals, there is a core of shared identity at the most basic level; everyone is born, lives, dies; everyone consists of one, and just one, being whose experiences belong to the same realm of consciousness, one that is forever separate from everyone else's.
>
> (Schwarz 1991:34)

The same basic sentiment is expressed by Claus Offe in the context of a more general assessment of the literature on group rights and representation. In his terms, meeting the demands of citizen equality by bestowing special group rights on minorities is a process fraught with ambiguity, because the question of what constitutes a deserving group and what sorts of

rights they deserve is inherently contestable and therefore prone to the dynamics of proliferation and escalation (Kukathas 1992; Fierlbeck 1996; Offe 1998:139; Tempelman 1999). In other words, the contingent and contested nature of the process of group definition leads to an unmanageable proliferation of group definitions and group-based claims to rights and recognition (Lusztig 1999:460).

The upshot of both these accounts is that we are on much firmer ground if we stick with the idea of the individual and individual rights, but is this assumption justified? Is it true that the process of defining individuals and assigning them rights avoids the pitfalls of contingency and contestation? To his credit, Schwarz at least acknowledges the formidable challenge states face in deciding what qualifies as inherently or universally a human trait, and which other characteristics warrant differentiation in terms of responsibilities and entitlements, but he is convinced that there is enough 'ontological similarity' among individ uals to facilitate 'largely rational' and 'somewhat successful' answers to these questions (Schwarz 1991:34). What exactly does he have in mind here? One way of interpreting this claim is to view it as a form of essentialism: the idea that one can isolate and describe that which comprises the human essence or the common core identity which exists prior to and independent of our particular and idiosyncratic characteristics as individuals. This is not a promising justificatory strategy. The consensus in most contemporary philosophical circles is that the centuries-long quest to identify a human essence has been a spectacular failure, a project whose own terms of reference may not even bear close epistemological scrutiny. Foundationalist philosophers have consistently proven themselves incapable of demonstrating that their accounts of the human essence, despite all of their claims to objectivity and universality, are anything more than contingent human constructs, coloured by contingent human values, assumptions and purposes (Rorty 1989; Taylor 1989; Nietzsche 1990; Young 1990).

Yet it is possible that Schwarz is articulating the seemingly more modest claim that the definition of the individual identity can be accomplished with much greater rigour and precision than definitions of group identity. Nevertheless, if we are to judge this claim by Schwartz's own efforts in this regard, the outlook is not favourable, since it is difficult to see how relatively mundane observations to the effect that all individuals live and die and are possessed of a single and separate consciousness tell us much of anything about how to distribute rights, responsibilities and entitlements in a democratic state. Schwarz indicates his awareness of this problem but can provide only vague assurances that 'largely rational' and 'somewhat successful' solutions can be found. Where is the clarity and objectivity in such an approach? Offe is even less forthcoming in this regard, in that he neglects to offer any account of the rights-bearing individual to contrast with his critique of rights-bearing groups. In fact, the comparative ease and simplicity of the individual approach to rights assignation is often simply assumed instead of argued by liberal individualists. One of the key reasons for this oversight stems simply from the pervasiveness of the individual rights discourse in the public cultures and public policies of western liberal democracies, such that it has taken on the status of an unquestioned background assumption of their socio-political worldviews. A second key reason is the tendency to see the rights-bearing individual as a 'natural' political unit or physical particle, unlike rights-bearing groups which are recognised as mere social constructs. What could be more natural or fundamental than the individual? Unlike groups, which are almost infinitely divisible into further sub-groups—the so-called 'Russian doll' syndrome—the individual constitutes a natural physical stopping point. The individual cannot be further subdivided (Lusztig 1999: 464–5, 470).

If we conceive of the individual rights-bearer in these crudely physicalist terms, the process of assigning rights and entitlements would indeed be rather simple: to each individual particle an equal measure of rights. However, the mere physical distinguishability of individual human beings provides neither the sole nor even the primary rationale on the basis of which they are assigned rights and entitlements in contemporary liberal theory or practice. Indeed, the class of individuals is further subdivided into a plurality of subclasses of individuals with varying rights and entitlements. Moreover, these sub-divisions and corresponding rights assignations are established on the basis of criteria which are contingent, frequently imprecise and often vigorously contested. We do not have sufficient space to treat this question fully here, but a few brief examples should help illustrate the basic point. Take the example of the established distinction between the universal class of individual human particles—humanity at large—and citizens—those who are members of particular states. The distinction here is between individuals who either are or are not entitled to rights by virtue of membership. Critics argue that this distinction between citizens and aliens is arbitrary from a liberal point of view, perhaps even a fundamental breach of liberal respect for the individual *qua* individual (Booth 1997). One critic goes so far as to describe citizenship in rich western democracies (and its attendant rights and entitlements) as the modern equivalent of feudal birthright privileges (Carens 1995: 332). Of course one could cite a host of persuasive liberal counter-arguments to this position (Miller 1988; Tamir 1993: chap. 7); however, the point is not to take sides in this particular debate but simply to demonstrate that its very existence poses a serious challenge to the view that assigning rights to individuals is an uncontroversial and conceptually unproblematic enterprise. Turning to some examples *within* liberal states, it was not that long ago in Canada and the United States that women, indigenous peoples and certain ethnic minorities were excluded from the class of individuals entitled to political rights. In each of these cases, being an individual in the physical sense was insufficient to gain access to rights if one was judged to be in a state of intellectual or moral infancy. Such judgements were a standard and legitimate feature of liberal theory and state practice well into the twentieth century (Spinner 1994:1–32; Parekh 1995). A somewhat less pernicious contemporary example is the case of children excluded from the franchise. Is it not reasonable to ask why the legal voting age should be set at 18 or 19 rather than

14 or 15, or even lower? Are these numbers derived by means of objective and incontestable scientific decision rules or is there not a certain measure of arbitrariness to them? Contemporary democracies are replete with such, arguably arbitrary, age standards: mandatory retirement after age 65; motor vehicle licensing restrictions applied to those under the age of 16; and prohibitions on the purchase or consumption of alcohol applied to those under the age of 21. Moving to another set of cases, there are deep and abiding disputes over what properly constitutes a fully formed or functioning human individual to which even the most basic rights can legitimately be assigned, including the right to life. Foetal rights in the abortion debate and the rights of brain dead patients in the euthanasia debate are two examples which pose enormous intellectual and moral challenges in this regard. Correspondingly, these issues provoke the most bitter and intractable disputes amongst their loyal supporters. Taking one final example, others challenge the sharp distinction between humanity and the rest of the animal kingdom, thereby seeking to extend the category of the 'individual rights-bearer' to a broader range of sentient beings. For example if, as theorists such as Rorty argue, liberals ought to view their bond with other human individuals as being anchored, not in something like a common or universal rationality, but in a common susceptibility to pain (Rorty 1989:92, 192), the question is what reason do we have to restrict this solidarity to the human community rather than extending it to all beings capable of experiencing pain and suffering?

These are just a few examples of the contingent and contested nature of the process of constructing 'individuals' and assigning them rights in liberal theory and practice. Perhaps one might conclude on this basis that both individual and group-based accounts of identity are hopelessly vague and arbitrary, but this also would be a mistake, because contingency and contestedness are not fatal flaws but normal features of political discourse, not to mention political practice. As Wittgenstein demonstrated almost half a century ago in his attack on foundationalist accounts of language, the insistence on the crystalline purity of definition was a *requirement* and not a *result* of philosophical investigation. Which is to say that despite their unavoidable contingency, we can and in all aspects of our lives *already do* agree upon understandings of words that are sufficient for our various human purposes (Wittgenstein 1984: sects. 107, 109–33). Take the example of the principle of exactness of measurement. If I want to cut a piece of carpet to fit a room accurately I need to have a measurement which tells me how many metres, centimetres and perhaps if I want to do a professional job the number of millimetres I am working with. What I do not need to know is how many tenths or thousandths or millionths of a millimetre I am working with even though this would constitute a more accurate measurement. The point is that my original measurement is perfectly suitable to the purpose I have in mind, and to ask for greater accuracy is irrelevant to this purpose and even a bit mad. The error of critics like Schwarz and Offe is not to draw attention to the difficulties associated with group-differentiated political theories, for these sorts of critiques can be very useful and edifying, and as such deserve to be taken seriously. Instead, it lies in their *categorical* dismissal of these theories on the basis of a standard of conceptual clarity which neither their own individualist accounts nor any other political theory could possibly meet. A more productive approach is to consider the benefits and shortcomings of specific theoretical and practical approaches to individual and group-differentiated rights, and to explore the various means by which they can be combined and coordinated in multicultural and multinational democratic states. Such a debate already been widely and vigorously joined by normative political theorists (Young 1990; Tamir 1993; Taylor 1994; Kymlicka 1995; Phillips 1995; Tully 1995; Benhabib 1996; Williams 1998; Carens 2000; Kymlicka and Norman 2000). In the remainder of this chapter, and the rest of the book, we explore a previously underemphasised dimension of this debate, focusing in particular on the example of sub-state nationalism.

What is a sub-state national group?

As sub-state national groups are at the centre of this study a working definition is essential. A nation refers to a collectivity of people living within an existing state who express a strong sense of identification as a distinct nation. The term substate highlights the fact that state power and institutions are primarily in the hands of a larger and more dominant nation(s) with whom these groups coexist. What, then, is a nation? Defining the nation has been a notoriously difficult and contentious task (Gellner 1983; Smith 1986; Greenfeld 1992; Hobsbawm 1994). Indeed, many political commentators readily acknowledge the existence of nationalism while simultaneously dismissing the idea of a nation as some kind of fabrication or illusion. Others reply that myth-making is a key feature of most political communities, including states, hence it is disingenuous to single out substate nations for special criticism in this regard (Anderson 1991:1–7). Conceptual debates aside, the political salience of nations is something neither their defenders nor critics deny. Among those who accept the challenge of definition, a consensus has emerged around the idea that nations are marked by both objective and subjective characteristics (Canada 1995: 178–81; Harty 1999: 670; Mayall 1999:478–9; Seymour 2000:237–8). Objective characteristics refer to various features in terms of which a nation can be described, such as kinship ties, a shared language and culture, association within and governance of a historic territory or homeland, common socio-economic, legal and political institutions, shared myths and symbols, and common values, beliefs and traditional lifestyles. The subject dimension refers to the members' sense of themselves— their identity—as a distinctive nation, which derives from some combination of these objective characteristics. This includes a sense of solidarity and common destiny with fellow nationals and a corresponding sense of differentiation from other nations

or ethnic groups and their members. Hence Renan's dictum that 'A nation's existence is…a daily plebiscite, just as an individual's existence is a perpetual affirmation of life' (Renan 1990:19). This subjective element also encompasses a nation's desire to preserve and promote its national identity via the right to national self-determination. This sense of solidarity and political consciousness may develop partly as a consequence of a nation's experience of domination or oppression at the hands of another nation or simply by the close proximity of another nation, but this question of origins is not part of our central concern here. What we wish to do in the remainder of this section is explore some of the important nuances of our definition of a sub-state national group. These include the interplay of objective and subjective factors; differences between national and other ethnic groups; the issue of fractured identity; and the difference between civic and ethnic nationalism.

First, there is no necessary connection between the objective and subjective elements of nationhood. In other words, sharing objective characteristics such as culture and language does not necessarily lead to a distinct national identity or the politicisation of that identity in other words, nationalism. One has to recognise the role played by the subjective element of individual and collective choice. This logic cuts both ways. On the one hand, it is possible that a group may share very little in the way of common objective characteristics, such as culture, memories and traditional values and yet manifest a distinct and powerful national identity. As many commentators have remarked in the case of Israel, a national identity can be anchored in little more than the perception of an external threat and an attachment to a particular piece of territory (Spinner 1994:169–70). On the other hand, a group may share a great deal in the way of language, culture, myths and symbols and yet manifest no subjective sense of national identity. The Romany of Central and Eastern Europe and the Sorbs in Germany are two good examples (Spinner 2000). From another perspective again, two groups may look and feel almost identical in terms of language and culture and yet manifest radically different national identities. The example we have in mind here are Unionists and Nationalists in Northern Ireland (see Chapter 3). One final point we would like to raise in this context is that national identity, as with all forms of identity should not be viewed as fixed or frozen in time. It is not inherently unstable or chaotic but it is characterised by a fluidity based on changing institutions, contexts, and the forces of individual and collective choice (Seymour 2000:229–30). Quebec nationalism, for example, waxes and wanes in response to a variety of contextual factors, not the least of which is the degree of sympathy or hostility with which its traditional demands are greeted by the federal government in Ottawa.

A second broader, but related, observation is that not every national group will possess the same objective or subjective characteristics. As we foreshadowed in our response to critics of group-differentiated political theories, the concept of a nation, like all other concepts, is marked by a degree of indeterminacy. Following Miller:

> Instead of believing that for any given nation there is a set of necessary and sufficient conditions for belonging to that nation, we should think in terms of Wittgenstein's metaphor of a thread whose strength 'does not reside in the fact that some one fibre runs through its whole length, but in the overlapping of many fibres'.
>
> (Miller 1995a:27)

The Welsh people serve as an interesting illustration of this point. They qualify as a sub-state national group in a relatively straightforward manner in terms of territory, shared memories and historical experiences, and common institutions, but they have also experienced significant losses to their traditional language and culture. Moreover, the sense of national solidarity and commitment to the Welsh nation is somewhat more muted than in Scotland (Brown *et al.* 1998:208–14), and tends to be anchored less in a sense of historic Welsh cultural identity than in a 'modern' and forward looking commitment to Welsh socio-political and economic institutions, in combination with a ready acceptance of Wales' place in a broader partnership within the United Kingdom and Europe. It remains, nevertheless, a national consciousness distinctly different from competing forms of identity such as those of multicultural groups (McAllister 1998; Keating 1999; Taylor and Thomson 1999). Turning to another example, indigenous peoples in Canada, New Zealand and Australia have suffered significant erosion of their traditional languages and cultures, in the case of many languages to the point of near extinction. These national groups have also had much of their traditional territories confiscated or otherwise encroached upon by settler populations; moreover, significant numbers of their members (in certain cases a majority) currently reside in urban areas where a land base is non-existent. These peoples nevertheless can still be classified as national groups in the sense that they have common ancestry and kinship, shared historical memories and experiences, a strong sense of communal solidarity and mutual commitment, a claim to historic sovereignty and self-government, and a political consciousness which distinguishes them from groups like religious or ethnic minorities. To elaborate, a recent immigrant group may share a language and ethnic background, an attachment to certain traditional values and practices, and a sense of communal solidarity, but they lack a territorial claim, a historical status as self-governing peoples, a political consciousness as a nation and a corresponding commitment to nationalist goals and institutions. Even in situations wherein the institutional solutions for both types of cases may bear a striking similarity, the difference in terms of the nature and authority of their claim is of crucial symbolic importance (Murphy 2001a). An example from the 1999 APEC meeting in New Zealand illustrates this point nicely. When it was suggested that a performance by a group of Pacific Islanders, a 'recent immigrant' group in New Zealand, would be used as part of the official

greeting of world leaders at the Auckland International Airport, Maori spokespersons were very clear that this would be unacceptable, on the grounds that it was part of their authority as the *tangata whenua* (the people of the land) to perform such a greeting (Knight and Larkin 1999).

A third issue derives from accepting that most individuals recognise in themselves several different, sometimes overlapping sometimes cross-cutting, sources of identity. Some multiple identities refer to different disaggregations of the national group. For instance many Maori in New Zealand identify not only with a larger conception of Maoridom but also with their respective *iwi* (tribes) and *hapu* (sub-tribes) (Fleras and Elliot 1992; Sharp 1997; Durie 1998; Sharp 1999). Likewise parts of the populations of Scotland, Wales and Quebec share their attachment to their sub-state national group identity with a strong identification with the larger country or federation of which they are a part. All of these differing forms of identity are further cross-cut by identifications based on gender, class, urban or rural differentiation, and adherence to or rejection of traditional values, practices and institutions. Northern Ireland provides a somewhat unique example in this regard, given that there is such a high degree of coincidence in terms of class, religious and political identification. Nevertheless, in most cases it should also be emphasised that these multifarious forms of identity are not always compatible with one another. For instance organisations such as the Native Women's Association of Canada have challenged interpretations of indigenous identity and nationhood which are controlled by indigenous male elites and which they feel perpetuate the domination and oppression of indigenous women (Moss 1990; Nahanee 1993; Murphy 1996). These problems of group identity are considered further in the next section, which canvasses the issue of determining group membership, and are considered again in Chapters 3 to 5, when we examine potential institutional means of responding to forms of internal diversity.

A fourth and final area of contention in group-differentiated theory that has direct relevance to this study is the issue of civic versus ethnic forms of national identity. Standard accounts of nationalism tend to make a sharp distinction between (good) civic nationalism and bad (ethnic) nationalism (Nodia 1994). Ethnic nationalism, we are told, posits an unchosen form of national identity, grounded in strict ethnic or racial criteria of membership and the national interest. Consequently, it tends to be associated with virulent, exclusionary and often murderous examples of nationalist mobilisation. Civic nationalism, in contrast, tends to be viewed as civilised nationalism, invoking far more inclusive and liberal criteria of membership and governance which have no connection with objective characteristics such as ancestry, language, culture and ethnicity, and hence it is associated with few if any of the unsavoury political correlates of its ethnic cousin (Habermas 1982; Renan 1990; Mostov 1993; Ignatieff 1994). However, this sharp distinction does not hold up under scrutiny with respect to either the question of characteristics or of consequences. Recent investigations into the theory and practice of nationalism reveal a much more complex reality which always takes part in some combination of both 'civic' and 'ethnic' elements, hence the more relevant questions are which characteristics and which consequences predominate in particular cases, why do they predominate, can they be justified, and if so how can they be accommodated? (Tamir 1993; Kymlicka 1995; Smith 1995; Requejo 1999). The civic/ethnic distinction does not play a large role in this study, but it does have clear relevance in the following section on group membership.

Defining group membership

We turn now to the practical and theoretical question of how to determine membership in the national group. In other words, which individuals are eligible to enjoy the rights and entitlements which membership provides? Two aspects of this question are of particular relevance to this study: representation and jurisdiction. In the remainder of this chapter, we investigate questions relating to who can be a representative and which group of people are represented. In the next chapter the issue of which people are covered by decisions taken by the sub-state national group are canvassed. Interestingly, answers to the two sets of questions are not necessarily identical, even within one case study, suggesting that membership can have multiple, context-specific definitions. Most commonly, membership is based on one or more of the following: physical presence in and willingness to abide by the laws and institutions of the community; community acceptance; ties of ancestry, kinship and marriage; and linguistic and cultural affiliations. Issues also arise around the differences between traditional or historic understandings of membership and those created in recent decades. Differences between popular understandings of membership and criteria that have been specified in government legislation must also be borne in mind.

We begin by introducing some of the more general issues in the debate over membership. Specific membership criteria will be covered in the detailed case descriptions in Chapters 3 and 4 and in Table 2 in the introduction to Part II. A quick look at the cases illustrates how complex and variegated are the issue before us. In both Scotland and Quebec a proportion of the population links membership to ethnic criteria such as ancestry, culture and language. This linkage is present though less prominent in the Welsh population (Curtice 1999: 124–8; Paterson and Jones 1999:183–7). For some nationalists, ethnic criteria of membership take absolute precedence over others. In Quebec, there is a wellknown distinction between Québécois de souche (Quebecers with roots or ancestral ties to the original French settlers) and those who are considered outsiders, regardless of their linguistic or cultural affiliation. For example, immigrants to Quebec who have become fluent in French may still be viewed as outsiders in certain nationalist circles if they have no ancestral ties to Quebec. Quebec nationalists'

suspicion and hostility towards these immigrant 'ethnic' communities is fuelled by the fact that they tend to be strong supporters of the federal government and Canadian unity. For example, (former) Premier Jacques Parizeaus' unhesitatingly singled out the so-called 'ethnic vote' *(le vote ethnique)* for blame in the sovereigntist's loss in the 1995 referendum on Quebec sovereignty, ignoring the fact that a large percentage of 'native' francophone Quebecers also voted against the sovereignty option. Fortunately, in Quebec, as in Scotland and Wales, the majority of the population places more emphasis on civic factors such as residency and the willingness of newcomers to integrate into the public culture and abide by the laws and institutions of their respective societies. More importantly, the platforms of the mainstream political parties and official government policy in territory firmly rejects the use of exclusively ethnic criteria of membership. The case of Northern Ireland is somewhat more complex, with different sectarian populations linking membership to religion and in the cases of a small minority of the Catholic population, with the Gaelic language (see 1980: 110–16; Keating 1999:220–1). The official code of membership in the territory and under the terms of the Good Friday Agreement manifests a similar rejection of exclusive ethnic criteria, although certain forms of participation in the Northern Ireland Assembly are governed by elected members' self-identification as either Nationalist or Unionist.

Questions of membership for indigenous groups are complex and highly politicised. Traditional indigenous societies tended to base membership on factors such as ancestry, kinship, community acceptance, and linguistic and cultural affiliations. The units of membership could extend from the sub-tribal and tribal (Maori *whanau, hapu* and *iwi*), through groupings of tribes into indigenous nations (the Cree and the Dene in the Canadian North) through to confederacies of aboriginal nations (the Iroquois Confederacy which spans the current Canada–USA border). Contemporary indigenous groups continue to endorse these types of criteria of self-identification, but factors associated with colonial occupation and control have complicated issues of membership. Most significantly colonial governments tended to legislate categories of indigenous identity and community membership as part of their attempts to manage and eventually assimilate the indigenous population (Milloy 1991; Tobias 1991; Bennett 1999:20). These definitions often used some notion of a blood percentage or 'blood quantum' as it became known in Canadian parlance. In spite of their origin in the policy of colonial governments, aspects of these stateimposed definitions have now been adopted by indigenous communities themselves, either mixing with traditional notions of identity and belonging or superseding them entirely.

Looking at specific cases, the New Zealand government linked membership for Maori to birth and descent, with provisions for those of mixed Maori-Pakeha heritage. After 1975 the standard became any descendant who self-identified as Maori, hence membership for the purposes of inclusion on the current Maori electoral roll is officially accepted as self-identification. This issue is much more contentious when it comes to deciding which Maori are entitled to the benefits of specific Treaty settlements, as evidenced in the 1996 fisheries dispute. Some Maori argue that these questions should be approached using as a departure point all self-identifying Maori in New Zealand, while others argue that such a 'national' approach infringes on the authority and rights of self-identifying members of particular *iwi* or *hapu*. These positions are in turn cross-cut by the argument that self-identification must be verified by community acceptance and/or the ability to recite one's *whakapapa* (ancestral lineage). So in decisions on how to allocate money from the fisheries deal there is an argument between *iwi*based Maori and urban Maori with no links to ancestral *marae* (meeting houses) (Sharp 1999:16–20). Shifting to the Australian case, blood standards played a role well into the twentieth century in Australian states such as Queensland, New South Wales and Western Australia, but have since been discontinued (Morse 1986:13–14; Bennett 1999:16–18). Prior to 1967, Aboriginal and Torres Strait Islander people did not 'officially' exist according to Australian law and were not included in census counts. Under the 1975 Racial Discrimination Act, an Aboriginal was defined as 'a person who is a descendant of an indigenous inhabitant of Australia' (Torres Strait Islanders were excluded from this definition but were mentioned specifically in others) (Galligan 1997:196). Since the mid-1980s it has become more widely though not universally accepted that an Aboriginal Australian is defined by descent, self-identification and community acceptance. This definition emerged from a decision of the Australian High Court in 1983 in the matter of *Commonwealth v Tasmania* (46ALR625) (Barnes 1994:15) and is the definition employed in the legislation creating the Aboriginal and Torres Strait Islander Commission (ATSIC), the country's primary institution for the representation of indigenous interests.

State-sanctioned definitions of indigenous identity comprise a significant component of Canada's historic and contemporary 'Indian' policy (Morse 1986:13–14). Section 35 of the Canadian Constitution identifies and recognises three broad groupings of Aboriginal peoples: Indian, Inuit and Métis. In addition, the Indian Act, the primary legislative instrument through which the Canadian federal government exercises its constitutional jurisdiction over Indians and their lands, defines who is or is not an Indian for the purposes of the Act and other pertinent government legislation. Ancestry and blood quantum are core components of this legislation, although certain provisions are made for intermarriage, and the question of membership is left to the discretion of the particular Indian bands who fall under the purview of the Act. Aboriginal peoples who have already signed land-claim and self-government agreements usually gain the authority to establish independent membership criteria, although the Indian Act still has jurisdiction over who is and is not a Status Indian for the purposes of rights and entitlements outside of these specific agreements. This issue is covered in greater detail in the case summaries in Chapter 4. Examples of some of the membership criteria established in such agreements include blood quantum, adoption,

intermarriage and community identification. Interestingly, some of these citizenship codes break fundamentally with traditional state practice, both in Canada and elsewhere. For example, in the Yukon an individual who meets at least one of the other established criteria can be declared a member of a Yukon First Nation even if she is not a Canadian citizen (Canada 1993: s. 3.2.3).

In summary, despite their complex and contested nature, questions of recognising, defining and differentiating groups for the purpose of assigning rights and institutions of representation can be answered in a clear and rigorous manner. We began this section by defending the theoretical legitimacy of a politics of group-differentiated rights, moved to a description of the specific characteristics defining a sub-state national group, and concluded with a survey of the relevant questions associated with defining their membership. From here we proceed to a discussion of how such groups may acquire a political voice on decision-making bodies, beginning with a detailed description and analysis of the variable measuring the type of political voice in question.

How many group representatives?

In contrast to the widespread debate on the viability of talking about a group as a political unit, the literature discussing the various means of providing representation for groups is small. Nevertheless, size in this case does not serve to compromise the vigour this literature encapsulates. All works start from an acceptance that some types of groups are deserving of political rights but each writer has a distinct set of acceptable groups. Whatever the group in question, an account of how they are to be represented cannot avoid answering two key questions: how many representatives should the group have on a larger body, and how are they to be chosen? These two issues form the basis of the categories used for type of voice in the matrix, whose analytical foundations are constructed in the remainder of the chapter.

Beginning with the question of determining how many representatives the group should have, two ideas dominate the literature. One is that of threshold or symbolic representation, whereby being there is what matters, and the other is that of proportionate or mirror representation, where the number of representatives is proportionate to the group's size in the population. There are also arguments about the need for self-rule and the ability to veto decisions that impact on the core identity of the group. In discussing how to choose representatives common ideas are lot or random sampling and the need for accountability to the group through elections. To arrive at some useful and mutually exclusive categories, these different ideas need to be examined in relation to one another. The following discussion seeks to provide a trail through the different ideas while linking them to general arguments about group representation. For ease of expression the following discussion assumes the example of determining the membership of a committee. However, the arguments hold for any decisionmaking body from the national legislature to local government and the vast array of public committees and boards.

Surveying the literature on group representation, most arguments in its favour are based on recognition of a shared perspective amongst group members. So Young talks of 'experiential specificity' and claims that 'a democratic public should provide mechanisms for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed and disadvantaged' (Young 1990:184). Kymlicka argues that 'the diverse conditions and experiences of men and women, Anglophones and Hispanics…give rise to different and sometimes conflicting interests' (Kymlicka 1995:137) and that 'fairness in a decision-making procedure implies, amongst other things, that the interests and perspectives of the minority be listened to and taken into account' (ibid.: 131). Phillips proposes that the traditional stance of politics organised around the representation of ideas needs to be adapted to recognise that for many a sense of who they are is also important and thus a politics of ideas needs to be supplemented by a politics of presence in the constitution of representative bodies (Phillips 1995). Burnheim suggests that shared experiences rather than common views provide a better foundation for assuming mutual interests (Burnheim 1985), a view modified somewhat by Williams, who argues that a group's shared experience of marginalisation constitutes the source from which a shared perspective on issues of public policy springs (Williams 1998:5–6). From a somewhat different perspective, Taylor argues that the demands of equality and human dignity compel us to recognise and accommodate the unique identity of different groups in society (Taylor 1994). As with the earlier discussion of the range of objective and subjective elements that might combine to form a distinct national identity, so too these distinctive perspectives can have a variety of sources.

One component of this argument is the idea that only someone from the group can properly express this unique perspective so a committee member from the group is needed (New Zealand 1986:88; Kymlicka 1995:138) As there are clearly societal differences that impact on life chances and people are not very good at imagining themselves in vastly different circumstances, legislators from across societal divides need to be present to ensure that the needs and preoccupations of all are heard in debate (Phillips 1995:53). When policy is formulated for the group rather than with it the process will often overlook some of the group's concerns, though this may be due more to a lack of knowledge than a conscious intention. More assertive is the suggestion that political dialogue is only democratic if all significant points of views and demands are present in the debate (Miller 1995:446n), and, in particular, when debating issues pertaining to the treatment of the group, good decisions

can only be made when the historic and experience-based views of the group are heard during decision-making (Williams 1996:106). This issue has particular relevance to the question of how representatives are chosen.

Given that members of the group have a distinctive perspective, then as a starting point the group wants to have its perspective heard in committee deliberations and the easiest way to do this is to have a member present who can express those views. Therefore a member of the group joins the committee. If a group needs a presence so that its perspective can be heard then only one member is needed. The other major and related argument is that the presence of one member of the group helps to empower other members because of the dignity associated with official recognition (Guinier 1989:421; Taylor 1994). In similar vein, Phillips notes the importance of a politics of transformation (Phillips 1995:31) and that changing legislative composition impacts on popular ideas of who has the ability to rule (Phillips 1995:41; Williams 1998:209–10). When decisions are made through consensual deliberation then weight of numbers is not paramount, just the chance to express a distinct perspective (Stark 1997). So if the idea of symbolic or threshold presence is sufficient, a person from the group is a member of the committee in recognition of the fact that the group has a voice that must be heard. Here input is what matters (Phillips 1995:41). With symbolic presence it is being there that counts, not the number of people, although two may be more effective than one as this lessens feelings of isolation. Kymlicka says that representation must be 'sufficient to ensure that the group's views and interests are effectively expressed' (Kymlicka 1995:146) and if there are too few then the voice of the group can be ignored. Here arguments of critical mass are relevant (Dahlerup 1988; Norris 1996). The argument is that once a minority reaches a certain size there will be a qualitative shift in their ability to be heard and in members' tendency to maintain their distinctiveness rather than assimilate to the norms of the dominant group on the committee. Based on arguments of critical mass or reducing isolation, additional members are added to ensure empowerment of the group's representatives rather than to increase their success rate in winning decisions taken by vote. Thus under symbolic presence there may be more than one representative.

In some instances the small number of symbolic representatives may be able to make a major difference on a key decision. Take the example of Elijah Harper, an Oji-Cree chief from Red Sucker Lake, the only indigenous member of the Manitoba provincial legislature in 1987. In protest over the exclusion of indigenous peoples from the most recent round of constitutional negotiations to recognise Quebec as a distinct society within Canada, Harper used parliamentary procedures to delay the legislature's ratification of the resultant Meech Lake Constitutional Accord beyond the 23 June signing deadline, ultimately spelling its demise (Dickason 1997:386–7). This outcome constituted a tremendous symbolic victory for indigenous peoples across Canada, and a firm message that their concerns were not to be taken lightly. Whilst he was able to delay this measure such veto power is not guaranteed to symbolic representatives.

However, if outcomes are the focus then the group needs more than just a means of having its perspective heard and therefore will want sufficient members to have a guaranteed impact on decisions. Pitkin was dismissive of forms of representation that concentrated on composition because she argued that it is the activity of the decision-makers that matters (Pitkin 1967:226). The crucial question is how many members are warranted? Here there are two distinct arguments. A concentration on outcomes leads to the idea that the group needs to have control over certain issues while an emphasis on equality of influence leads to demands for a presence related to the size of the group in the population.

Based on arguments of fairness one idea is that the committee should in some way mirror the population, and therefore the group's representatives should constitute the same proportion of committee members that the group comprises in society. For instance, as Maori make up 15 per cent of the New Zealand population then 15 per cent of committee members should be Maori. This argument is most commonly articulated in relation to women with the demand that in each parliament half of the MPs should be women (IPU 1995). The idea that the composition of decision-making bodies should be based on population size is called mirror or microcosmic representation or, especially in the USA, 'proportional electoral representation'. When referring to the demands of one group, a common term, and the phrase to be used here, is proportionate presence. While this idea of population-based representation is initially compelling for many, the democratic underpinnings are difficult to argue. One explanation Phillips offers is that if parliament was selected randomly then the number of women or ethnic MPs would equate with their proportion in the population. The fact that in no country are half of the MPs women suggests that there are barriers, intentional or not, to women entering politics. So the absence of proportionate presence is a sign that something is wrong but seeing the problem does not mean that the solution is to ensure proportionate presence (Phillips 1995:53). Mirror representation is also suggested as a means of ensuring representation or presence of the range of views contained within the series of people who share an identity (Bickford 1999:103–4) but this only holds if the group is sufficiently large to warrant a number of representatives.

So, as well as problems with the justifications of proportionate presence, there are concerns that the size of the presence may be too small (Young 1990:187). Aboriginals constitute 2 per cent of the population of Australia so proportionate presence would allow them just under three MPs and even Maori, who constitute 15 per cent of the New Zealand population and parliament, can always be outvoted. However a prominent Canadian indigenous scholar has argued that an indigenous presence in provincial and federal parliaments no greater than their proportionate representation of 5 per cent of the population would have a significant impact, potentially yielding over fifty indigenous legislators, which would undoubtedly

have an impact on the character and conduct of Canadian public affairs, in both its indigenous and non-indigenous domains (Borrows 2000: 336–7). This anticipated impact is as much a consequence of the symbolic recognition of the group and the opportunity for different views to be heard as it is of their potential to win a vote. Unless the group makes up a large proportion of society, having proportionate presence will not guarantee outcomes. Thus there are arguments for some form of control over decisions (Lijphart 1984: 22–3; Young 1990:184; Taylor 1994:90).

A group can control a decision when only its members are on the committee or when its members have a veto. Therefore the need for a group perspective also leads to arguments for self-government and for a form of power-sharing, regardless of the size of the group in relation to the population as a whole. Here the argument is that not only does the group have a distinctive culture, way of life and perspective but that they must be able to protect the distinct components of their identity from change by others and thus have the final say in certain decisions. Another dimension of this argument is the democratic claim that distinct national groups have a right to self-determination, with a minimum amount of external interference or oversight (Philpott 1995; Murphy 2001a). Arguments for control through self-government tend to move away from the need to have others hear the group's perspective, favouring maintenance of distinctiveness and democratic self-rule over having a voice and being understood within the wider political system. This is not to suggest that the group's perspective will not be heard at all because there is usually a range of bodies where the group has a voice. So while the group may claim self-government over certain policy areas they will seek to have their distinct perspective heard on other bodies. We discuss different combinations of self-rule and shared rule in Chapters 2, 5 and 7.

To summarise, there are three arguments about the appropriate size of the voice: one or more people, sufficient to have a presence (symbolic); related to the group's size in the population (proportionate); and able to determine an outcome (controlling). While all derive from recognition that the group has a distinct way of life or culture, that experiences of being a group member will impact on interests and views, and hence the group's perspective needs to be present, they reach vastly different conclusions on the size and impact of presence that is needed.

Who chooses the group's representatives?

Once the number and voting impact of the group's committee members are determined, the other crucial question is who those people are. When using arguments based on the group having a particular perspective, then the role of the representative (s) is to articulate the views of the group and so 'the legitimacy of group representation depends on some mechanism for establishing what the group in question wants or needs' (Phillips 1995:55). Integral to arguments in favour of group representation is the idea that the group's representative is a member of the group because of the importance of shared experience. So the representative could be from the group (selected) and assumed to hold the views of the group or the representative can be there for the group (elected) and answerable to them in some way. Notwithstanding the fact that selection and election are the only two methods of choosing representatives, each has its problems. Having a representative from the group is usually taken to be based on an essentialist sharing of views by all in the group just because they are of the group, similar to the essentialist ideas on humanity discussed at the start of this chapter (Phillips 1995; Williams 1998:5–6). An alternative version of this claim recognises the internal plurality of group perspectives but maintains that members are more likely, on average, to share the group's perspectives than non-members due to their common experience of marginalisation (Williams 1998:6). The common issue raised when a representative is for the group is that this requires identification and enumeration of group members, because if a representative is to be elected an electoral roll is needed. We saw in the previous section just how difficult this question of membership can be. Nevertheless, many of the institutions covered in the cases have created a workable definition, even if this has required that certain issues be glossed over or ignored. Issues of this nature are discussed in more detail in Part II.

Another issue deriving from our earlier discussion is the existence of multiple sub-group identities. Of particular importance are questions relating to the appropriate level of disaggregation and provisions for representing the range of perspectives within the group based on gender, class, and other relevant differences (Offe 1998:129; Bickford 1999:87, 95). For instance are Maori represented as Maori or by *iwi* and is there provision for the views of women and men to be heard as well as the different perspectives of urban and rural Maori? A number of internal groups are recognised by the institutions used as cases, for instance regions in Scotland or youth and elders amongst Canadian First Nations. Obviously sub-group differences can only be represented when the group as a whole has more than one representative but it is not clear that these differences within the group are catered to in such cases. In Part II this issue is discussed in relation to those case studies where there are multiple representatives.

If airing a perspective is the key component and the group's perspective is common to all members then anyone from the group could do the job. There may be differences in ability based on oratory skills, empowerment and experience but anyone from the group with these skills would do. In this case all committee members could be chosen by lot with an element of stratification to ensure group representation (Burnheim 1985) or selected by an outside body such as the government. When the representative is from the group then the idea is that the person will speak as other members of the group would, were they

present (Young 1997:357). So selection may happen without any input from group members. However, often when representatives are selected some organisation recognised as having links to the group may nominate candidates. Details of selection are discussed in the case descriptions in Part II.

However, ideas of representative democracy usually include the need for accountability and thus elections. Modern perceptions of democracy see 'popular control' as central and tend to treat elections as a basic necessity (Dahl 1989:221; Phillips 1991:10; Beetham 1994: chap. 2). Whilst elections give the represented some ability to choose who their representative is, the extent of choice varies across electoral systems and does not always provide control over their actions (Catt 1999a: chap. 5). Representative theory talks of delegates and trustees each of which portrays a different relationship between the voters and the representatives. If the representatives are delegates then they are mandated to follow the wishes of their voters, although it is debatable how such instructions can be articulated. When a representative is following orders it matters less who that person is because the message comes from the voters and the representative is a mouthpiece. In such a situation the presence of group members would meet the needs of recognition and inclusion, but it is the message not the messenger that counts in terms of policy input. When representatives are not delegates then they are expected to be trustees and make decisions based on their own judgement and are then accountable to the voters for those decisions at the next election. So voters keep trustee representatives accountable with the threat and action of not electing them when their term of office ends.

In terms of group representation the argument is not only that decisionmakers should be elected because they are making decisions on behalf of the people but also that if a member is there to speak for a group then that person must be elected by members of the group. Election by group members keeps the representatives accountable to voters from the group. In this instance it is necessary to know who is in the group so that group members can vote. Thus the need for self-organised groups with some idea of what it is that the group wants (Young 1990:184). You could say that ten Maori MPs are needed and that all New Zealanders will vote for them and this would provide an essentialist presence. But if the representatives are to speak for Maori then Maori voters must have a means of keeping those representatives accountable. Thus, mirror representation and accountability cannot coexist (Kymlicka 1995:148).

Mixing the two aspects of group representation raises some problems for democratic theory. When the main justification for group representation is the need to hear distinctive perspectives then this is based on the idea that elected representatives make decisions after they have listened to a range of views and arguments and thus act as trustees. The need for deliberation is emphasised by those defending group representation (Young 1990:185; Kymlicka 1995:147; Taylor 1998:144, 155), as is the suggestion that a more consensual form of decision-making would take account of a range of perspectives in society (Kymlicka 1995:147). However, when representatives act as delegates then their final decision is not affected by hearing the views of others. In this situation a distinctive perspective is not going to be incorporated into the decision-making process so its mere recitation serves only as a means of recording a particular view. The argument is not that there is no need for the group's perspective to be heard but that a decision-making body comprised of delegates is not the place to do it. When concentration is upon particular outcomes, then there will be a desire from the group to tell the representative how to vote, to act as a delegate. Having group representation to ensure a perspective is heard (trustee) relates to setting the agenda and debating solutions but representation of a set of ideas and opinions (delegate) focuses on the outcomes of decisions (Young 1997: 363–5). Those seeking group representation should be clear as to whether their primary concern is for popular control of the representatives or the decisions (Phillips 1995:36–9).

This argument holds for all cases where the group representatives are working alongside other representatives. Arguments based on perspective assume that there are other committee members not from the group who need to hear the views of group members. When all members of the committee are from the group then there is not the primary need for them to express the perspective of the group because all members will have that perspective. In a situation of selfgovernment, when a committee is comprised entirely of group members, then the whole set of arguments can start again about the representation of subgroups such as those based on gender, political views, age, adherence to tribal traditions or any other group whose claim to a common perspective is accepted. As 'none of the social movements asserting positive group specificity is in fact a unity' (Young 1990:162) then all of the arguments used here in relation to a national group within a nation state can be applied to a sub-group within the self-governing group. The extent to which sub-group representation is ensured will be discussed in the case studies.

The categories

Based on the two questions about the form of group representation there are five categories that encompass the key elements measuring the type of political voice. From the question of size come the categories of symbolic, proportionate and controlling. The question of how the people are chosen adds the distinction between selection and election which apply to symbolic and proportionate presence, but not controlling. In the final part of this section each of the five forms is briefly described and examples from amongst the case studies are mentioned.

In symbolic selection one or two people are needed so that the perspective of the group is heard and these people will be chosen by lot or by the government. This form of representation is based on essentialism at its most basic and input is the prime focus. Selection is not extensively used at the government level but one example of symbolic selection is the appointment of a sub-state national group member as a cabinet minister to oversee matters affecting that group. The Secretary of State for Scotland is one example.

In symbolic election one or two people are elected so that their perspective is heard but the group members are allowed to choose who delivers it and so have some control over the skills and experience of the representatives and how they present the group's views. Input is still the prime focus. Specifying certain seats for the group is the primary way of achieving symbolic selection and the Maori seats in New Zealand prior to 1996 are a good example.

In proportionate selection the aim is for the decision-making body to reflect the composition of society. The easiest way to achieve this is to select people by lot, using stratified sampling like that employed by opinion polling and market research companies. As there are no elections there is no need to determine which group each member of the population belongs to. This arrangement applies to a number of groups in society and is not a solution aimed specifically at the national group. Concentration is mainly on input but there is also some desire to see the weight of each perspective related to their presence in the population. This method is not used at the legislative level and does not appear amongst our cases.

Proportionate election is based on recognition that the representatives need to have an impact on decisions over and above their contribution of a distinctive perspective and so the number of representatives is related to the sub-state national group's relative size and members are chosen by voters. Concentration is on input and outcomes. As in some cases proportionality means that there are a number of group representatives, there is the possibility of representatives being chosen to express the range of views held by the group, at least for some sub-group perspectives. To deliver proportionate presence the size of the group in relation to the rest of the population must be known. The other practical question is how to ensure that a given number of elected members are representing the group. In New Zealand the solution is separate seats while in Nunavut the assumption is that group members, in this case the Inuit, will vote for Inuit candidates.

In a controlling situation accountability replaces the need to hear a group perspective so there are no real democratic arguments for selection over election, as long as the group itself, rather than the state, is either the selector or the elector. In this situation the group can determine a decision so concentration is upon outcome. Within the category of 'controlling' there are two scenarios: all members are from the group; or the group representatives have a veto power. The Scottish Parliament provides control for those living in Scotland and ATSIC does the same for Aboriginal voters in Australia. The rules in the Good Friday Agreement provide a veto for the Unionist and Nationalist within the Northern Ireland Assembly.

Summary

In this chapter we accomplished three key objectives: a defence of groups as a unit of political analysis, a rigorous definition of our own unit of analysis—the sub-state national group, and the construction of the categories for the first vari able in the matrix measuring the type of political voice. Each objective posed complex challenges of a theoretical and practical nature, but none that proved insurmountable. In Chapter 2 we complete the construction of the matrix while confronting a fresh set of difficulties associated with the variable capturing the extent of the political voice. As in this chapter, material from the case studies will be interspersed throughout the analysis, but a full accounting of case particulars is reserved for the second part of the book.

2
Extent of political voice

Extent of political voice is the second of the two variables structuring our study. Each relates in a different way to the political power of the sub-state national group: type of voice describes the size and source of the representative group; and extent considers the strength and policy reach of the access they have gained in a particular decision-making body. Since our emphasis is on institutional arrangements rather than elite behaviour, the matrix is designed to show the point in the decision-making process when that the group is guaranteed a voice. There are several aspects of the policy process related to the variable measuring extent, including the nature and scope of policy decisions to which the sub-state national group has access, the security of that access, and the group's capacity to shape, design or alter the structure of the policy-making institution itself, including the method or style of decision-making. A necessary consequence of our institutionalist approach is that our focus, at least initially, is on the intent of structural design, hence our discussion in this chapter and in the case study descriptions concentrates upon the institutional access and the group's potential to influence policy-making processes rather than the outcomes of decision-making.

Our first task is to develop a concept of political power that is relevant to both of the variables measuring political voice. We begin by constructing a basic definition of power as the capacity or potential to influence a given decision-making process, and devote the remainder of the chapter to a discussion of its various specific aspects in relation to the variable for extent. To this end, we canvass insights from a broad spectrum of literatures on local and regional government, federalism and consociational democracy, and public policy research on the structure and function of committees, boards and various other sub-legislative decision-making bodies. The specific issues we have in mind can be divided into themes relating to access, roles, and jurisdiction. A summary of how the two variables, type and extent, contribute to the overall power or influence of a sub-state national group is left to the concluding section of the chapter.

The chapter is divided into four sections. The first section outlines our definition of political power. The second section begins with a brief discussion of some of the important terms to be employed in the chapter, and then moves to an exploration of the complex subject of jurisdiction. The third section delves into questions of role and access, beginning with the question of which particular function the institutional body occupies in the wider policy-making process. Equally important is identifying the specific point in the policy process when members of the national group are given access, how important that role is, and what sort of influence they have over the decisions resulting from that process. Included in this section is a more fully developed consideration of the idea of a policy sequence and the kinds of influence or access which are a product of this sequence. The fourth section uses these conclusions to derive the categories for the second variable in the matrix.

Power as influence

Controversies rage over the proper or precise definition of power, but as in our definition of the sub-state national group in the opening chapter, our aim is simply to construct a definition which is suitable and sufficient to our specific purposes. One method of defining power which is particularly helpful in this context is to see it in terms of influence or as an influence process. To begin with a somewhat awkward formulation: 'The *exercise of influence* (influence process) consists in affecting policies of others than the self' (Lasswell and Kaplan 1950:71). More simply, this refers to the capacity of one person to alter the behaviour of another (Simon 1969:77). Similarly, March defines influence as the inducement of change (March 1969: 168). In Dahl's characteristically more rigorous terms: 'A has power over B to the extent that he can get B to do something that B would not otherwise do.' Dahl wants to use power, influence and control interchangeably whenever it proves convenient while acknowledging that for many purposes important distinctions among these terms are necessary and useful. (Dahl 1969:80). Bachrach and Baratz, on the other hand, believe it is essential to distinguish power from influence, although they acknowledge that this distinction is often difficult to draw. I have influence over another to the extent that she can be induced to change her original course of action without my having to resort to either tacit or overt deprivations or coercion to achieve that end. Power is different in that its exercise depends upon potential sanctions which the exercise of influence does not (Bachrach and Baratz 1969:104). Cartwright adds to this analysis by distinguishing three aspects of the influence process under which a discussion of the subject can be organised: the agent exerting the influence; the methods of exerting influence;

and the agent subjected to the influence (Cartwright 1969: 125). Dahl likewise fills out his own definition of power by distinguishing between the various terms which govern its analysis: its source or base; the means or instruments via which it is exerted or exercised; the amount or extent of the power in question; and its range or scope (Dahl 1969:80–1).

Given the focus of our research on processes of legislation and policy-making, the sense of power as influence without the need for sanctions is particularly suitable to our purposes. We also prefer the term 'influence' rather than 'control' because access to a decision process may allow an opportunity to persuade or the ability to administer rather than the ability strictly to determine outcomes. As there are usually a number of members of a particular decision-making body each has a chance to influence the decisions but not necessarily to control them. In terms of the object over which influence is exerted, rather than another individual or group of individuals we are more directly interested in the potential for impact on processes of legislation or policy-making, although the people covered by these decisions are important in the overall context of the study. Keating suggests a similar conception of power understood not as power *over* but as power *to*, or more exactly the ability to achieve policy aims. As he explains it, this conception of power shifts our attention away from an exclusive concern with the autonomy of actors or their ability to do things on their own, to their capacity for governance or their ability to have an impact on the various problems and projects which comprise their interests (Keating 1988:128). We also share Keating's assessment that we are not dealing with a rigidly quantitative and zero-sum concept of power (Keating 1988:128). It is instead both fluid and relational, which is to say that the power of a sub-state national group must be viewed relative to that of other actors and institutions with whom it is engaged in a complex and shifting array of juridical and political relationships. Where we do differ slightly from Keating is in the sense that initially we are concerned with assessing not the actual exercise of power and the measurement of outcomes, but rather the capacity or potential to influence.

Drawing on these insights, we define political power (influence) as a measure of a sub-state national group's capacity to translate its interests into laws or policies by means of the procedural access, jurisdiction and form of representation assigned to them by the institutions in which they have acquired a political voice. This understanding of power is well suited to the politics of pluralism and its attendant notions of a distribution or dispersion of, as well as negotiated and overlapping, forms of power. In this sense it is also a useful tool for exploring challenges to traditional conceptions of state sovereignty and democratic representation posed by the politics of group-differentiated representation.

Reasons for increasing the extent of a sub-state national group's influence in the domain of legislation and policy-making parallel those discussed in the previous chapter. These include pressures to grant greater symbolic recognition of a national group's demand for self-determination and treatment as a political equal. Central again is the idea that the group has distinct ideas and perspectives which need to be heard. This view was expressed, for instance, by the Scottish Constitutional Convention:

> Denial of Scotland's rights over the last 100 years had led to frustration and bitterness which has become all the more marked in recent years where the legislative programme has simply not reflected Scottish opinion or taken account of Scottish traditions but have been driven through the Westminster parliament.
>
> (Scottish Constitutional Convention 1989:5)

Another important reason is the desire for particular outcomes such as improved socio-economic conditions or preservation of language and culture. Torres Strait Islanders have voiced such an argument: 'social ills will not go away unless and until Islanders themselves are looking after social issues. Leaving it to faraway program designers with faraway cultural and social assumptions will not succeed' (Lui 1995:219). Measures to increase policy influence are also intended to enhance local accountability and participation by bringing the issues and decisions closer to the people upon whom they have the most direct impact. Such measures in turn have an obvious impact on the legitimacy of policy decisions and the policy-making institutions themselves, and a powerful corresponding relationship to issues of democratic governability and political stability. Each of these relationships are discussed more thoroughly in Part III.

Jurisdiction

Before we launch into a discussion of jurisdictional issues, some clarification of terms is in order. Our discussion is framed by the politics of decentralisation, devolution and power-sharing. Decentralisation and devolution are used interchangeably to denote the delegation of some form of power or authority from a central to a local governing institution (Smith 1985: chap. 10; Pollitt *et al.* 1998: 73). Decentralisation of implementation may of course be part of centralisation of overall policy. For instance the decision to have a national curriculum that specifies, amongst other things two hours a week on cultural and religious studies and an hour a day of reading, but local decisions on what is included in cultural studies and which books are to be read. Decentralisation covers everything from local functional bodies such as health authorities and school boards, through municipal forms of self-government, to consociational and certain forms of regional and federal government. Full autonomy is not part of this discussion as decentralisation assumes a central body that has delegated power in certain areas

but retains it in others. The concept of power-sharing may denote a similar wholesale or partial power transfer but can also encompass measures to include or represent local authorities in central governing institutions, as is characteristic of the elite accommodation aspect of consociationalism, and certain policyspecific government advisory boards and legislative committees. Power-sharing might also denote a distribution of powers based on centralisation rather than decentralisation, as in the case where federating states agree to transfer certain powers to a federal authority (Frenkel 1986:66–7). Power-sharing might further be used to characterise informal strategies of cooperative policy-making among different levels of government which fall outside the parameters of formal juridical divisions of powers (Bogdanor 1986:47).

Decentralisation and power-sharing both incorporate important questions on the subject of jurisdiction. This subject has four main components: policy areas; people covered; geographic scope; and the source and security of the jurisdictional authority granted. Beginning with policy areas, the most obvious issue is a straightforward empirical question of which powers or jurisdictions are covered. In certain cases the list will comprise only one item, as in the example of the Nunavut Wildlife Management Board. For the more complex cases, specifically the bodies capable of primary and secondary legislation in multiple areas, a table of comparative jurisdictions will be supplied in Chapter 5. In the process of enumerating jurisdictions there are interesting distinctions to be made between those which are *de jure* (those explicitly listed in legal documents or interpreted as such via judicial review) and those which are *de facto* (those which are implicit as a consequence of administrative arrangements or because of the existence of general and imprecisely defined powers, e.g., the federal powers related to government spending and peace, order and good government in Canada). Account must also be taken of undefined residual powers which are generally assigned to or simply appropriated by one or the other (or both) levels of government (Herperger 1991:1–2). Some of the institutional examples we have chosen comprehend the possibility of a sub-state national group acquiring new jurisdictions via future negotiations, as is provided for in the Northern Ireland Act, the Westminster legislation giving effect to the 1998 Belfast Agreement (O'Leary 1999:85). Tribal governments in the USA present a fascinating variation on several of these themes. Their powers have been defined by the Supreme Court in abstract terms rather than an enumerated list of specific powers. This is to allow their adaptation over time to meet changing tribal needs and circumstances. Furthermore, the source of these powers is located, not in the US Constitution, but in the original sovereignty of the tribes. Nevertheless, in practice these extra-constitutional powers have been comprehensively circumscribed by the virtually plenary power of congress to legislate in the domain of tribal affairs (Wilkinson 1987; O'Brien 1989).

Issues relating to the centrality and relative weighting of different jurisdictions is another key dimension of our analysis. Apart from its more practical implications, the notion of a hierarchy of jurisdictions has a significant symbolic component. A case in point, Quebec's involvement in the area of immigration is a tool for cultural preservation but also enhances its public image as a national government actively involved in policing its borders with foreign states. One of the most fundamental areas of jurisdiction for sub-state national groups is the authority to define their own membership codes. This jurisdiction is a key pillar of effective national self-determination and a sub-state national group's capacity to distinguish itself from other national communities. The symbolic importance of the capacity for self-definition is self-evident, and parallels its practical importance in contributing to the designation of community representatives on the relevant decision-making institutions. Determining internal political structures and decision-making processes are also important:

> for aboriginal peoples the 'self' in self-govt means much more than delivering programmes and administering policies designed by other governments and imposed on aboriginal people. It means defining, through the practice of government, how aboriginal governments can be used to come to terms with important problems and objectives in aboriginal communities, what the various aspects of aboriginal government look like and how they function in relationship to one another, and how aboriginal governments affect and are affected by the wider public policy environment in Canada and internationally.
>
> (Cassidy 1990:258)

Moreover, as some observers argue, even a substantial degree of autonomous self-government is meaningless for Aboriginal peoples if it entails adopting the institutional structures and methods of decision-making of the non-Aboriginal majority. In their view this is simply a form of cooptation and an inevitable, if only more indirect, route to assimilation and the eventual destruction of their communities and cultures (Boldt 1993; Durie 1998; Alfred 1999). We will have more to say on this subject in chapter 6.

Although the specific preferences of particular national groups vary somewhat, there is a substantial degree of convergence on a number of jurisdictions deemed to be of central if not essential importance. These include education, language and culture, social policy, justice and policing, land and resources, the environment, and economic and fiscal policy. Taking one example in particular, it is often crucial to obtain the fiscal means of realising the remaining jurisdictions one has been assigned. Without this capacity, a group's political power is greatly reduced if not effectively nullified (Frenkel 1986:81–2; Meekison 1991: 261). Hence the tendency of centralising central governments to concentrate as many of the fiscal powers as possible in their own hands. According to Keating, finance is a crucial factor in determining the scope for independent

regional action and hence the bargaining power of the regions in intergovernmental negotiations. This explains the reluctance of national treasuries to hand over independent powers of taxation (Keating 1988:196). Such reluctance often extends down to the level of establishing budgetary needs. ATSIC is a good example in that it can define its budgetary priorities but not its budgetary allocation which is controlled by the Australian federal government. Viewed from a different perspective, the fact that ATSIC does have such an extensive say in terms of where and how money is spent provides it with a certain measure of autonomy in meeting the needs and priorities of its indigenous constituents, but this must be read together with the fact that its budget allocation can be reduced or eliminated at the sole discretion of government, which also tends to restrict the councillors' spending behaviour through an extraordinarily onerous regime of accountability (O'Donoghue 1998).

Scope of policy areas covered is another important factor in determining a group's influence. Turning again to Keating's discussion of regionalism, the breadth of jurisdictions enjoyed by a regional body often has important implications for their autonomy and influence. If jurisdictions are defined widely, institutional bodies can enjoy a significant degree of autonomy within these defined fields. If they are defined narrowly this creates increased interdependence in that policy-making in your restricted jurisdictions is dependent on policy-making in other jurisdictions over which you have no control. Moreover, if the preponderance of power is held in the centre this may lead to dependence and subordination. Policy-making on the part of regional government can also be rendered highly fragmented if each of their several departments are forced to follow the lead of their counterparts in the central government, rather than coordinating efforts on a more localised and internally consistent basis (Keating 1988:194). Dependence on distant, uninformed and unresponsive central bureaucracies can also prove to be enormously frustrating and possibly fatal to local legislative and policy initiatives; hence, the capacity to develop, and fund, an independent bureaucracy staffed by group members may also be crucial to the determination of the scope and power of regional governments (Hoekema 1994; Pyper 1999). From an alternative vantage point, narrow jurisdictional scope is not always a liability in terms of impact and autonomy. For example, single jurisdiction functional management boards might initially seem to present this problem, but if a sub-state national group acquires a voice on several of these boards covering an interlocking series of issues, the picture starts to look very different. The Nunavut Land Claims Agreement provides the Inuit with precisely this kind of representation (Canada 1993d).

Jurisdictional scope also speaks to the relationship between primary and secondary legislative bodies. If the superior legislative body drafts primary legislation in very general or loose terms this affords the subordinate body significant scope to draft secondary legislation to suit local conditions and demands. This in turn provides them with a much greater degree of policy influence than if the primary legislation were drafted in such specific and inflexible terms that it drastically constrained the scope of secondary legislative input (Bogdanor 1986: 48–50). An excellent example in this regard is the National Assembly of Wales, whose capacity to develop distinctive secondary legislation is entirely dependent on how much room for variation the parameters of acts passed by Westminster permit (Laffin *et al.* 2000:224).

Who are the people and what territory is covered by a group's decisions? These questions are most easily dealt with together. Both are intimately connected with questions of sub-state national group membership discussed in the opening chapter. On the most basic level, does the sub-state national group have jurisdiction over just their own territories and peoples or do these jurisdictions overlap with those of other national groups with whom they share a state? In New Zealand if a Maori MP is chosen as Minister of Maori Affairs his specific portfolio gives him jurisdiction over all matters relating exclusively to Maori in New Zealand but, like all other Maori MPs, he also has a voice in policy creation for all residents of New Zealand. A similar system of Aboriginal Electoral Districts (AEDs) has been suggested for Canada (Canada 1991a), but the preponderance of Aboriginal peoples there shows a preference for arrangements which will provide them with jurisdiction solely over their own territories and peoples (Boldt and Long 1985a:345). Even where they do show any enthusiasm for representation in state-dominated central legislatures, it remains strongly linked to a desire to represent their interests with respect to their own internal self-government rather than a desire to participate in governing the wider non-indigenous society and territory (Schouls 1996:739–41). In other cases, indigenous groups do exercise jurisdiction in limited areas over nonAboriginal populations regularly resident in their territories. These residents generally represent a tiny minority, but as we will see in Chapter 3, in the Sechelt case they represent nearly half the population. Additional exceptions include joint Aboriginal and non-Aboriginal land and resource management boards such as those dealing with water and land-use planning in Canada's Yukon Territory, where authority is shared not only over the particular jurisdiction but over the entire territory irrespective of internal geographic and ethno-national boundaries (Canada 1993). One other interesting variation on the issue of jurisdiction arising from self-government agreements in the Yukon is the notion of personal jurisdiction. This refers to a Yukon First Nation's right to legislate for their citizens throughout the Yukon in certain areas such as family law. In this sense, their citizens carry the law with them when they leave their settlement lands (Hogg andTurpel 1995:199–200).

Looking to some of our other case studies, most federal and confederal systems combine joint and segmented jurisdiction over populations and territories, depending on the policy area in question (Herperger 1991). In practice, these jurisdictional variations become extraordinarily complex, with institutional arrangements often defying strict frameworks of classification. The Belfast Agreement presents several fascinating variations on this theme. The first strand of the Agreement establishes a democratic institution, the Northern Ireland Assembly, which is consociational in terms of its provisions for elite

powersharing and mutual community veto powers. Nevertheless, it differs from many classic examples of consociationalism in that both sub-state national communities have joint authority throughout the territory over all of the jurisdictions devolved from Westminster. Additional layers of complexity are added when one considers the quasi-federal and confederal institutions contemplated by the second and third strands of the Agreement. These are, respectively, the North/South Ministerial Council and the British-Irish Council (Northern Ireland 1998; O'Leary 1999). In similar fashion, standard accounts of federalism are challenged in Australia by the Commonwealth's efforts to accommodate its indigenous population. Commonwealth and federal governments enjoy concurrent jurisdiction over Aboriginal affairs (with Commonwealth paramountcy), the states over the Aboriginal population within their borders and the Commonwealth over the population in the entire country. This concurrent form of jurisdiction is itself cross-cut by several layers of Aboriginal administration created by ATSIC at the local, regional, state and national levels. This division of authority between state and Commonwealth has been a point of contention among indigenous Australians, who have frequently called for a more coherent and cohesive approach to indigenous policy which would devolve responsibility away from the states and towards the Commonwealth (Bennett 1999:107–11).

Source and security of jurisdictions is the last area to be explored and, as in the above examples, multiple variations are conceivable. One can begin with the question of whether the jurisdictions are constitutionally entrenched or simply delegated or devolved powers created by statutes of the central governing body. This difference can have a significant impact on the relative influence of the governments in question. Keating makes this point in distinguishing regional from federal forms of government. In a federal system of government, the entrenchment of the powers of the lower levels of government provides them with a power resource or bargaining chip which forces the central government to negotiate with them to make policy across jurisdictions over which neither party enjoys exclusive control. In effect, a balance of power exists because each requires access to authority and resources which are controlled by the other (although this balance can certainly be skewed in favour of either party). Horowitz makes note of this phenomenon in the particular context of ethnic conflict, describing it as a dispersal or proliferation of the points of power in a state, which sets up a system of political competition and negotiation for influence and control (Horowitz 1985:598). In regional arrangements, by way of contrast, central governments can usually act unilaterally, though not without considerable political resistance from the regions (Keating 1988:193; Bogdanor 1999). At the extreme, this extends even to the radical curtailment of devolved or delegated powers or even the complete abolition of the devolved institutions, as happened with Stormont in 1972.

Nevertheless there is heated debate regarding the relative inviolability of constitutionally enshrined federal arrangements versus either regional or localmunicipal forms of delegated authority. Frenkel argues that the distinction ought to be maintained because historically federalism has been a centralising and integrative measure (Frenkel 1986). Others like Bogdanor argue that it is of little more than formal significance since regional government in effect creates a new locus of political power and legitimacy (Bogdanor 1986:44; O'Leary 1999), while some like Nice claim that the traditional distinguishing features of federalism—constitutionally delimited independent jurisdictions—have given way to complex patterns of interdependence, collaboration and conflict (Nice 1987; Meekison 1991:260–1; Keating 1998:113–16). Some might argue that this neat federal distinction has never existed, except perhaps in theory. Herperger adopts this approach in his definition of federalism: 'The federal principle, broadly defined, relates to the distribution of legislative powers between a general government and regional governments so that each order can act directly on its electorate within its own sphere of jurisdiction, thus providing for a system of shared sovereignty' (Herperger 1991:1). He distinguishes this from Wheare's classic definition of the federal principle as a 'method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent' (Wheare 1963:10). This, he claims, provides the somewhat misleading impression of a finite number of cleanly distinguishable powers assignable to each order of government (Herperger 1991:1–2). Herperger prefers the term distribution of powers as it recognises the interdependence of the orders of government in federal systems. Following Elazar, the federal principle connotes 'the distribution of real power among several centres that must negotiate co-operative arrangements with one another to achieve common goals' (Elazar 1984:2; Bogdanor 1986:46–8; Hrbek 1986:31–2). This point is nicely illustrated in practice by Smiley's classic discussion of the rise of a negotiated form of 'executive federalism' in Canada (Smiley 1976; Brock 1995).

In similar vein, O'Leary makes an interesting case for the Belfast Agreement representing more than simply devolution within a decentralised unitary state, arguing instead that it is quasi-federal in character. There are, he explains, two different unions within the UK: The Union of Great Britain, and the Union of Great Britain and Northern Ireland, the constitutional basis of the latter being distinctly different than that of the former. From O'Leary's point of view, this creates a relationship between Northern Ireland and Great Britain which, at least in terms of international law, is explicitly federal in character. This is so because the executive and parliament at Westminster is unable to exercise power in Northern Ireland in any manner that is inconsistent with the Belfast Agreement without thereby breaking their treaty obligations and denying Irish national self-determination (O'Leary 1999:84). Moreover, the Northern Ireland Act has created an open-ended mechanism for Northern Ireland, with the consent of the Secretary of State and the approval of Westminster, to expand its autonomy and independence within the Union. Neither Scotland nor Wales were granted a similar open-ended mechanism. O'Leary is not denying Westminster's *de jure* sovereign authority in Northern Ireland, his point is rather that once the Agreement 'beds down'

politically speaking its relationship with the territory and its Executive Committee may assume more of a federal than a unitary character (O'Leary 1999:85).

Another question to be considered under the broad heading of source and security of jurisdictions is what powers are held concurrently by different levels of government and which government is paramount in cases of conflict? Concurrent powers serve several possible functions. For instance, a central government can legislate national standards and then provinces or states can implement and deliver in a manner sensitive to local conditions and circumstances; alternatively they allow central governments to occupy a typically provincial or state jurisdiction which that government has temporarily vacated or proven unable to fill (Herperger 1991:18). Milne also discusses concurrency, and argues that it is a much more promising and flexible means of dealing with some of Canada's perennial constitutional and jurisdictional disputes, particularly those relating to Quebec (given the provision of provincial paramountcy). This would affect the type of balance of power and environment of negotiated sovereignty discussed with respect to regional and federal governments above. Milne observes that other federations such as the United States, Germany and Australia make much greater use of concurrency than Canada. This may be less true now than it was a few years ago as Canada now makes extensive use of the concurrency principle in the negotiation and implementation of Aboriginal self-government. Milne also observes that the issue of paramountcy is not always a dilemma; for example, Canadian courts interpret concurrency narrowly such that if there is no direct contradiction between a federal and provincial law, both may stand (Milne 1991; Hogg and Turpel 1995:202). Nevertheless, it is important to be aware that concurrency and ambiguity of jurisdiction provide not only avenues for cooperation but also recipes for conflict if negotiations fail to produce solutions or if such arrangements are inherently unacceptable to a particular sub-state national group. They may also serve as convenient tools in the hands of central governments that are less interested in decentralisation and seek to limit or constrain the autonomy of their states or provinces.

A similar set of issues arises with respect to powers which are not absolutely concurrent but only partially overlapping. As we indicated above, in this era of complex interdependence it is likely that this question of overlap extends to a wide range of jurisdictions and policy decisions. This state of affairs can favour either central or regional and local governments. For example, the general spending power of central governments in many federations, which often grants powers of taxation and appropriation to the central government beyond its normal range of legislative jurisdictions, is often judged by state/provincial governments to be an unjustified means of interference in their exclusive areas of jurisdiction (Fremont 1993). Yet central governments themselves are often constrained by this state of affairs. For example, in Canada, the federal capacity to guarantee implementation of international treaties to which it is signatory is limited by the requirement that when such treaties impinge on provincial jurisdiction, those measures can only be made operable through provincial enabling legislation (Herperger 1991:26–7).

In any discussion of an overlap and potential conflict of jurisdictions one must distinguish the legal from the political aspects of the power of legislative override. For example, the federal government in Canada is legally entitled to several powers (reservation, disallowance) by means of which it can unilaterally override the provinces even in their exclusive areas of jurisdiction, but these powers have rarely been used in the last fifty years, hence their resurrection is becoming ever more unlikely as this would come with enormous political cost. As one observer has noted, political authority is dependent on its regular exercise (Bogdanor 1986:46). We have already seen how O'Leary makes such a case with respect to the relationship between Westminster and Executive Committee in Northern Ireland, and Bogdanor makes a strikingly similar case with regards to the quasi-federal character of Scottish devolution (Bogdanor 1999).

It is worthwhile summarising here some of the more important general insights arising from our discussion of jurisdiction. The first point speaks to the broad spectrum of institutional variations available to satisfy demands for a redistribution of power and influence in a multinational state. Furthermore, the formal structures of many of these institutions do not conform strictly to the theoretical parameters specified in much of the existing institutionalist literature. Similarly, initial impressions of the relative influence of particular institutional bodies can be misleading. A body with wide-ranging legislative powers may on its face look very impressive but if it has little control over the fiscal means of exercising its authority its influence appears much diminished. Similarly, a single jurisdiction functional management board may have a greater structural capacity to promote the interests of a sub-state national group in that particular policy area than an institution with wider jurisdiction wherein the group does not have control over decisions. Both of these examples help illustrate a more fundamental theoretical point, which is that while we stress the importance of formal institutional structures in the measure of influence, they must be examined in the context of the 'constellation of political forces' (Bogdanor 1986:43) which characterise the state in which they are rooted. This context in turn depends on the particular historical, cultural and socio-economic factors of the states in question. For example, is there a history of inter-group conflict, violence and mistrust or have historic relations provided a less volatile foundation for cross-community cooperation? Is there a political will amongst the majority in the state in favour of accommodating the demands of sub-state nationalists, or will such measures prove politically suicidal to the government of the day? These caveats are entirely consistent with our new institutionalist framework which views formal structures as one among several important factors essential to political analysis.

Access to the policy process

We turn now to a discussion of the question of access points in the policy process. To avoid duplication and complication, this section assumes that all discussion relates to areas where the group in question has some jurisdiction. Institutionalists argue that the rules implicit in an institution specify both the sequence of decision points and which individuals can act at each point (Shepsle 1989:137). It is worth re-emphasising here that our focus is on the ways in which the institutional arrangements provide group members with access to a particular part of the process and not with the ability to use that access. An early discussion document on Nunavut stressed the idea that constitutions 'do not say how things are going to be, but rather who will be able to make things happen and what are the limits on their power to do so' (Nunavut Constitution Forum 1983:6). The public policy literature and public administration studies consider the interaction of institutions and actors through the policy process, although they stress that policy creation is rarely as linear or distinctly segmented as such a description suggests. Policy analysis in its many forms seeks to understand why decisions and outcomes differ across policy areas, countries and time and so tends to look at institutions and actors for the answers. In discussions of the policy process the norm is to distinguish between the formulation of policy and the implementation of that policy.

While models and authors agree on implementation as a distinct component there is a range of terms and ideas used when talking about policy formation. In particular it is generally divided into further sections such as the classic distinction between issue definition and options analysis or selection versus achievement of goals (Gordon *et al.* 1993; Hjern and Porter 1993; Jenkins 1993). Easton sees the process as starting when demands come from both inside and outside of the political system (Jenkins 1993:37) but the actual process of making decisions is not given much emphasis, taking on the appearance of a 'black box' between the raising of an issue and the creation of the policy objectives (Jenkins 1993:41). Lasswell's more detailed model conceives of the initiation of an idea, collection of information, consideration of options and then the decision (Jenkins 1993:36). More generally Dahl (1956:84) talks about the prevoting, voting and postvoting periods in a polyarchy. In the prevoting period individuals can suggest alternatives to be included amongst those that the voters will choose between and the postvoting period equates with implementation. Other writers on democracy and voting tend only to talk about the ways in which votes are aggregated and the extent to which the decision is followed as they are dealing with a situation where the range of alternatives is not in the control of the voters: they choose between parties or candidates who stand for election.

Taking all of these ideas together a policy decision can be divided into a number of phases when different people are potentially influential. Before anything else can happen a question or issue must be raised and defined. Following that there will be discussion of alternative options, selection of one or a series of favoured solutions for more detailed consideration and the policymakers will choose and refine one of those proposed solutions. Clearly every decision must contain all of these factors although in real cases some will be separated and some combined into one discussion or action. Indeed much public policy literature stresses that the policy process should be seen as a whole, rather than as distinct sections, because impacts are interrelated and cyclical (John 1998: chap. 3). Political players who wish to have an influence over policy outcomes must know when access is possible and what component of the decision can be affected so that they can establish strategies (Shepsle 1989:137). Many such access points will be reliant upon the ability to lobby and thus are not institutionalised guarantees of a role in the process. Therefore, in considering the opportunities for influence that sub-state national groups are given, the matrix needs to consider different stages in the policy process and the institutional arrangements that define them. Given the range of relevant institutions this relates not only to the parliamentary process but also to a range of decentralised or devolved bodies.

Once an issue is on the agenda then many of the details have already been decided. For instance the terms used to describe the issue are established, as is the form of the question and thus whether it is narrowly or broadly defined. For sub-state national groups with a particular concern this part of the process can be crucial to ensure that the language used does not exclude them or define them as a 'problem'. For instance the question of the number of young indigenous men in prison can be discussed as a problem of indigenous men not respecting authority or as a problematic relationship between indigenous peoples and alcohol. This is just one example of how the problem can be defined in a way which suggests that causes are inherent in the sub-state national group. The Australian Royal Commission Report on Aboriginal Deaths in Custody (RCADC 1990) played an important role in re-framing the debate to consider Aboriginal incarceration and disorderly behaviour as an issue relating to an absence of self-determination rather than one of unlawful tendencies inherent amongst Aboriginals. Hence those who define the problem play a crucial role in the policy process. Raising possible solutions has similar importance as again it provides the opportunity to shift focus onto particular aspects of the issue. Often these two phases of raising an issue and proposing solutions are combined because people define an issue by offering a solution to a perceived problem, for instance when proposing a motion at a meeting. However, in parliaments they may be separate as in cases when the government identifies a problem and then asks bureaucrats or a policy institute or a commission of inquiry to suggest solutions. In the representation literature discussed in the previous chapter, it is in effect this part of the process where the airing of a range of perspectives is important to the deliberative process. Much discussion of the political needs of sub-state national groups suggests an alternative approach to the delivery of services, justice systems or resource use. These distinct approaches are

deemed to be based on different basic assumptions about human nature and social organisation. Thus many of the solutions proposed by indigenous and other sub-state national groups are surprising or alien to those familiar to the dominant national group, whose political ideals are grounded in radically different conceptions of the individual and society.

Once an issue and solution are defined there will be a formal decision. Committees and meetings using normal standing orders will accept or reject a proposal and may discuss amendments to it. The same is true once a bill reaches the floor of parliament but in legislatures a committee will also have debated every detail of the bill and had the opportunity to suggest changes to it. At the end of the decision process the policy is deemed to have been created.

Early studies saw the relationship between policy creation and implementation as a hierarchy with objectives determined by politicians which bureaucrats then made happen. These 'top-down' models were challenged by 'bottom-up' models which suggested that the two parts of the process were interrelated and that many important decisions were made in the implementation phase and that the implementers often suggested new issues to be addressed or alternative solutions to problems. These studies not only argued that implementers did play a role in shaping the outcomes but that they should be doing so to allow for local differences in values and beliefs (Elmore 1993; Hjern and Porter 1993; Sabatier 1993). To borrow a metaphor from Smith (Smith 1985:86) relations between policy creation and implementation can be seen as either a tiered or marbled cake. In a tiered cake each section is distinct though related while in a marble cake the different parts can be distinguished but they are not separate. In policy terms a marble cake situation would be one where there is cooperation with the centre providing funds and the locality the implementation decisions and mechanisms. In contrast economically independent federalism would exemplify a tiered cake. Of course the two models may coincide in one place, differing across policy area or department.

While implementation is generally discussed as something done by bureaucrats it may also be carried out by local government or other local elected bodies such as school boards and therefore is an important possible forum for sub-state national group involvement. Implementation is described as a process permitting the actor in question to carry out, accomplish or produce a prior authoritative public policy directive (Nakamura and Smallwood 1980:1–14) and generally means the ability to govern interpretation, regulation and the technical aspects of primary legislation. In many policy areas details of implementation are not specified in the legislation and therefore implementers determine the final shape of service or delivery within the scope created by policy-makers. In a rationalchoice approach implementation is a straightforward matter of efficiency, but if the process is seen as political then there are choices to be made on the basis of particular values and norms (Gordon *et al.* 1993:27; Jenkins 1993:41; Minogue 1993:24). In this manner, sub-state national groups can achieve differentiated policy delivery through input at the implementation stage. The magnitude of determination of detail is such that some writers see implementers as saboteurs of the policy process (Hill 1993:235). In Scotland, for example, implementation has at times acted as a 'sociological brake' on government policy, and goes a long way towards explaining the persistence of Scottish cultural distinctiveness in the United Kingdom (Brown *et al.* 1998:114–16). Implementation covers a range of activities but all have in common that they are constrained within limits set by another body and that body can change policy without input from implementers. So for sub-state national groups implementation may allow for differentiated delivery but its continuation is dependent upon the decisions of others and also often resources from the central government.

Most discussions of the policy process also include evaluation as part of the cycle, coming between implementation and agenda-setting. Particularly in the bottom-up models evaluation is the key that links implementers to the policy definition process as their assessment of the match between desired and actual outcomes feeds into the next round of policy modification (Minogue 1993). This part of the process is not included in the matrix as a distinct section. When evaluation leads to agenda-setting then the important component is the role in identifying an issue and the source of the demand is not important. On the other hand, some evaluation leads to lobbying or advisory reports which the decisionmakers do not need to heed. In these cases the influence is part of the normal lobbying process and not an institutionalised access point in the policy process and thus is not deemed to be a real form of institutional political voice. The same arguments hold for those bodies which monitor activity rather than control it and therefore purely monitoring bodies are not included in the matrix.

Implementation can relate to general policy or service delivery or budgets and is seen in both administrative and political forms. The process of creating primary legislation also involves both elected politicians and bureaucrats. This recognition of policy as being both political and administrative relates to ideas discussed in the previous chapter. Members of the sub-state national group may be elected and therefore there is delegation to political representatives. However, group members may be appointed to advisory boards and are therefore closer to the administrative approach to policy creation and implementation. The members of the sub-state national group may also have some influence because administrators are accountable to them, rather than because they make the decisions themselves. In decentralisation the process of accountability is always important and one measure of the level of decentralisation is whether local administrators are accountable to local or national politicians (Pollitt *et al.* 1998: 12–13). This distinction is crucial in looking at the influence of sub-state national groups. For instance if local administrators are accountable to the cabinet minister rather than the local indigenous council then it is not clear whose policies are ultimately followed. Therefore in determining placement on the matrix we need to consider lines of accountability

as well as access to participate in the decision-making process. Accountability is a theme which features prominently in Chapter 5.

The matrix concentrates upon the extent of political voice as determined by institutionalised access to points in the policy process. The extent of the political voice is an indication of where in the chronology of a policy decision the group has formal access to the process. The form of this access will differ depending upon the political body involved. For instance if access is within the parliamentary legislative process then the form of access will differ from that when an advisory or management board is being discussed.

Categorising the extent of political voice

The extent of political voice describes the place in the policy process where the sub-state national group can gain access or has the capacity to influence. Therefore the task is to determine the earliest point that group members are guaranteed a voice, either on all issues or on specified ones. The matrix categories are arranged chronologically but this should not suggest a hierarchy. There is no suggestion that having a voice at the implementation stage is necessarily a failure to achieve self-determination. Depending upon the priorities of the group, access may be most appropriate at a later rather than an earlier level.

Agenda-setting means that the members of the group in the political institution are able to participate in the creation of the working agenda. Usually this means placing an issue on the agenda but keeping an issue off the agenda is a powerful part of this process too. Integral to the idea of setting the agenda is the ability to frame the question or define the issue. In many cases the political institution will have restricted jurisdiction so there will be differences in the ability to have an issue put on the agenda that relate to whether or not the issue is within the jurisdiction of the body. Assemblies such as those in Nunavut or Scotland are obvious examples where sub-state national groups have agenda-setting capabilities as are many of the local governments for Canadian First Nations. The Secretary of State for Scotland and the Minister of Maori Affairs are also examples of agenda-setting because they are cabinet members.

Proposing solutions for issues already on the agenda means that the group members can suggest alternatives that suit the needs or beliefs of the group. Here the definition of influence is important because access means being able to raise alternatives and have them discussed, rather than a guarantee of having the ideas accepted. In legislative terms proposing solutions means that the group plays a part in writing details of the bill before it is published for discussion and submission. For instance one institution tried in Northern Ireland, known as rolling devolution, showed elected assembly members draft orders in council and allowed comment before the final decision was made. Through this mechanism representatives had access to discussion of possible solutions to a pre-specified problem.

Making decisions and refining details follows chronologically and therefore refers to the situation when group members can take part in the official decision, once the issue has been clarified into a proposal. Again there are possibilities of helping to refine the proposal and in voting on the presented package. In formal legislative bodies the decision-making stage does not allow for extensive alteration of the proposed solution, thus the previous step of proposing solutions needs to be distinct. Once a piece of legislation or a motion at a meeting has been created then those participating in decision-making can only propose amendments of detail or try to defeat the entire policy. Backbencher MPs and senators from sub-state national groups are a good example of this category, either acting individually or as part of the committee stage of a bill.

Implementation and delivery covers a range of actions relating to decisions on budgetary priorities, differentiated delivery and decisions of regulatory details. In particular sub-state national group members can play a role in provision for members of their group and introduce some variation in the general policy to suit the needs of the national group. For instance, there may be a role in allocating resources or in deciding how set norms are to be met, for example which dates will be the four allotted public holidays or the content of cultural studies in schools or how to regulate a policy of sustainable fishing. Examples range from ATSIC which allocates development funding to the Assembly of Wales which passes secondary legislation within policy defined by Westminster.

Distinctions between the different parts of the process may be made clearer by use of an example. Say that a group wanted to respond to domestic violence through tribal shaming and rehabilitation rather than the conventional incarceration of offenders. If the group has agenda-setting access then they would have opportunity to have the issue of sentencing for domestic violence placed on the agenda of the body that has jurisdiction in this area. If the group's earliest access was in defining solutions then they would have to wait until this issue was placed on the agenda by others but could then have their ideas on tribal treatment seriously considered amongst the range of options. When the decision-making stage is the earliest access, then the group can only further their demands by either voting for a measure that would allow them to follow such a policy, or opposing a measure that would prohibit it, and therefore are very dependent upon those who have access at earlier levels. Access to implementation could mean that the group can follow its alternative approach if the policy allows for variation in the matter of sentencing in cases of domestic violence. In this example the group has little real chance of effecting change unless they have access to the first two stages of the policy process. However this situation is not always the case. Take the

example of the school curriculum that has been discussed earlier and a group that wants to ensure that school children read books written by authors from their sub-state national group. Agenda-setting would involve raising the issue of specifying what books are read in schools, while solution proposing would include the idea either that the list of books is specified nationally and includes relevant authors, or that the specific authors are to be determined locally (by each school or by a devolved body). At the decision-making stage the group may be able to amend a general rule on specifying the books to be read so that it includes indigenous authors and will also be able to support proposals in line with their wishes. Implementation may allow for local variation and therefore the group would have a chance to specify their chosen authors.

Summary

To recap briefly, we opened the chapter with a definition of power as a sub-state national group's potential to influence the decision-making process in its respective institutional context. This influence is dependent on three interrelated factors: the jurisdiction, the access to the policy-making sequence, and the form and size of representation within the decision-making body. We stressed that this is a measure of the sub-state national group's potential for influence, not their capacity to guarantee outcomes. A sub-state national group must still contend with a variety of intervening variables acting as a brake on its political voice. These include resources available to decision-making bodies to carry out their functions and to see them implemented. Factors such as political expertise, time and economic resources are important resources for the decision-making body as a whole and for the sub-state national group's representatives. There also may be structural constraints on the potential to influence, for instance, formal or informal constitutional limitations on legislative powers, competition from other levels of government, judicial review and bureaucratic intransigence.

Looking ahead to the next two chapters, our purpose there is to provide a brief description of the institutional structures provided by each of our cases or groups of similar cases, and to categorise them in terms of the variables for type and extent of voice. A table is provided showing the precise place of each of the institutions in the resulting matrix. The matrix provides an organisational resource for the analytical chapters in Part III.

Part II

Evidence from the cases

Having defined the theoretical parameters of the matrix it is now time to interrogate it with real cases. The chapters in Part II describe and classify each of the institutional cases chosen for inclusion in the matrix plus some others of interest which fall just outside of the matrix. Chapter 3 covers institutions with primary legislative authority and Chapter 4 covers bodies with a more limited or circumscribed voice in the policy process. Each case study summarises the history and rationale for the creation of the particular institution, its main structural features and decision procedures, the nature of the group it is intended to benefit, and its categorisation in terms of the type and extent of the political voice it provides. Each chapter concludes with a table listing all cases considered and their categorisation for type and extent of voice, or the reason they are not part of the matrix. The filled matrix, with all cases, is in the introduction to Part III.

This brief introductory section is designed to provide some initial contextual and explanatory material to orient the reader within the range of different cases in the study. As we indicated in the introduction to the book, we decided to research a relatively small number of countries which were similar enough in their basic political structures and political traditions to facilitate a stable platform for comparative purposes, but which contained a sufficiently large and diverse collection of institutional examples to support an empirically and analytically rich set of conclusions. The institutional examples exhibit variety along several different dimensions. To run a very quick survey, we have included institutions which have been in existence for well over a century, in addition to institutions of a very recent vintage. Included are examples of separate institutions of self-government, alongside others involving representation in central legislatures and committees or on shared management boards governing specific issues. We have surveyed institutions of vastly different legislative scope, discretion and autonomy, governing bodies with and without formal constitutional status, those with varying degrees of economic independence from central authorities, and those which answer the needs of both territorially dispersed and territorially concentrated populations.

Moving to some specific examples, as we indicated in the opening chapters, there are some fairly significant statistical differences among our chosen cases.[1] A sample of these statistics appears in Table 2. Differences tend to be most pronounced when comparing some of the indigenous and non-indigenous cases, particularly regarding size and dispersion of populations and territorial factors. For example, in each of Australia, Canada and the USA, the self-identifying indigenous populations comprise less than 5 per cent of the population as a whole, but this proportion rises to 15 per cent in the case of Maori in New Zealand. This seems small in comparison with Quebec, which has roughly 25 per cent of the Canadian population, but is not far off Wales and Northern Ireland at 9 per cent and 3 per cent of the UK total respectively. Indeed, by 2051, it is predicted that Maori could comprise 22 per cent of the total New Zealand population, and up to 36 per cent of the under-17 population. Regional breakdowns yield different results again with Inuit comprising roughly 85 per cent of the population of Nunavut and Yukon First Nations over 20 per cent of the Yukon. Similarly, in 1996 Aboriginal peoples made up just over 2 per cent of the total population of Australia, but almost 29 per cent of the population of the Northern Territory. In terms of absolute numbers, indigenous populations tend to be much smaller, particularly when we look at individual groups like the Inuit at just over 20, 000 and the Sechelt at roughly 1,000 members, who are dwarfed by the Scottish and Quebec populations at roughly 5 million and 7.5 million respectively. On the other hand, if we ignore individual tribal breakdowns, the 1997 Indian, ‘Eskimo’, and Aleut population in the United States at 2.3 million is larger than the total populations of either Wales or Northern Ireland, and approaches the non-Maori population in New Zealand which stood at just over 3.1 million in 1996.

Territorial statistics also reveal another complex landscape of similarities and differences. Nunavut comprises 20 per cent of Canada’s landmass, which is not vastly different from Scotland at 32 per cent of the United Kingdom. Measuring 2 million square km, nearly eight times the size of the United Kingdom, Nunavut is in fact much larger in absolute terms than any of the other landmasses, with the exception of Australia. ATSIC technically has jurisdiction in all of Australia, but in real terms its authority is limited to areas of Aboriginal concentration. A similar argument applies to Maori MPs and the Minister of Maori Affairs. Particular arrangements for indigenous groups in Canada are subject to a high degree of internal variation in this regard. Indian Act bands and US tribal governments have jurisdiction solely over their reserve lands, which vary greatly in size, though on average are much larger on the American side of the border. The Navajo reservation, for example, covers 25,000 square miles, an area larger than many existing countries (O’Brien 1989:250). Groups like the Nisga’a, Yukon First

Nations, and the Sechelt have negotiated jurisdiction over comparatively larger territories than their Indian Act counterparts, but these often represent only a fraction of their traditional territories. Scotland and Wales, in contrast, enjoy jurisdiction over 100 per cent of what might be called their traditional territories.

In jurisdictional terms, the institutions are characterised by a similarly wide range of variations. Some have control over a single issue or jurisdiction, for example the management of a National Park as in the case of the Cobourg Peninsula Sanctuary Board. Others, such as Scottish Parliament and the Quebec National Assembly, have jurisdiction over a wide range of matters. Institutions like the Northern Ireland Assembly and Nisga'a Lisims government lie somewhere in between these two ends of the spectrum for breadth of jurisdiction. Most of the institutions have jurisdiction over all of the people resident within the given territorial parameters of their decision-making authority, although in certain cases, in particular US tribal governments, this is subject to variation depending on factors such as the type of legislative power in question for instance civil versus criminal law, and the discretion of the state within which the group's territory lies (Wilkinson 1987:88; O'Brien 1989: 201–8).

Other interesting variations appear among the cases in terms of criteria for political participation (citizenship) in the national group's governing institutions. Table 3 clearly shows the most significant variation to be the use of blood percentage (quantum) standards in the Canadian and US indigenous cases. Blood quantum is distinguishable from ancestry in the sense that it requires not just a blood connection, but a certain blood percentage as a criterion of citizenship. This 'thick' ethnic criterion of membership is, as we mentioned in Chapter 1, a carry-over of a policy of racial government imposed on indigenous peoples by early colonial governments. This criterion continues to play a role in the definition of an Indian for purposes of the Canadian government's official Indian Act, although individual bands are given the discretion of defining their own codes of membership which govern things such as political participation in band government (Canada 1985: ss 5–14). Blood standards nevertheless continue to be voluntarily employed by Canadian Indian Act and US tribal governments (Grand Traverse Band of Ottawa and Chippewa Indians 1988: Article II; Jamestown S'Klallam Tribe of Indians 1989: Article II). Under the terms of the Umbrella Final Agreement (see chap. 3), Yukon First Nations can, but are not required to, appeal to a blood standard (Canada 1993:26). Explanations for the survival of the blood standard include the desire to maintain a manageable tribal population under conditions of territorial, resource and funding limitations, and the connection made by some between ancestry and cultural survival. This having been said, blood standards are by no means a universal phenomenon among North American indigenous groups, and in fact many have constructed citizenship codes which incorporate a variety of qualification criteria which have no necessary connection with blood percentages. The Inuit, for example, agreed from the outset to accept a public rather than an ethnic form of self-government for Nunavut, and as such participation is open to all in the territory regardless of ancestry or ethnic background. To take another example, in the final draft of the CAFN Constitution, a blood standard is one option, but individuals can qualify for citizenship on other grounds at the discretion of the First Nations Council (CAFN 2000: ss 1–5). Similarly, the Nisga'a citizenship code has a strong ancestry component, but no blood standard, and those without Nisga'a blood can acquire citizenship as the adopted children of those who have Nisga'a ancestry (Canada 1998: chap. 20; Nisga'a Nation 2000:8).

Table 2 Population differences (population figures are approximate)

	People (thousands)	within country	Land mass (1000s of sq. km.)	of country
Australia (1996)	*17,086*		*7,682*	
Aboriginals & Torres Strait Islanders	386	2.10	na	
Canada (1996)	*28,528*		*9,922*	
Quebec	7,420	26.00	1,700	17
James Bay Cree[a]	12	0.16	375	22
Aboriginal country-wide	1,016	4.00	na	
Inuit (Nunavut)[b]	25	85.00	1,994	20
Sechelt	1	na	0.01	na
Nisga'a[c]	6	0.16	2	20
Yukon First Nations[d]	7	21.00	na	
New Zealand (1996)	*3,714*		*265*	
Maori	538	14.50	na	
United Kingdom (1999)	*59, 501*		*243*	

	People (thousands)	within country	Land mass (1000s of sq. km.)	of country
Scotland	5,119	8.60	78	32
Wales	2,937	4.90	21	9
Northern Ireland	1,692	2.80	14	6
Northern Ireland Protestants	913	1.50	na	
Northern Ireland Catholics	710	1.20	na	
United States (1997)	255, 555			
American Indian, Eskimo and Aleut	2,300	0.90	na	

Sources (New Zealand 1996a; Australia 1997; United States 1997; United Kingdom 2000; United States 2000; Canada 2000c)
Notes:
[a]Territory and population percentages measure the Cree as a percentage of the province of Quebec
[b]Population percentage measures Inuit *vis à vis* total Nunavut population
[c]Territory and population percentages measure the Nisga'a as a proportion of the province of British Columbia. The population of British Columbia is approximately 3.689 million, and its land mass approximately 948,000 sq. km.
[d]Population percentages measures Yukon first Nations *vis à vis* total Yukon population

Ancestry standards, on the other hand, are not entirely alien to contemporary democracies, as demonstrated by the cases of Germany and Israel and, as we mentioned in Chapter 1, receive unofficial support among segments of the Quebec population. Ancestry is technically a requirement for participation in both ATSIC and the Maori electorates, but in practice both states tend to rely on the principle of self-identification, unless a formal objection is raised with regards to the registration of a particular individual. In contrast, ancestry is more stringently applied as a requirement for institutional participation and receipt of benefits under the settlement negotiated between Ngai Tahu and the New Zealand Crown (New Zealand 1996: ss 7–9; Ngai Tahu 1999: s. 6). Selfidentification as either Nationalist or Unionist is a criterion for certain kinds of participation in the Assembly for Northern Ireland, but in general citizenship is tied to residence. Similarly, for Scotland, Wales and Quebec membership is tied in a more straightforward manner to the simple fact of residence in the territory, although active participation in political institutions is, as in all of the cases, at least informally linked to factors such as one's level of linguistic and educational competence. For example, whereas all residents have a right to participate in Quebec's political institutions, such participation will be relatively more limited if one has no command of French.

The presence of more than one national group in a specified sub-state territorial jurisdiction is another factor differentiating our chosen cases. As Table 2 indicates, in at least six of our cases the populations within the territorial jurisdiction of the relevant institution are divided in terms of their primary identification with a national group. This has an important bearing on questions of eligibility for political participation, and who the institution was intended to benefit. In three of these cases, the Maori seats, ATSIC, and the Sechelt Indian Band Council, the institutions were created exclusively for the indigenous national groups in the territory and participation is restricted to members of that group. The Sechelt case is somewhat different in the sense that it creates an advisory body for non-members resident in the territory. Certain US tribal governments have set up similar advisory boards that allow non-voting reservation residents (for the most part, non-Indians) to influence policy on matters affecting their interests. Others have established special assessment districts that extend the franchise to all within their bounds (Wilkinson 1987:118–19). Some of the functional management boards present an interesting variation on this theme in that indigenous groups are guaranteed the right to appoint board members, but there is not always a stipulation that these members be *from* the group. Such is the case with the Yukon Fish and Wildlife Management Board, where Yukon First Nations are free to appoint (and in some cases have done so) non-First Nations members to represent their interests ((YFWMB) 2000). The Northern Ireland Assembly is a case apart in that it is explicitly created for both Unionists and Nationalists, and participation in key decisions is linked to selfidentification as one or the other. Nevertheless, the institution is also designed to benefit, and is open to the participation of, all in the territory regardless of national identity.

Table 3 Criteria for political participation[a]

	Nothern Ireland Assembly	Nunavut Legislative Assembly	Quebec National Assembly	Scottish Parliament	National Assembly of Wales	Nisga'a Lisims and village governments	Sechelt Indian Band and District Councils	CAFN Council	Cree Band Councils	Indian Act band councils	Tribal Council (USA)	Maori Seats (pre-1975)	Maori Seats (post-1975)	ATSIC
Ancestry						X	X	X	X	X	X	X	X	X
Blood quantum								X	X	X	X			
Residence	X	X	X	X	X									
Marriage						X	X	X	X	X	X			
Adoption						X	X	X	X	X	X			
Selfidentification	X												X	X
Community acceptance						X	X	X		X	X			

Sources: (New Zealand 1867; Canada 1984; Canada 1985; New Zealand 1986; Grand Traverse Band of Ottawa and Chippewa Indians 1988; Australia 1989; Jamestown S'Klallam Tribe of Indians 1989; Canada 1993; New Zealand 1993; CAFN 2000)

Note:

[a]This table is not intended as a strict representation of each group's citizenship code, but rather as an indication of the various criteria which can be used, either alone or in combination, to qualify individuals for participation in the group's governing institutions. In the Indian Act and US tribal government cases, we have amalgamated criteria which are relevant to different band or tribal entities, but it is important to recognise that these are subject to numerous case-specific variations.

Residence is a sufficient criteria for political participation in all of the non-indigenous cases. The criteria 'normally resident' on the group's specific territory is specified as a criterion in some of the indigenous cases, but we have chosen not to include this under the category for residence in order to highlight the differentiation between these two groups of cases.

The Nunavut and Quebec legislatures present yet another variation. Both were created as public governments designed to represent, and open to participation by, all resident in their territory, but each had the primary purpose of serving the interests of a particular national group, the Inuit in Nunavut and the Québécois in Quebec. Neither national group is guaranteed control of their respective territorial assembly, but must instead engage in electoral competition with populations professing a competing national identity. In Nunavut this refers to a non-Aboriginal minority which identifies most strongly with Canada as a whole (or perhaps English Canada). In Quebec it is much more complex, with not only an Anglophone population whose primary identification is with the rest of English Canada, but one Inuit and ten Aboriginal First Nations, each of which constitutes a separate self-identifying national group. Nevertheless, although neither the Inuit in Nunavut nor the Québécois in Quebec enjoys a voice which is *de jure* controlling, their numeric dominance in both cases ensures that their voice is controlling in a *de facto* sense. The Scottish Parliament and the Assembly of Wales, in comparison, also were created as institutions of public government for all residents in their respective territories, with the difference that there are no rival national groups in either case. Hence the official participation criterion necessarily matches the criterion for self-identification, yielding a controlling voice in both cases.

This brief sample of similarities and differences is designed to highlight and supplement the information contained in Tables 2 and 3. An additional reference point is provided in the Appendix, which contains a comprehensive list of the relevant institutions, existing and defunct, their initiators, creation date, and founding documents. Before proceeding with case summaries, one final caveat regarding the self-imposed limitations of our case-study coverage. Given the theoretical parameters established in the opening chapters, the case summaries are not intended as an exhaustive account of either the historical emergence or the contemporary operation of the governing institutions in question. This explains the brevity of the summaries provided. Our purpose is instead to provide a cross-section of institutional examples covering as wide a spectrum on the matrix as possible in terms of their potential degree of influence in the policy process.

3
Separate bodies

This set of cases looks first at three legislative assemblies located in Nunavut, Quebec and Scotland. We then consider the range of bodies created for Northern Ireland and finally a number of arrangements for Canadian First Nations and Indian tribes in USA providing varying degrees of legislative power. At the end of this chapter all cases mentioned are listed in a table along with either their matrix classification or the reason why they are not in the matrix (Table 4). The matrix with all cases included can be found at the beginning of Part III and all cases are listed in the Appendix with details of their founding document (s) and date of creation.

Government of Nunavut

Nunavut, the Canadian territory with an Inuit majority created by the division of the Northwest Territories (NWT), has an elected assembly which has the same legislative powers as the government of NWT (Cameron and White 1995; Légaré 1997; Stevenson 1997). While First Nations peoples, as a collectivity, make up the majority of people within the NWT, and have held over half of the seats in the legislature since 1979, there are significant differences in the needs and views of the Inuit, Métis and Dene. This perceived difference helped give birth to the idea of a division of the NWT in 1976 and in the following years a growing number of bodies, both Inuit and other, backed the idea culminating in support from the Department of Indian and Northern Affairs (INAC) in 1985. This official acceptance was crucially aided by a plebiscite in 1982, where 56 per cent of NWT voters backed a split, and the publication in 1983 of *Building Nunavut* by the Nunavut Constitutional Forum, a grouping of native peoples within NWT (Nunavut Constitution Forum 1983). Once the idea was accepted, more detailed proposals for the new government and the new boundary went through several rounds of consultation and a vote on the boundary in 1992 which passed with 54 per cent. In 1992 a Political Accord was signed which, along with the NWT Act, formed the basis of the enabling legislation passed in 1993. The Nunavut Implementation Commission then worked on details of the assembly and the first elections were held in 1999. The drawn-out progress on this idea reflects the persistence of Inuit groups and the fact that the political deal was intrinsically related to the land claim. The six years for implementation were in large part designed to enable the training of Inuit bureaucrats and to ensure time to formulate appropriate details (Cameron and White 1995). However, while the time taken seems long, the Inuit achieved political control only forty years after first gaining the right to vote in federal elections.

The detailed structures for Nunavut were proposed by the Nunavut Implementation Commission whose ten members were appointed by the minister and taken from lists proposed by the Ottawa government, the NWT government and Tungavik Federation of Nunavut (TFN). The Commission's first report *Footprints in New Snow* was circulated widely and after consultation a second report was published (Nunavut Constitutional Forum 1995, 1996). The commission aimed to keep things simple and mostly adopted the familiar structures from the NWT with a legislative assembly and an executive cabinet. While the NWT and Nunavut use this Westminster model they also follow more traditional practices of consensus, relying on few recorded votes and eschewing political parties (White 1991:499–500). Candidates run as independents, even if they have political affiliations, and as they represent such small populations (often less than 1,000 people) there is a feeling that they can talk to everyone and be delegates for the popular view. In the assembly all members elect the cabinet and any bill must gather the support of a majority with no party discipline to ensure that the cabinet view wins (Canada 1993b). Nunavut was always conceptualised as public government, covering all who lived there, rather than government specifically for the Inuit. However, as the Inuit make up over three-quarters of residents they are virtually guaranteed a majority in the legislature.

During the consultation process election details caused widespread debate. The 1993 Act specified that each member represent a district so proportional representation was not an option. However, due to the belief that the legislature should contain more than the ten members from the NWT assembly, there was discussion of two-member electorates. This process was also seen as a way to ensure gender equity with a proposal that in each district there be two lists of candidates, one all women and the other all men. Each voter would vote for one candidate on each list with a first-past-the-post (plurality) election: the candidate with the most votes would win (Nunavut Constitutional Forum 1995: Appendix A). After many debates the proposal was narrowly defeated in a 1997 plebiscite. After the 1999 election there was one female member of the assembly. In

the end the whole idea of two-member electorates was also rejected and nineteen new districts were created for the election, meaning there are under 1,000 voters in each district (Elections NWT 1999). The creation of new electorates means that community differences can be represented, which is important in such a geographically large place. With no political parties community is the basis of representation.

Jurisdiction is the same as for the NWT. Nunavut has the same powers as any Canadian territory, which are less than those of the provinces. They are highly dependent on the federal government for financial support but can pass legisla tion to raise taxes within Nunavut, for territorial, municipal or community purposes (Act 32 (1) h). The Implementation Commission suggested that the functions be organised into ten units, fewer than in the NWT: executive and intergovernmental affairs; finance and administration; human resources; justice and regulatory affairs; community government, housing and transportation; culture, language, elders and youth; education; health and social services; sustainable development; public works and government services (Nunavut Constitutional Forum 1996:41). They also suggested that the offices be spread across the territory but grouped into similar clusters, for instance having all social functions together. One reason for this spread was to ensure that employment opportunities were shared; the other was that no town could cope with the influx of people that would have resulted from a concentration of government business in one place. The commission was clear that organisation should be functional rather than regional and also was opposed to the idea of a regional level of administration between the territory and the existing community activity. In some areas, such as health, this meant that the three existing regional boards came together into a Nunavut-wide organisation.

As Inuit are only part of the population and all residents can vote then the type of voice is elected proportionate. Of course, should there be a change in the population then the Inuit representatives could cease to hold a majority in the legislative assembly. In choosing public government the Inuit did not press for guaranteed control of the legislature, recognising that public government would be more readily accepted by the rest of Canada, and that it still increased their political autonomy (Abele and Dickerson 1985:12) and is likely to assist in their ultimate goal of provincial status (Ittinuar 1985). However Inuit leaders have also made it clear that, should the demographics shift in favour of non-Inuit, they retain the prerogative of choosing the option of ethnic government. As the legislative assembly can pass laws within its areas of jurisdiction then members can affect the agenda although, as with all territories, there are issues of concurrency and paramountcy. It is primarily the executive that proposes new bills but drafts are sent to the Legislative Standing Committee before formal introduction to the legislature to allow for consultation and suggestions. The non-cabinet members can also raise an issue, following NWT practice, by passing a motion asking that the executive consider a particular course of action (White 1991: 514–17). Given the size and consensual practices of the legislature all members have the opportunity to place an issue on the agenda.

Quebec National Assembly

The National Assembly of Quebec is one of Canada's ten elected provincial parliaments. Its origin lies in the historic struggle of the settlers of New France to preserve their distinctive culture and society within an overwhelmingly British North America. These settlers were governed by a variety of French colonial institutions from 1671 until the capitulation of France in 1759 established British control over North America (Larocque 1973:70). The Royal Proclamation of 1763 provided for the division and political administration of British North America, anchored in the assumption that the French population would be rapidly assimilated (Brunet 1973). Political realities dictated otherwise, and in 1774 The Quebec Act provided recognition to the distinctive features of Quebec society, with guarantees for its language, religion and system of civil law. The Act also provided its elites with a share in the exercise of political power as members of a crown-appointed legislative council. The Constitutional Act of 1791 divided the colony into two provinces: Upper Canada (Ontario) and Lower Canada (Quebec). Each came equipped with its own legislative assembly with fifty elected deputies, as well as a lieutenant-governor and a legislative council appointed by the king. In 1792 an executive council was added which was also appointed by the king (Larocque 1973: 70).

In time, the population of British origin came to dominate the rest of the country while that of French origin remained a majority in Quebec. Tensions ending in brief rebellions in both Upper and Lower Canada in 1837 led the British to commission a special report on the provinces by Lord Durham. Durham, seeking an end to what he concluded was the 'war of two nations within the bosom of a single state', recommended assimilation of the French via the elimination of their special status and the fusion of Upper and Lower Canada under the authority of a single Parliament of United Canada. Hence, under the Act of Union in 1840, the two provinces were united under a single Governor, an executive council not responsible to the legislature, a legislative council (upper house) appointed by the king, and an elected legislative assembly with 84 deputies, 42 from each of the former provinces (Larocque 1973:70–1; Thomson 1973:11). British intentions once again bowed to political realities as the new government developed much more of a consociational and bicultural than an assimilationist character. This approach included guaranteed numbers of representatives, bi-ethnic coalitions, shared ministries, and equal representation in decision-making (Larocque 1973:71; Thomson 1973:11; Maclver 1999: 256–7). Members of the parliament could debate bills initiated by the executive so extent of power is 'make decisions' and type is symbolic elected as Lower Canada

(Quebec) and Upper Canada had equal numbers of members regardless of population relativities. This arrangement in fact treated Lower Canada unequally, since its population of 650,000 exceeded that of Upper Canada by 200,000 people (Larocque 1973:71). In time, this demographic balance shifted in favour of the English, leading to dissatisfaction on both sides: French out of fear of domination; and English out of anger that their numbers warranted greater representation. This dissatisfaction fuelled the search for yet another institutional alternative.

This alternative was not long in presenting itself. In 1864 the colonial governments of New Brunswick, Nova Scotia and Prince Edward Island passed resolutions to discuss a proposed Union of Maritime Provinces. They were joined in these discussions, held from 1 September until 9 September in Charlottetown, by representatives from the Parliament of United Canada, and soon the idea for a Maritime Union was dropped in favour of a Union of British North America. At a follow-up conference in Quebec on 10–27 October 1864, 72 resolutions were adopted which came to be known as the 'Quebec Resolutions'. These resolutions were debated for several weeks in the Parliament of United Canada until they were passed on 20 February 1865 (Bonenfant 1973: 52–3; Thomson 1973:11). The Quebec Resolutions formed the basis of Canada's original constitution, the BNA Act, proclaimed on 29 March 1867 as an Act of the British Parliament at Westminster.

The motivations of the provincial partners for entering the federal compact included the desire for self-government in their own provinces, protections against the threat of the United States, and a vision of a state-building project (a United Canada). For Quebec in particular, concern to protect their distinctiveness was paramount, as was mistrust of the USA, though they were decidedly more ambivalent about the Canadian state-building project (Bonenfant 1973:52–5; See 1980:121–2; MacIver 1999:242). After Confederation, Quebec's ambivalence to the federation and its alienation from English Canada grew as a result of perceived threats to its autonomy and distinctiveness (MacIver 1999:242–4).

Confederation created both the contemporary province of Quebec and its governing body, the national assembly. The national assembly is a unicameral legislative body whose members are each elected under the single-member constituency plurality system. The first Quebec provincial government was elected on 15 July 1867 and the 36th legislature, comprising 125 members, began its tenure in 1998. The national assembly is virtually identical to all other Canadian provincial legislatures in terms of structure and constitutional principle. Based on the Westminster model, the executive and legislative institutions, through the constitutional conventions of responsible government, are fused in such a manner that the cabinet is the key engine of the state. This structure entails cabinet domination of the policy-making process, debilitating restrictions on committee power to regulate government activities or determine public policy, and a massive preponderance of resources backing the cabinet. This executive domination is enhanced by strict adherence to cabinet solidarity, party discipline in the legislature, and the convention designating the government leader as first among equals in cabinet (Brock 1995:94; White 1996:205).

The BNA Act accorded 49 powers, 29 to federal parliament, 17 to the provinces, and 3 held concurrently. Residual powers are assigned to the federal parliament, but in practice these are often exercised concurrently when they have an impact on an existing provincial competency. It also provided the federal parliament with a number of general powers of intervention which have since either been repealed or fallen into abeyance. Provincial powers include matters such as education, property and civil rights, municipal institutions, and taxation. A general account of these powers is included in Table 7 in Chapter 5. Arguably, the initial aim of Confederation was to balance power heavily in favour of the federal government, but reality has come to reflect interdependence and a shifting balance of power (Smith 1991; Romney 1992; MacIver 1999:244). Funding is provided through a combination of Quebec's own powers of taxation, and annual federal transfer payments.

The national assembly has exclusive legislative authority in most of its areas of jurisdiction, hence the extent of its voice is agenda-setting in these areas. Its area of jurisdiction is wide and covers all people residing in Quebec. Over 90 per cent of Canada's French-speaking population (francophone) live in Quebec, whose population was 82 per cent francophone in 1991 (MacIver 1999:248). The province's francophone population continues to harbour one of the most vigorous sub-state nationalist movement in the developed west. This sub-state national group, the Québécois, manifests a powerful interest in preserving and promoting the French language and culture and of building a strong and independent francophone socio-economic and political community in the province. The voice is proportionate elected in a *de jure* sense, because the strength of the Québécois voice is dependent upon their success in electoral competition with rival Anglophone and indigenous national groups (although the latter are not really a factor in provincial electoral competition). Nevertheless, the strength of their demographic majority provides them with a voice that is *de facto* controlling. This is enhanced by the fact that all three major political parties in the province are officially dedicated to the preservation and promotion of the francophone presence within the province, and to the defence of Quebec's powers against any encroachment by the federal government.

In the modern history of the province there have been two major but ultimately unsuccessful constitutional initiatives contemplating various changes to Quebec's powers and relationship with federal institutions: the 1989 Meech Lake and the 1992 Charlottetown Accords. There have also been two unsuccessful referendums on Quebec sovereignty, in 1980 and 1995. In the latter case, the vote differential was only 1.16 percentage points. In 1998, the province reelected the Parti Québécois, whose platform maintains a commitment to Quebec sovereignty, to a second consecutive term in government. These

developments highlight the ongoing centrality of the competition between the forces of federal reform and political independence in Canada-Quebec relations.

The Scottish Parliament

The Scottish Parliament is an elected assembly with primary legislative power over those living in Scotland. Created by the Scotland Act of 1998, the first elections were held in 1999. The blueprint for the new parliament was provided by the Scottish Constitutional Convention (SCC) in 'Scotland's Parliament, Scotland's Right' (Scottish Constitutional Convention 1995), with the final legislation making only minor changes to the SCC proposal. The SCC brought together political parties, local government, churches, trade unions and business organisations plus other interested groups to find common ground on a devolved structure for Scotland. Although the full range of political parties was invited, the Conservatives never attended and the SNP (Scottish National Party) left in the first year due to disagreements over devolution versus separation (Scottish Constitutional Convention 1995; Keating 1996; Taylor and Thomson 1999:20). The SCC first met in 1989 and the following year published a discussion paper, 'Towards Scotland's Parliament' and called for comment from the people of Scotland. In the lead up to the 1992 general election the Labour Party promised to legislate for a Scottish Parliament in its first year but they lost the election. In the ensuing five years the SCC worked on details for the parliament such as the electoral system and relationships with the Westminster Parliament (Lynch 1996).

When Labour won the 1997 general election they honoured their earlier promise and held a referendum in Scotland, later the same year, asking voters if they wanted a Scottish Parliament and also if the parliament should have the power to vary tax levels. Both were successful with 74 per cent voting for the parliament and 63 per cent for tax varying powers with a turnout of 60 per cent (Taylor and Thomson 1999:8). This was the second referendum in Scotland proposing devolved powers, the other having been set by the previous Labour government in 1979. Despite being backed by 51.6 per cent of the voters the assembly proposed in the 1979 referendum was not established due to a clause in the legislation stipulating that over 40 per cent of registered electors had to vote for change, rather than just a majority of voters. As the vote was only 32.9 per cent of those on the electoral roll it was not successful (Taylor and Thomson 1999:7). The change in voting is seen as a sign that devolution had become acceptable to the middle classes, the majority of whom had voted no in 1979 but voted yes in 1997. In 1979 the working class were already majority supporters of devolution (Taylor and Thomson 1999:44). Since the 1930s there have been sustained calls for devolution, separation or, more recently, an independent Scotland within a federal Europe, with the SNP first winning election to Westminster in 1967 (Keating 1996; Brown *et al.* 1998).

Members of Scotland's Parliament (MSPs) are elected by voters living within Scotland, using a form of proportional representation not previously used in Britain: the additional member system (AMS). The new electoral system maintains representatives elected for an electorate with the addition of regional proportionality, thus ensuring that the different areas have a voice (Brown 1999). In its debates on the electoral system the SCC canvassed various issues relating to group representation, in particular for women and the rural areas, particularly the islands. Some groups, such as the Scottish Trade Union Congress and Women's Co-ordination Group, were keen to use the opportunity of institutional design to introduce measures that would ensure gender balance. However, despite lengthy discussion, they could not find a solution acceptable to all in the Convention (Brown *et al.* 1998: chap. 8). Instead Labour and the Liberal-Democrats promised to select women candidates in winnable positions to ensure a better balance, however this did not happen fully. In the first parliament, 37 per cent of members are women which compares to 18 per cent in Westminster, thus providing a vast improvement but not the 50 per cent many had desired.

Various groups from the Highlands and Islands, including some Gaelic speakers, wanted to ensure a voice for these sparsely populated areas. One reason for the retention of local representatives and the use of regional lists was to ensure that the populous Glasgow area could not dominate the election. For instance the Orkneys and the Shetlands, two island groups to the north, were each given an MSP despite their populations being much smaller than other electorates and that they share an MP in Westminster. Regional allocation of party list votes also means that the party balance in each area is used rather than aggregating for the country as a whole. The main parties that contest Westminster elections fought the 1999 election and the PR system ensured each a presence (Brown 1999). In contrast, the 1979 Act had used the Westminster first-past-the-post system (plurality) for elections although a Lords amendment unsuccessfully attempted to change this to AMS. So the SCC ensured that internal divisions based on geography and party were accommodated and sought a means of ensuring gender balance. Party balance is also specified for committees within the parliament, with chairs and membership voted on by all members (Consultative Steering Group 1998:30).

Since the Act of Union in 1707, when the Scottish and English parliaments were united, Scotland has maintained a separate legal, education and banking system plus a distinct church. As discussed in the next chapter there was administrative devolution from 1937. The Parliament for Scotland has exclusive legislative power in all policy areas not specified as reserved for the Westminster government or specified as shared. Reserved areas include foreign and defence policy, changes to the constitution and social security provision. Specific issues within other broad policy areas are also reserved such as

abortion, time and deportation. Shared powers relate to obligations under international treaties and to the setting of standards (United Kingdom 1998). The parliament may debate any issue relating to Scotland and so can discuss reserved areas. Thus the Scottish Parliament has the ability to set the agenda on most policy matters in Scotland. The powers of the Scottish Parliament proposed in 1979 were much weaker than those in the 1998 Act. While it was still an elected body with primary legislative powers there was a definitive list of powers covering mostly areas of the welfare state plus the legal system (United Kingdom 1978).

Jurisdiction covers all people living within Scotland and a wide range of policy areas. Scottish identity is taken to relate to residency so their voice is controlling. In the matrix the 1998 Scottish Parliament is controlling and agenda-setting; the proposed 1979 parliament would fall in the same box but had less jurisdiction.

Northern Ireland: Stormont, rolling devolution and the Northern Ireland Assembly

Northern Ireland has had some form of devolved power since its creation in 1920. Originally devolution was a compromise between the competing demands for union with Great Britain and union as the island of Ireland. Three cases will be discussed here: Stormont (1921–1972), 'rolling devolution' (1982–1986), and the Northern Ireland Assembly which resulted from the Belfast Agreement (1998). Other aspects are discussed in the next chapter. While Northern Ireland as a geographic area has devolved power from the Westminster government in London, within that area two communities claim to be distinctive: the Nationalists and Unionists; or Catholics and Protestants. It is these two that are the sub-state national groups. There is much debate about identity (See 1980: 110–16; Connolly 1990:152–60; McGarry and O'Leary 1995:171–213) but religion is generally used as shorthand, especially as it mostly coincides with political belief on the key question of the future of Ireland and its relations to Britain and the Republic of Ireland. In the 1991 census 43 per cent said that they were Catholic, compared to 34 per cent in 1926 and in the 1998 election 40 per cent gave a first preference vote to a Nationalist party.

From 1920 until 1972 Northern Ireland had an elected assembly with legislative powers, generally referred to as Stormont. The initial legislation was written and passed in a hurry following the British government's recognition that the northern counties of Ireland would not enter the Irish Free State. Therefore the structure was not the result of long debate within the community or even amongst the elected politicians and there was no referendum. There had been a consultative forum but its ideas were not used (House of Commons (UK) 1920: 1,142 Devlin). The British government suspended Stormont in 1972 in the face of growing violence and civil unrest that the Stormont executive seemed unable to control. A central reason for the civil rights protests was Nationalist complaints of discrimination within local government (Connolly 1990:50–1; Loughlin 1998:30). Under the 1920 Act, section 5, religious discrimination was prohibited both as preference and disadvantage (Wallace 1971:32) but the Catholic community clearly felt that they were suffering in comparison to their Unionist neighbours.

Stormont was bicameral with the lower house of 52 members initially elected using the single transferable vote (STV) and the 26 senators mostly elected by the lower house with the addition of the Mayors of Belfast and Londonderry (Wallace 1971: 28–9). In 1929 the electoral system was changed to first-past-the-post (FPP) based on Unionist arguments that it would provide more stable government and that smaller electorates would facilitate better communication with constituents (Barritt and Carter 1972:40). There was also an argument that FPP, unlike STV, would concentrate voters' choice between the two sides of the main divide in Irish politics (Hennessey 1997:44). This change in the electoral system ensured that the Unionists formed every government but it did nothing to provide a voice for the minority Nationalist community (Boyle and Hadden 1985:28). Stormont had full legislative powers within its jurisdictional policy areas and was largely left to its own devices by the Westminster government (O'Neil 1998:460). However, the Unionist governments, wanting to be a full part of the United Kingdom, eschewed any opportunity to differentiate their policy from that passed in London (Aughey 1989:102) and did not seek taxvarying powers for the same reason (Meehan 1999:26). The Westminster Parliament also effectively turned its back on Stormont (House of Commons (UK)1998: MacKay 824).

'Rolling devolution' was introduced in 1982 (O'Leary *et al.* 1988; Connolly 1990: 142–4). The idea was that power would gradually be devolved as cooperation grew and the assembly members learnt legislative skills and found a means of working for the whole community by working together. The ideas were mainly those of Jim Prior, the new Secretary of State for Northern Ireland, although they built upon earlier government attempts to institute power-sharing: While the legislation received cross-party support in the British parliament it was not popular with any of the parties in Northern Ireland.

After STV elections in October 1982, the assembly first met in November 1983 but was dissolved in June 1986. Before the election the Nationalist parties had talked of a boycott but in the end both the SDLP and Sinn Fein contested and won a number of seats. However none of these elected Nationalist members took up their places. The cross-community Alliance Party and the various Unionist parties did attend assembly sessions and served on the committees. However, after the Hillsborough Agreement, where the British government formally recognised a role for the Republic of Ireland's government in discussion on the future of Northern Ireland, the Unionist parties protested. With the absence of all major parties the assembly was dissolved.

Abstention of Sinn Fein and SDLP members meant the assembly could only work on the first stage of the proposed process, that is, scrutiny of the departments within the Northern Ireland Office working for the Westminster Parliament. The assembly created six statutory committees, like the Westminster select committees. However, unlike select committees they saw planned legislation in the form of draft orders in council and so could exert influence before legislation was introduced (O'Leary *et al.* 1988:86–7). Being able to scrutinise draft orders gave them an opportunity to influence government thinking because when members chose to look at a particular issue then the department had to take note. Although the Northern Ireland Office was not bound to make the suggested changes, out of 998 suggestions 427 were accepted in full and 119 in part (O'Leary *et al.* 1988:174). Committee members showed little interest in administrative accountability and seeking to understand procedures used in the ministries: 'they were much more concerned with trying to influence the substance of policy and thereby to demonstrate publicly their ability to get things done.' (O'Leary *et al.* 1988:171).

The Northern Ireland Assembly was created from the 1998 Belfast Agreement (the Good Friday Agreement) arrived at through discussion by a forum elected in 1996. This assembly gives elected members legislative powers in specified policy areas. The agreement was reached after long-running and often tense negotiations between elected delegates from across the political divide. Although only thirty pages long, the document covers a number of crucial issues: decommissioning of arms, security, policing and justice, prisoners and rights, safeguards and equality of opportunity. A political structure of devolved power was only one of the bodies to be created, as the negotiators needed also to look at the so-called North-South and East-West relationships. These added components were in recognition of the existing 'totality of relationships' (Northern Ireland 1998:11–15). The latter looked at relations with other parts of the United Kingdom and suggested two British-Irish bodies, one of which includes members from all of the devolved assemblies as well as from the Westminster Parliament. While all of these aspects are crucial components of the political scene in Northern Ireland only the assembly is relevant as a case in this study. After signing of the Agreement at Easter 1998 the details were put to a popular vote in Northern Ireland on 22 May 1998 and passed with 71 per cent of the vote on a turnout of 81 per cent. A referendum was also held in the Republic of Ireland, as a constitutional change was needed to remove the aim of a united island of Ireland (Northern Ireland 1998; United Kingdom 1998a). Elections were then held in June and the assembly first met in July with the Act that turned the agreement into law being passed later the same year. However there were then arguments about cabinet creation and whether or not the IRA had to start decommissioning arms in order for Sinn Fein to be part of the executive. Finally at the end of 1999 powers were transferred to the Northern Ireland Assembly only to be rescinded in early 2000 after continued arguments that meant the assembly could not work properly. Power was returned to the assembly in June 2000 after an agreement that a cabinet could be formed with both Unionists and Sinn Fein members. The legislation gave the Secretary of State for Northern Ireland the power to decide when the assembly would gain powers to legislate (United Kingdom 1998a: part 1, section 2).

The 108 members of the assembly are elected using STV which assisted in the election of a number of small parties as well as the main Unionist and Nationalist parties: 10 in all. During negotiations the Northern Ireland Women's Coalition pressed for the use of AMS rather than STV in the belief that this would assist the election of more women. In the end little attention was paid to the selection or election of women. Nevertheless, the greater number of members helped to change the composition of the assembly, which is younger, more culturally diverse and has more women (14) than did Stormont (Reynolds 2000:624).

The internal structures of this assembly are unique in their institutional recognition of the two communities within Northern Ireland. The structure incorporated the consociational model with the executive as a grand coalition and party presence proportional to the number of assembly members they have; elections using a PR system; and close to a veto for each side on key issues (Lijphart 1997). Power-sharing, an idea adapted by the British government in 1973 (Arthur 1980:116–18), continued to be central. The assembly uses parallel consent and weighted majority rules, both of which had been discussed in various ways by different groups interested in a solution for Northern Ireland. For instance the use of a power-sharing executive containing members from all significant parties and the proportional sharing of committee chairs had been outlined in proposals from the Ulster Political Research Group in 1987 (Graham and McGarry 1990). Key decisions such as election of the First Minister, are conducted using parallel consent, which means that as well as having a majority of all members, there must be a majority within both the Nationalist and Unionist groups too. For some other votes a weighted majority is used whereby 60 per cent of all members must vote in favour plus 40 per cent within each of the two groups. These voting mechanisms will be used on anything designated a key decision, which can be triggered by a petition signed by thirty of the 108 members. These procedures mean that group membership must be specified and so elected members designate themselves as Unionist or Nationalist, or neither.

To further protect against domination by one group, the assembly does not follow the Westminster tradition of government and opposition. Instead the executive contains members from all large parties with places allocated in proportion to the number of assembly members from each party. Each committee also reflects the balance of the political parties and these committees have a strong role in policy creation, being able to develop and initiate policy and play a role in the creation of departmental budgets. The executive committee prioritises issues that have been raised in the committees. As with the

Assembly of Wales (Chapter 4) the assembly through its committees is the focus of power rather than the traditional Westminster executive cabinet power.

Policy jurisdiction has not changed as the form of control has shifted. The Secretary of State for Northern Ireland (discussed in the next chapter) took over the areas that Stormont had dealt with and it is these same areas that rolling devolution committees scrutinised and that the Northern Ireland Assembly will consider. Stormont was meant to provide 'peace, order and good government' (Connolly 1990:31), and to consider issues that exclusively affect Northern Ireland but certain items were explicitly excluded such as armed forces, treaties, banknotes and lighthouses (Wallace 1971:31). Revenue came from Westminster and Stormont could decide how to spend it. Changes to jurisdiction had to be passed in an Act at Westminster and they were expanded to meet new circumstances, usually when asked for by Stormont and always with their consent (Wallace 1971). The six committees in rolling devolution (agriculture, education, health and social services, the environment, economic development, finance and personnel) are the same areas to be considered by the new assembly. The assembly may be able to pass primary legislation in other areas, with consent from the Secretary of State for Northern Ireland. Unlike Scotland they cannot vary taxes. In all cases jurisdiction has covered all those living within Northern Ireland and explicitly excluded Irish people living in Britain and the Republic of Ireland.

In terms of the classification framework, the sub-state national groups are the Nationalist and Unionist communities rather than all those living within Northern Ireland. As most political parties in Ireland represent one or other of the groups the assemblies that used a proportional representation electoral system provided both communities with a voice that was proportionate and elected. However, in the new assembly both communities are guaranteed a stronger voice due to the rules of parallel consent, which means that either side can block a motion if most of them vote against it. In these instances the voice is controlling Given the population dominance of the Unionists and the use of a plurality electoral system for most Stormont elections then the Unionists also had a controlling voice in Stormont, unlike the Nationalists whose voice was not guaranteed.

The extent of voice that each side enjoyed across the three institutions is more varied. The Northern Ireland Assembly's use of mixed party executive and powerful committees who can initiate legislation means that both sides have clear access to the agenda. In Stormont the Unionists, by controlling the executive, had access to the agenda. The rolling devolution with its use of committees to comment on draft orders in council allowed influence in terms of suggesting alternatives once the agenda was set. The institutional structure called for crossparty committees which could comment and so structurally both sides had this form of access. The fact that the Nationalist parties did not attend means that they chose not to use the access, rather than suggesting it did not exist.

Sechelt Indian Band self-government

This institution provides a form of elected representative government with law-making powers applicable to all residents on Sechelt lands. Sechelt Indian Band self-government extends over a territory of 1,000 hectares comprising 33 former reserves within the Sechelt Peninsula, 50 km North of Vancouver, British Columbia (Peters 1987:8; McKee 1996:44). By the early 1970s the Sechelt had achieved the maximum autonomy available to them under the Indian Act (see Chapter 4), but continued to be dissatisfied with the restrictions this imposed on their autonomy (Sechelt Indian Band 1981). The Sechelt seized the initiative by drafting their own self-government legislation in 1982: the Sechelt Indian Band Act. Encouraged by the establishment in 1982 of a Parliamentary Special Committee on Indian Affairs, the Sechelt switched tactics and submitted for the Committee's review a legislative proposal that would apply to any band seeking to escape the confines of the Indian Act. The draft Indian Band Government Act proposed that any band, at its own discretion, could remove itself from the jurisdiction of the Indian Act and become self-governing under its own Constitution (Allen 1988:3–6; Taylor and Paget 1988:2.1). Although this draft was never adopted, its favourable review by the Committee's Penner Report, alongside continued pressure by the band, the constitutional entrenchment of Aboriginal rights in 1982, and several Supreme Court rulings supporting Aboriginal rights all combined to produce a political climate favourable to change (Allen 1988:5–6; Taylor and Paget 1988:2.3; McKee 1996:26–31).

On 9 October 1986, after months of intensive negotiations between the Sechelt and the federal government, Bill C-93, the Sechelt Indian Band Self-Government Act, was proclaimed. The Act for the most part displaces the authority of the Indian Act, establishing the Sechelt Band as a legal entity with all the capacity, rights, powers and privileges of a natural person. The Sechelt Indian Band Council is the governing body of the band, and exercises its powers within the terms of the Act and its own written constitution (Canada 1986a: ss 5–10; Peters 1987:8–9). Both the Act and the Band Constitution were approved by referendums of band members in 1986 (Canada 1986a: preamble; Taylor and Paget 1988:3.2). The Band Constitution also required approval by the federal cabinet which it duly received. The Act provides the Sechelt with title to their lands in fee-simple, a significant degree of financial independence and budgetary flexibility, and a range of primary legislative powers similar to those enjoyed by federal, provincial and municipal levels of government. These include the power to define their own membership, administration and management of band lands, provision of education, health and social services for band

members, preservation and management of natural resources, and the power to levy taxes for local purposes. The Sechelt also have the capacity to pick and choose from a menu of provincial statutes and use them for their own purposes, but without thereby submitting to provincial control (Peters 1987:8–10; Taylor and Paget 1988:3.3, 3.5, 4.1). A fuller account of these powers appears in Table 7, Chapter 5. The band has jurisdiction over both members and non-members on Sechelt lands, but only members can vote and hold office. The Sechelt constitution originally provided for a band council comprising a chief and four councillors, but included a growth provision such that there would always be roughly one councillor for every 120 band members ordinarily resident on Sechelt lands. No formal provisions are made for the inclusion on council of members of sub-groups such as women, youth or elders. Chiefs and councillors are elected by a majority of the votes of all band members, and council decisions are taken by majority vote (Taylor and Paget 1988:4.1; Sechelt Indian Band 1989:15, 25).

Sections 17–22 of the Sechelt Indian Band Self-Government Act also contemplated the creation of a second institution, the Sechelt Indian Government District, contingent on passage of provincial enabling legislation and a referendum among band members. The Sechelt District Government Enabling Act was passed in July of 1987, followed by a successful band referendum in March of 1988, and a subsequent federal cabinet order declaring sections 17–22 to be in force. The district is an autonomous corporate entity like the band, with jurisdiction over all Sechelt lands, including Indian and non-Indian occupied lands. Its members are those of the Council of the Sechelt Band, hence non-Indian residents on Sechelt lands can neither vote nor hold office. The band council can transfer any of its powers to the district council, with the crucial exception of membership and disposition of rights and interests in lands—see Table 7 in Chapter 5. The intention was to establish a division of powers between band government for Sechelt-specific matters, and local government for all individuals on Sechelt land regardless of band membership. The purpose of this division was to accommodate the fact that nearly half of the population living on Sechelt land at the time (1984) was non-Indian. The Sechelt acknowledged the need to provide this group with a political voice, but stipulated that this voice would be restricted to the advisory level, and could not speak to the band's core interests in land and membership. To this end, provincial legislation provided for an advisory council to the district (but not the band) council. The advisory council has four members and all individuals in the district, regardless of membership in the band, can vote and hold office. It has no legislative but only advisory powers, and in a restricted number of areas (Canada 1986a: ss 17–22; British Columbia 1987; Allen 1988:14–20; Taylor and Paget 1988:3.3–3.4, 4.2–4.4). The Sechelt Band also participates as a member municipality in the larger Sunshine Coast Regional District governing structure, but this institution is not covered by the study. The advisory council is not included in the matrix because its extent of voice places it outside the bounds of the existing categories.

Since participation in the band and district councils is restricted to members their voice is controlling. In both institutions their voice is agenda-setting in their areas of jurisdiction, but it should be emphasised that the Sechelt do not enjoy exclusive law-making powers, they are concurrent with existing federal and provincial jurisdictions. Federal laws of general application still apply to the Sechelt and their lands, except to the extent that they are inconsistent with the terms of the Act. Provincial laws of general application also apply, except to the extent that they are inconsistent with the Act, any treaty or act of parliament, the constitution of the band or a law of the band (Canada, 1986a; 756: ss 37–8). Hence, in cases of conflict, Sechelt laws enjoy paramountcy over provincial but not federal laws. Band government is financed through a variety of negotiated federal grants and transfers, and local revenues generated through taxation and band economic activity. As of April 2001 the Sechelt were actively involved in the renegotiation of their land and self-government arrangements as part of the British Columbia Treaty Process, after briefly pulling out in the summer of 2000 to consider the alternative course of litigation.

Yukon First Nations self-government

In Canada's Yukon territory, several First Nations have negotiated an elected form of government with a broad range of primary legislative powers. A Yukon First Nations political movement crystallised in 1972 following concern over potential damage to their traditional territories from oil and gas exploration. In 1974, the Council for Yukon Indians (CYI) was formed to negotiate a joint claim with the federal government for all Yukon First Nations. Negotiations led to tentative agreements in both 1976 and 1984, but each was eventually rejected by both Yukon First Nations and by the CYI General Assembly. Negotiations resumed in 1985 on the basis of a new approach. The aim was to negotiate a general agreement that would provide a framework for future specific negotiations with separate First Nations. On 29 May 1993, an Umbrella Final Agreement (UFA) was signed by the CYI, and the governments of the Yukon and Canada (Dacks 1985:258–60; Canada 1993). In addition to issues of land, resources, and monetary redress, the UFA commits government to the negotiation of individual self-government agreements with each Yukon First Nation that so chooses. A 'Model Self-Government Agreement' was finalised between Ottawa and Yukon First Nations in 1991, which establishes a framework within which First Nations can negotiate arrangements suitable to their particular needs and circumstances (Cameron and White 1995:30). The UFA is not legally effective until a Yukon First Nation has incorporated its terms into a final agreement (land claims) and a self-government

agreement. As of July 2001, seven of the Yukon's fourteen First Nations had negotiated self-government and final agreements (Yukon 1993; Canada 1994; Hogg and Turpel 1995:197).

Yukon First Nations are free to choose from a menu containing four different types of primary legislative powers. Depending on its particular needs and circumstances, a First Nation might choose to assume all or some combination of these powers. These include exclusive legislative jurisdiction (the rest of their powers are concurrent) over matters relating to their internal affairs and land claims; a second list of powers extending throughout the Yukon but which apply only to their citizens (personal jurisdiction); a third list of powers restricted to their territory but which apply to citizens and non-citizens alike (territorial jurisdiction); and a fourth set of designated emergency powers (Canada 1994:21–3; Hogg and Turpel 1995:197–8). In addition to these four broad types of powers, they can also negotiate the authority to make laws in relation to taxation, for local purposes, on settlement lands (which may eventually extend to non-citizens). A fuller accounting of these powers appears in Table 7, in Chapter 5. First Nations can adopt any law of Canada or the Yukon as their own, and can negotiate the devolution of responsibility for government programmes and services which fall within their areas of jurisdiction. Provisions are also made for a potential future upgrade of these legislative powers, and for the development of regional or district administrative and planning structures in partnership with the Yukon and/or other First Nations governments. Financing is provided by a separate Self-Government Financial Transfer Agreement negotiated as part of each First Nations' Self-Government Implementation Plan (Canada 1993e: chap. 24).

Voting and participation in Yukon First Nation governments is restricted to citizens, hence their voice is controlling. In terms of extent, their legislative powers enable them to play a role in setting the agenda in their designated areas of jurisdiction. Nevertheless, as in the Sechelt case, these powers are held concurrently. First Nation laws are paramount to those of the Yukon, but their relationship to federal laws is a subject stipulated for future negotiation (Hogg and Turpel 1995:204). The seven existing self-government agreements are denied constitutional protection, but negotiations towards securing this end are ongoing among the Yukon, Canada, and the Council for Yukon First Nations (CYFN, formerly CYI).

To illustrate the possible shape which such governments might take, we have included an outline of one of the seven existing self-government agreements, The Champagne and Aishihik First Nations (CAFN) Self-Government Agreement (Canada 1993a: numbers in brackets refer to sections of the Agreement). Except for purposes of determining Indian status, the Indian Act is displaced by the terms of the Agreement (3.5). The Champagne and Aishihik Indian Bands are replaced by the CAFN, a legal entity with the capacity, rights, powers and privileges of a natural person (9.0). It has the authority to construct and amend a constitution which, among other things, must provide for a citizenship code and governing institutions (10.0). The CAFN Constitution, as amended by its general assembly on 23 July 2000, contemplates a government consisting of four branches: the general assembly, the First Nations Council, the elders' council, and the youth council (CAFN 2000: s. 9). The First Nations Council is the law-making branch of government. It comprises a chief, four councillors at large, one elders' councillors and a youth councillor, for a total of seven members. There are no special provisions for the inclusion in council of other internal sub-groups, for example women. Each eligible voter receives one vote for the election of the chief and one vote for each councillor position. As in the case of most Indian reservations, there are no electoral divisions. Only citizens who are 16 years and over may vote or stand for office, and elections are decided by the plurality system. Unanimous agreement is encouraged in council decisionmaking, but in its absence a majority of councillors present and voting is required. Its duties include implementation of the guidelines established by the general assembly, and the enactment of legislation, regulations and policy in all aspects of governance within its jurisdiction (CAFN 2000: ss 13–21, 41–53). The general assembly comprises a minimum of forty CAFN citizens 16 years of age and above, and a quorum (four members including the chief or deputy chief) of the First Nations council. All citizens may attend meetings of the general assembly, but only those 16 years and over are eligible to vote. The chief and councillors generally do not vote except in certain specially designated circumstances. Unanimity is encouraged in assembly decision-making, but in its absence the approval of a majority of those present and entitled to vote is required. The assembly's duties include the review and approval of any reports submitted by the legislative council, and the establishment of general policy guidelines and mandates for the council and thus can be placed in the agenda-setting row of the matrix. The council, in carrying out the policy agenda of the assembly will be categorised as having access to the solution definition of policy. Only the assembly has the authority to amend the Constitution (CAFN 2000: ss 22–40).

Nisga'a self-government

On 4 August 1998, representatives of the Nisga'a Nation and the governments of Canada and British Columbia signed the Nisga'a Final Agreement. It provides the Nisga'a with an elected form of government, modelled along quasitraditional lines, with primary legislative powers covering all individuals normally resident in their territory. The Agreement was formally ratified by a referendum of the citizens of the Nisga'a Nation on 9 November 1998 (Canada 1998; British Columbia 1999; Canada 2000). Provincial and federal enabling legislation was passed on 22 April 1999 and 13 April 2000 respectively. The

Agreement is British Columbia's first modern 'treaty', the culmination of over 100 years of Nisga'a initiative and roughly twenty-five years of formal negotiation to gain recognition of their rights to land and self-government.

Negotiations with the federal government began in 1976, but the province did not officially take part until 1990. In 1990, the British Columbia Claims Task Force, representing First Nations, the province, and the federal government, recommended the establishment of a six-stage treaty negotiation process and an independent and non-partisan body to facilitate and monitor its operations. On 15 April 1993 a five-member British Columbia Treaty Commission was appointed, two by First Nations, one by each order of government, and a chief commissioner agreed to by all three parties (McKee 1996: chap. 2). The treaty process further provides for formal representation of non-Aboriginal interests including the general public and specific interests such as business, resource and environmental groups (McKee 1996: chap. 4). The Nisga'a Final Agreement was not formally negotiated as part of this process but, as we mentioned above, the Sechelt (and numerous other British Columbia First Nations) have been negotiating a treaty within this framework.

The Nisga'a Final Agreement receives protection under the Canadian constitution, but neither the constitution itself nor the existing distribution of powers among the federal and provincial governments is altered thereby (Canada 1998; 563: chap. 2: ss 1, 8–10 (numbers in parentheses refer to the Agreement)). Similar to the Sechelt and Yukon deals, it replaces the Indian Act except for the purpose of determining Indian status (chap. 2: s. 18). The structure of Nisga'a government comprises two levels, one for each of the four villages and a Lisims government for the Nation as a whole. Provisions are also made for Nisga'a urban 'locals' but they are at such an early stage of development that they have not been included in the study. The Nisga'a Nation and each village is incorporated as a separate and distinct legal entity, with the capacity, rights, powers and privileges of a natural person (chap. 11: ss 5–6). Each level of government is to exercise its powers in accordance with the Agreement, the Nisga'a Constitution, and Nisga'a laws. The Nisga'a have since ratified a Constitution according to guidelines set out in the Agreement (chap. 10: ss 9–11) (Nisga'a Nation 2000).

Within Lisims government there is established a legislative house or Wilp Si'ayuukhl Nisga'a (WSN), and a Lisims government executive. WSN is comprised of every individual who is an officer of Lisims government, a chief or councillor of a village government, or a representative of an urban local. The executive comprises a president, chairperson, secretary-treasurer, the chairperson of the council of elders, any other officer of Lisims government, in addition to the chief councillor of each village government, and one representative from each urban local. Unlike conventional Westminster assemblies, the Nisga'a executive does not enjoy cabinet-like powers or domination of the legislature. Legislative power lies in the WSN as a whole and the executive acts more like an administrator, conducting the day to day business of Nisga'a government, following the broad legislative guidelines set out by WSN. The WSN may also from time to time refer matters to a council of elders or a special assembly of the Nisga'a, but since neither of these institutions, nor the executive, have any new information to offer in terms of matrix placement they have not been categorised. Village governments are comprised of a chief councillor and anywhere from 4–8 village councillors based on a population table. All must be ordinarily resident in their respective Nisga'a villages and are elected by the citizens of each particular village (Nisga'a Nation 2000: ss 41–2). Nisga'a citizens 18 years of age and over are eligible to vote and hold office (Nisga'a Nation 2000: s. 12). WSN is charged by the Nisga'a Constitution to make laws in respect of rules and procedures for elections and referendums (Nisga'a Nation 2000: s. 12).

In general, Lisims government and each village is granted principle authority in respect of their government, citizenship, culture, language, lands and assets (Canada 1998: chap. 11, s. 33). In practice, the legislative jurisdiction of village governments covers mostly a restricted number of local matters within their respective village lands, and that of Lisims government is broad and applies to all Nisga'a lands. These powers are broadly indicated in Table 7 of Chapter 5. Significantly, WSN may only enact legislation at a public sitting of the legislative house. Both may also adopt any federal or provincial laws relevant to matters within their assigned jurisdictions (Canada 1998: chap. 11, s. 129). Each level is further assigned a residual power to make any additional laws 'as may be necessarily incidental to exercising its authority' (Canada 1998: chap. 11, ss 121, 126–7). Moreover, the government jurisdiction and authority of each level as set out in the Agreement is intended to evolve over time (Canada 1998; 563: chap. 11, s. 5a-e). Both levels have the authority to determine the specific democratic formula in terms of which their laws are passed, but each must satisfy a minimum requirement of support by a simple majority of those who cast a vote (Nisga'a Nation 2000: ss 34, 43). Nisga'a laws cover all people normally resident within their territories. Non-citizens have the right to participate in Nisga'a public institutions whose activities directly and significantly affect them, but not in Nisga'a government *per se* (Canada 1998: chap. 11, ss. 19–23).

Both WSN and each village government have a controlling voice since all members are from the group. Their voice ranges from agenda-setting to implementation depending on the jurisdiction in question. For matrix placement we use agenda-setting as the structure allows for this in some policy areas. Paramountcy of Nisga'a, federal and provincial laws also varies according to jurisdiction. This information is included in Table 7. In any conflict between a law made by Lisims government and any village government that of the former prevails to the extent of the conflict though Lisims government is required subsequently to review that law in light of the conflict (Nisga'a Nation 2000: s. 35). Financing of Nisga'a government is provided by a combination of periodically negotiated federal and provincial transfers, Nisga'a taxation of their own citizens and other potential own-source forms of revenue (Canada 1998: chaps 15–16).

US tribal governments

These are elected forms of local government for US tribal nations, which bear a greater similarity to the Sechelt, Yukon and Nisga'a cases than they do to Indian Act or Cree Band governments (see Chapter 4). As in Canada, a process of treaty making frequently governed early relations among European powers and Indian nations in the United States. In the years directly following the American Revolution, the USA continued this policy, signing nearly 400 treaties by the beginning of the nineteenth century. Notwithstanding moderate support for Indian sovereignty from the US Supreme Court, the latter part of the nineteenth century saw the policy of forced removal and resettlement of Indian nations on reserve lands in the Western part of the country, as the fledgling American state expanded and consolidated its power base. Unilateral congressional management of Indians and their affairs gradually displaced treaty making. This trend was refined and extended into the early twentieth century by the 1887 Dawes Act, designed to break up reserves, eliminate tribal governments, and assimilate the Indian population. In 1934 the Indian Reorganization Act (IRA) was another policy change, designed to replenish and protect reserve lands, and revive tribal self-government under federal supervision. The 1950s brought yet another radical shift, this time to a policy of 'terminating' the special legal and political relationship among the federal and tribal governments, and all of the accompanying benefits and support services (Barsh and Henderson 1980; Wilkinson 1987; O'Brien 1989; Fleras and Elliot 1992: chap. 10). With the end of the policy of termination in the early 1960s, federal policy once again started to speak the language of tribal sovereignty and government-to-government relations with Indian nations. The impetus came from tribal nations themselves, who embarked on an unprecedented period of political mobilisation, protest, and direct action to press the American government to recognise their right to self-determination as nations (Fleras and Elliot 1992:151–5; Ryser 1994:95).

Self-determination was first acknowledged as a desirable goal of Indian policy by Lyndon Johnson in 1964, but a more significant turning point was Richard Nixon's 1970 Message to Congress on Indian Affairs which reaffirmed the special relationship between the tribes and the federal government, and established dual policy goals of Indian self-determination and economic self-reliance. Congress followed suit in 1975 with the passage of the Indian Self-Determination and Education Assistance Act, designed to devolve to the tribes the administration and control of federal programmes in the realm of education, social services and economic development (Fleras and Elliot 1992:156; Ryser 1994:95–7). Dissatisfied with the pace of change under the Act, tribal representatives pushed for additional reforms. Congress obliged with amendments to the Act, creating the Tribal Self-Governance Demonstration Project in 1988 (Public Law 100–472), later subsumed by the Tribal Self-Governance Program created by the Tribal Self-Governance Act of 1994 (Public Law 103–413). Under the Act, the federal government formally recognises that the right of self-government derives from the inherent sovereignty of Indian tribes and nations, and further affirms the special government-to-government relationship among itself and tribal nations (United States 1998:7, 229–30).

The purpose of the Tribal Self-Governance Program, whose terms were negotiated among representatives of the tribes and the department of the interior, is to transfer to participating tribes control of, funding for, and decision-making for selected federal programmes, services, functions and activities. Up to fifty tribes per year are eligible to be accepted from a pool of interested applicants, who must first complete a planning phase to demonstrate both their financial accountability, and their organisational and governing capacity. Once accepted, applicants negotiate a bi-lateral 'self-government compact' with the federal government, based on a model negotiated as part of the larger programme. Compacts may cover single tribes or a consortium of tribes. By 1997, sixty compacts had been negotiated covering 202 different tribes (United States 1998: ss 7,202–3, 7,228–32, 7,250–1). Tribes identify in the planning phase which programmes they wish transferred to their control, and negotiate annual funding agreements to suit their choices. They are free to redesign and consolidate or to develop new programmes, to reallocate funds, or to retrocede their authority back to the federal government (United States 1998: ss 7,203, 7,231). Existing agreements cover a wide range of programmes and jurisdictions, including taxation, natural resources, trade, education, environmental regulation, civil affairs and criminal jurisdiction (Ryser 1995:6). The terms of the compact are to be executed by the duly enacted laws of the tribe, and the decisions of its tribal court are to be respected, to the extent that neither is inconsistent with existing federal, and in certain cases state law (Duckwater Shoshone Tribe and United States 1992: s. 3; Grand Traverse Band of Ottawa and Chippewa Indians and United States 1992: s. 3; Ryser 1995:6). The authority of the tribe is exercised through a tribal council, whose structure and powers are set out in its tribal constitution. For example, a seven-member tribal council, elected at large by registered band members, governs the Grand Traverse Band of Ottawa and Chippewa Indians. A quorum of five members is required for council meetings, where decisions are taken by a majority of those present and voting (Grand Traverse Band of Ottawa and Chippewa Indians 1988: article 3). Tribes are much freer now than in the IRA era to adopt their own traditional forms of governance (Duthu 2000b).

In legal terms, tribes are recognised not as entities with enumerated or delegated powers, but as governments possessing in the first instance all of their original powers as inherent sovereigns. However, their sovereignty is restricted by the terms of their treaties, their constitutions and their dependent status, e.g. the Supreme Court has ruled that when tribes accepted the protection of the USA, they also submitted to its legislative control, hence congress enjoys nearly plenary power to legislate Indian affairs. The court has given tribal powers with a broad legal characterisation, so as to permit their evolution over time,

and to permit tribes to compete with state and local governments and private development interests. They are defined in abstract terms rather than as an enumerated list of specific powers. For example, in terms of the administration of justice, the court makes no reference to any specific kinds of institutions, stating only that tribes have the right to make and to be ruled by their own laws. Similarly, their taxation powers fall under the tribe's general authority, as a sovereign, to control economic activity within its region (Wilkinson 1987: chap. 3; O'Brien 1989:199). Tribes often specifically enumerate many of their powers in their constitutions, but generally include a clause where they 'reserve' any additional powers not specifically included in this list (Grand Traverse Band of Ottawa and Chippewa Indians 1988: article IV, s. 3).

Tribal governments are somewhat unique in terms of the study, since they are not themselves created by government statute. Nevertheless, they are required to exercise their powers in terms of a tribal constitution, approved by tribal referendum and, with the exception of certain questions such as membership, the secretary of the interior (Federal Minister Responsible for Indian Affairs) (Duthu 2000a). They are also required to develop and demonstrate their capacity for effective institutionalised self-government prior to assuming devolved federal powers. Tribal nations have primary legislative authority comparable to that of state and federal governments. With certain exceptions too complex to detail here, this authority covers all individuals living on their territory. Some of these powers are exercised exclusively by the tribe, but most are concurrent with federal, and in a much more limited set of jurisdictions, with state authorities. Questions of paramountcy are extraordinarily complex, but generally the federal authority is recognised as supreme (Wilkinson 1987: passim; Duthu 2000a and b). Tribal governments enjoy a voice that is controlling, because they exercise exclusive authority over criteria for membership and political participation. Their voice extends to agenda-setting in their areas of jurisdiction. Under the Tribal Self-Governance Program, the federal government has shown increasing deference to tribal authority and autonomy, by evacuating areas of tribal legislative jurisdiction, and providing the funding for increased development of tribal governing capacity (Duthu 2000b).

Table 4 Matrix placement of the cases from Chapter 3

	Type of voice	*Extent of voice*	*Reason not in matrix*
CAFN council	controlling	agenda	
CAFN general assembly	controlling	agenda	
Nisga'a village and Wilp	controlling	agenda	
Northern Ireland Assembly—power-sharing	controlling	agenda	
Northern Ireland Assembly—not power sharing	proportionate elected	agenda	
Nunavut	proportionate elected	agenda	
Parliament of United Canada	symbolic elected	decisions	
Quebec Parliament	elected	decisions	
Quebec cabinet	elected	agenda	
Rolling devolution	proportionate elected	solutions	
Scottish Parliament	controlling	agenda	
Sechelt Advisory Council	proportionate elected		advisory
Sechelt Band Council	controlling	agenda	
Sechelt District Council	controlling	agenda	
Stormont	controlling	agenda	
US tribal government	controlling	agenda	
Yukon First Nations Councils	controlling	agenda	

4
Sub-legislative bodies and representatives

This set of cases is more varied than those in Chapter 3. They include elected assemblies, structures within national parliaments, local government and functional committees or boards. The first cases consider bodies with powers and roles akin to local or municipal government and those which can pass secondary but not primary legislation. We then move to a number of functional boards, each created to work in a particular area such as fishing or hunting regulation. Finally we discuss the range of institutions related to the national parliament such as special electorates, cabinet ministers and internal scrutiny committees. At the end in Table 5 all cases that have been discussed are listed along with their categorisation for the type and extent of voice. In addition all cases are listed with their date of creation and founding document in the Appendix.

Municipal and local-government-style institutions

The band council system provides an elected quasi-municipal form of self-administration for over 600 Indian bands in Canada. Here we discuss the generic Indian Act band council system, and a variation on this negotiated by the James Bay Cree in 1976. British Colonial and later Canadian governments first began the process of governing Indian[1] peoples in the early part of the nineteenth century. This was accomplished by a policy incorporating their settlement on designated reservation lands and a variety of legislative acts facilitating the extension of crown influence and control over their internal socio-economic and political organisation. The overall goal was the gradual 'civilisation' and assimilation of the Indian population and their traditional territories. In 1850, the Lower Canada Lands Act represented the first effort by the crown to define who was or was not an 'Indian' for purposes of residency on the reserve. This policy of legally defining, and thereby controlling, Indian identity and citizenship was extended under the auspices of the Gradual Civilization Act of 1857, which outlined measures by which Indian status could be alienated. In 1867 Confederation and section 91(24) of the BNA Act conferred upon the newly created Canadian federal legislature exclusive legislative jurisdiction over 'Indians, and Lands reserved for the Indians' (Canada 1986:30). Under this authority, in 1869 the Gradual Enfranchisement Act ushered in the era of direct interference with tribal self-government via the forced adoption of the band council system. With the passage of the first comprehensive Indian Act in 1876, the Canadian federal government took extensive control of reserves and tribal nations, creating an Indian legislative framework that has changed little in the ensuing years (Milloy 1991; Tobias 1991; Canada 1995: Volume I, 271–8). In the 1980s and 1990s, there were several notable efforts to bind governments to the creation of more comprehensive and robust institutions of self-government potentially available to all First Nations in Canada. These include the 1983 Penner Report, the 1992 Charlottetown Accord, and the 1995 Final Report of the Canadian Royal Commission on Aboriginal Peoples. Since few of these recommended measures have been implemented, either the Indian Act remains in place or particular groups such as the Sechelt, the Nisga'a, the Inuit, Yukon First Nations and the James Bay Cree have negotiated separate deals which supersede the Act in different ways and to varying degrees.

The federal Minister of Indian Affairs and Northern Development, who is the superintendent general of Indian affairs, administers the Indian Act (Canada 1985; Peters 1987:5–8). At her discretion, the minister may, 'in the interest of the good government of the band', authorise the creation of an elected body called the band council, generally consisting of one chief and one councillor for every hundred band members, with a minimum of two and a maximum of twelve members. The federal cabinet is authorised to make additional regulations respecting elections, band meetings and council meetings. Voting and participation in band government is restricted to members 18 years of age and above who are ordinarily resident on reserve lands, with elections using the plurality (FPP) rule. Normally, a reserve comprises a single electorate, but in special cases may be divided into a maximum of six electorates, in which case any individual must be ordinarily resident in the section in which they vote or stand as a candidate (Canada 1985: ss 43–6).[2] Where there is no split into electoral sections then it is an 'election at large' which will allow significant communities of interest to elect a representative, compared to electoral division which provides for spatial representation.

Subject to the terms of the Act or any regulation made by cabinet or the minister, bands can make by-laws for a variety of restricted local purposes covering members within reserve lands (Canada 1985: ss 81–86) (see Table 7, Chapter 5). All by-laws, with the exception of those relating to intoxicants, are subject to disallowance by the minister. Certain additional powers

are reserved to the minister, including title, division and use of reserve lands, and to cabinet, including protection and preservation of wildlife. Cabinet may also authorise the expropriation, for public purposes, of reserve lands, upon request by a province, municipality or corporation (Canada 1985: passim; Peters 1987:6–8). Only the federal government enjoys direct law-making power over Indians and their lands, but both federal and provincial laws of general application, with certain restrictions, also apply. Band government is funded primarily through grants negotiated yearly between the council and INAG. Bands may also negotiate the transfer of funds to administer certain additional programmes and services devolved from the federal government (Peters 1987:7–8). Participation and voting in band government is restricted to members so the type of voice is controlling, and in terms of extent they fall into the category of implementation and delivery because they make decisions of detail in implementing decisions made by others.

In 1984, municipal corporations were created providing local government for the James Bay Cree of Northern Quebec (Moss 1985; Peters 1987:11–14). The impetus for this initiative was the 1971 decision by Quebec to begin construction of a massive hydroelectric project in territory claimed by the Cree and Inuit of Northern Quebec (the Inuit are not dealt with here). Following a successful political campaign and legal action by the Cree, a process of political negotiation began between the Grand Council of the Cree (of Quebec), the Quebec and federal governments, and three corporate business entities: the James Bay Development Corporation, the James Bay Energy Corporation, and Hydro Quebec. In 1975, the blueprint for a land claim and self-government settlement was signed in the form of the James Bay and Northern Quebec Agreement (JBNQA) (Quebec 1976).

Under the terms of the agreement and its accompanying implementation legislation (Quebec 1976a; Canada 1984), the existing Indian Act Cree bands are replaced by Cree Band Corporations, each with the capacity, rights, powers and privileges of a natural person. Each corporation acts through a band council which enjoys resolution and by-law making powers over members within its own community territory (category I lands) (Quebec 1978; Canada 1984). The scope of these powers is similar to those of Indian Act councils, with notable additions including those relating to hunting, fishing and wildlife, and protection of the environment, including natural resources (see Table 7, Chapter 5). Unlike Indian Act by-laws, Cree by-laws are not subject to ministerial disallowance, with the exception of those relating to elections, and hunting, fishing and trapping. Federal and provincial laws still apply to the Cree to the extent that they are not incompatible with the terms of the JBNQA or the federal implementation legislation. Individual bands are responsible for their own election by-laws, covering matters such as the calling of elections and the means of choosing the chief and councillors, which require approval by the minister and the band electors (Canada 1984:439–54; Peters 1987:11–13). Decisions are carried by a majority of councillors present and voting. Band corporations enjoy powers of taxation for local purposes, and the remainder of their revenue is provided by way of a variety of federal grants determined by a negotiated funding formula (Peters 1987:11–12, 14). Like their Indian Act counterparts, Cree Band Corporations enjoy a voice that is controlling because all members are from the group. Similarly, their by-law making power falls under the category for implementation and delivery, but their jurisdiction is somewhat wider and more secure.

A second layer of authority created by the James Bay Agreement over category I lands is the Cree Regional Authority (CRA). All Cree belong to the CRA, which is governed by a twenty-member council, comprising the chiefs and one additional elected representative from each of the nine Cree communities, a grand chief and a vice grand chief directly elected at an annual general assembly. The council has the authority, at the request of a Cree community, to establish, administer and coordinate the programmes and services established by or for that community. It is also authorised to appoint all Cree representatives on the various functional boards created by the agreement, to manage and distribute the compensation monies negotiated as part of the overall settlement, and generally to oversee the implementation of the JBNQA (Quebec 1976: 183–4; Grand Council of the Crees (Eeyou Istchee) 2000a). The CRA has in fact emerged as the central Cree governing body in large part because of the Cree's decision that, in the interest of political unity, the CRA would be under the same leadership as the Grand Council of the Crees, a representative body they themselves formed in 1974 to negotiate their claim with the Canadian and Quebec governments (Grand Council of the Crees (Eeyou Istchee) 2000a). Like the Cree Band Corporations, the CRA enjoys a voice which is controlling at the level of implementation, with a wider geographical and functional jurisdiction.

Another case which resembles Cree and Indian Act local government is the institution of community government in Australia. Since the late 1970s this has developed to a limited extent in Southern and Western Australia, and more extensively in Queensland and the Northern Territory (NT) (McLean 1994; Sanders 1996:166–7). For example, the Northern Territory Local Government Act of 1979 created both a conventional municipal strand of local government, and a second strand designed for smaller communities, including discrete predominantly Aboriginal communities in sparsely populated areas (Australia 1979: part V; Sanders 1996:166). NT community government exists as an option which communities are free to adopt or pass up at their discretion. Basic principles of governance, including elections and decision-making procedures are to be negotiated by particular communities and the territorial government. The powers of these community governments are similar to those of a conventional municipality (Australia 1979: part V). Unlike their Canadian or American counterparts, these are not ethnic forms of government, but rather public governments predicated on a community of interest, with control being maintained through population numbers. So the voice would be proportionate elected in type, and implementation and

delivery in terms of extent. By 1994 roughly twenty such governments with an Aboriginal or Torres Strait Islander majority existed in the Northern Territory and thirty-one in Queensland (Sanders 1996:166–8).

In the Torres Strait area the seventeen outer islands of the archipelago each have an island community council with local government status. For the inner islands and the Cape the Torres Shire Council operates like other local governments in Queensland. The indigenous peoples form a majority of voters but their control on the council is not guaranteed in the regulations. As a region the Torres Strait Regional authority (TSRA) operates within the ATSIC framework, which acts more in an advisory than a local government role (see below) (Arthur 1997; Sanders 1999). In 1997 the House of Representatives Committees on Aboriginal and Torres Strait Islander Affairs (HRSCATSIA) inquired into means of increasing islander autonomy and in their report suggested regional government elected by all who live in the area (Altman *et al.* 1996; Arthur 1997; Australia 1997a; Sanders 1999). The intention was to keep the existing island councils but the new authority would replace the shire council on the mainland. However the report was not received with enthusiasm, in part because the majority of Torres Strait Islanders do not live in the Torres Strait area (Sanders 1999). There are no indications that it will be implemented.

The creation of corporate tribal structures has also played a part in the negotiated settlement of Maori claims under the Treaty of Waitangi in New Zealand. One example is Ngai Tahu, an *iwi* of approximately 25,000 members, whose traditional territory covers the lower four-fifths of the South Island, roughly half the land surface of New Zealand (Dawson 1999:207). As part of the settlement, the crown has encouraged a transformation of the *iwi's* governing body from a charitable trust accountable to the Minister of Maori Affairs into a corporate body accountable to *iwi* members (Te Puni Kokiri 1996; Dawson 1999:219). In 1996, at the *iwi's* request, legislation was passed creating a corporate body—Te Runanga o Ngai Tahu—as the legal representative of the *iwi's* collective interest. It functions through a *runanga* (council), whose powers and procedures are governed by the Act and Ngai Tahu's Charter, established at a meeting of representatives of the *papatipu runanga* (local councils) in 1996. Each of the eighteen *papatipu runanga*, which represent the various *hapu* of the *iwi*, elect one or more members who, in turn, are charged with the duty of appointing a single representative of their *hapu* to sit on Te Runanga o Ngai Tahu (New Zealand 1996; Ngai Tahu 1999: ss 6.6, 20). The larger *runanga* deals with issues concerning the *iwi* as a whole, while the *papatipu runanga* retain authority over their own local affairs (New Zealand 1996: ss 6–19; Dawson 1999: 219–21; Ngai Tahu 1999). The mandate of Te Runanga o Ngai Tahu is to set policy for the governance of the various *iwi* corporations, to receive and manage settlement assets, and to distribute funds for social and educational purposes. It is designated as the body through which Ngai Tahu will confirm its enduring tribal structure, which rightly represents its *tino rangatiratanga* (sovereignty) (New Zealand 1996: Ngai Tahu 1999; 658: s. 3 (f)). Although interesting from a comparative viewpoint, Te Runanga o Ngai Tahu does not constitute a case as defined by the parameters of the study, because its *statutory* function relates to the receipt and management of assets, rather than policy-making (New Zealand 1996: Ngai Tahu, 1999; 658: s. 3–3A, 4).

Assembly of Wales

The Assembly of Wales is elected with secondary rather than primary legislative powers. Created at the same time as the Scottish Parliament (see Chapter 3), it followed a referendum in September 1997, which only narrowly passed with 50.3 per cent on a turnout of 50.1 per cent (Taylor and Thomson 1999:xxii). Elections were held in 1999. Like Scotland, this was the second referendum on a devolved assembly although in Wales the 1979 vote was heavily defeated with only 20.9 per cent voting yes on a turnout of 58.8 per cent (Taylor and Thomson 1999:5).

There had not been a lengthy debate in Wales about the structure of an assembly so many of the Scottish details were adapted. In particular the Assembly for Wales also uses the regional additional member (AMS) electoral system, which provides greater proportionality than FPP and also ensures representation for all geographic areas. Underscoring the importance of regional representation, there are also regional committees comprising all members from that area in recognition that various areas suffer serious social and economic deprivation (Jones 1998:65). There was no provision to ensure gender balance but the Labour Party adopted candidate selection processes aimed at balance and indeed in the 1999 assembly half of the Labour members and 40 per cent of the entire assembly were women. In the first assembly twenty members were Welsh speakers giving a higher proportion than for the population (Jones 1999: 331). As all members are from Wales and identity is based on residency, the type of voice is controlling.

The Wales Act (1998) does not confer the ability to legislate, only the power to suggest legislation to the Westminster Parliament in London and to administer the laws passed there: subordinate legislation is the proper term but secondary is more widely used (Silk 1998:68). This role is not like the local government power to pass by-laws but rather the ability to determine details within broad legislation passed in London. All secondary powers that were held by the Secretary of State for Wales have been transferred to the assembly. It is up to parliament in Westminster to decide which details of new legislation are sent to the Assembly of Wales for secondary legislation so they could frame primary legislation to curtail the assembly or to allow it great freedom (Silk 1998:74–7). According to the legislation the extent of voice for the Assembly in Wales is

implementation. The areas of competence for Wales (see Table 7) reflect the previous jurisdiction of the Welsh Office and are designed to democratise the existing administrative devolution. They cover the essential public services in Wales such as education and health and the assembly can prioritise spending across its areas of competence. The assembly can also debate any issue of relevance to Wales. Strong subject committees are central to the structure of the assembly and they could develop like British select committees and thus may form part of the pre-legislation consultative process, talking to those with interest in the issue and making suggestions about detail (Jones 1998:59–63).

Functional boards and councils

The cases in this section include functional land and resource management and policy review bodies with varying degrees of guaranteed representation for members of sub-state national groups. Cases from Australia, Canada, New Zealand and the United States are covered. We begin with two cases from Canada's Yukon Territory: Renewable Resource Councils, and the Fish and Wildlife Management Board. These are among several such bodies designed to integrate the management of all renewable resources in the entire Yukon Territory. These bodies are designed with several broad objectives in mind: to facilitate the principle of conservation; to ensure equal participation in decision-making of the Aboriginal and non-Aboriginal communities; and to serve the interests of all Yukon residents, but with particular regard to the cultures, identities and resource needs of the traditional Aboriginal inhabitants (Canada 1993: 153). Both bodies operate under the authority of the responsible government minister, who retains ultimate jurisdiction over management of fish and wildlife and their habitats (Canada 1993:155). A Renewable Resource Council (RRC) acts as 'a' primary instrument for management of local renewable resources within each Yukon First Nation's traditional territory (Canada 1993:163). Taking the example of the Alsek RRC, which acts in the CAFN's traditional territory, the council comprises six members, three each nominated by the minister and the First Nation. Each council determines its own procedure for selecting a chairperson from among its membership, who is then appointed by the minister. All councillors must be resident within the CAFN's traditional territory and be familiar with that territory and its natural resources. Councils are also mandated to provide for public involvement in the development of their recommendations (Canada 1993a: 217–19). Whenever possible, the council's decisions are taken by consensus, but when this is not possible a two-thirds majority is required (ALSEK 2000). Its primary function is to make recommendations to the minister, the CAFN, and the Fish and Wildlife Management Board (discussed below), although it also enjoys limited by-law making powers regarding the management of fur-bearing animals (Canada 1993a:217–20).

In addition to these local councils, a Yukon Fish and Wildlife Management Board (YFWMB) was established as the primary instrument of fish and wildlife management in the Yukon Territory. The board is comprised of twelve members, six each nominated by government and the CYF. The majority of each party's representatives must be Yukon residents. The board is responsible for determining the means of choosing a chairperson from among its membership, and must make provisions for public involvement in the formulation of its recommendations. A quorum of eight members, seven regular members plus the chair is necessary for the conduct of board meetings and the making of board decisions. The function of the board is to make recommendations to the minister, First Nations, and RRCs on all matters related to fish and wildlife management, legislation, research, policies and programmes, taking into account both the public interest and relevant recommendations of the RRCs (Canada 1993:166–9). Whenever possible, decisions on recommendations are to be made by consensus, but when this cannot be achieved, a two-thirds majority vote of the entire board is required (YFWMB 2000). Upon receiving the recommendations of the board or councils, the minister has sixty days in which to accept, vary, set aside or replace them, providing written reasons for the decision. The board and council then has thirty days to respond with a final recommendation to the minister with written reasons. The minister in turn again has forty-five days to accept, vary, set aside or replace this final recommendation (Canada 1993:173–5). The minister's decisions must be guided by the principle of conservation and purposes of public health and safety (Canada 1993:55–6).

In both the Alsek RRC and the YFWMB, the voice is controlling because the membership quotas and voting procedures guarantee the indigenous parties a veto in decision-making. For instance, for a two-thirds majority some of the First Nation appointed members must vote in favour so they can veto anything they do not want. In both cases the voice extends to implementation and delivery, as they are restricted to making recommendations and a limited number of by-laws within a legislative and policy framework whose overall agenda is set by the federal and territorial governments. A variety of bodies with similar structures and capacity for influence have been created for the Cree, Nisga'a and the Inuit. Examples include the Nunavut Wildlife Management Board, the James Bay Hunting, Fishing and Trapping Co-ordinating Committee and the Joint Fisheries Management Committee negotiated as part of the Nisga'a Final Agreement. Due to their membership structures and voting procedures, some, but not all, of these bodies provide the indigenous party with an effective veto in decision-making, but none are officially capable of more than implementation and delivery under the overarching control of a non-indigenous government minister (Quebec 1976: ss 14, 15, 24; Canada 1993d: chaps 5, 10–13; Canada 1998: chaps 8–9). Since they present no novel insights in terms of matrix classification, these bodies have not been formally categorised.

Formal initiatives in this area have played a much smaller role in US Indian policy. On 6 March 1968, by executive order, Lyndon Johnson established the National Council on Indian Opportunity (NCIO), a government body designed to facilitate tribal participation in decision-making concerning Indian policy. It was given a mandate to make broad policy recommendations, and to ensure that federal programmes for Indians reflected the needs and interests of Indian peoples. Appointed by the president, the council initially comprised six members chosen from among Indian nations, in addition to the vice-president, the director of the office of economic opportunity, and the secretaries of the departments of the interior, agriculture, commerce, health, education and welfare, housing and urban development. President Nixon increased the council's Indian membership to eight, but despite signs of initial promise and its role in developing the administration's new policy on Indian self-determination, it eventually came to be viewed by Indian nations as an instrument of US rather than tribal interests, and was discontinued in 1974 (Fleras and Elliot 1992:165; Ryser 1994:95–7). Thus the case is symbolic selected and could be as high as propose solutions or as low as implement and deliver, and thus is on the matrix for propose solutions.

A more recent initiative is the Indian Gaming Commission, an independent federal regulatory agency created by the Indian Gaming Regulatory Act (IGRA) in 1988 (United States 1988). Its mission is to regulate gaming activities on Indian lands, in order to protect tribes from organised crime, maintain fair and honest gaming practices, and ensure that the tribes are the major beneficiaries of gaming revenues. To meet its responsibilities it has the authority to conduct investigations and audits, enforce its decisions against offending parties, review and approve tribal gaming ordinances and management contracts, and issue its own gaming regulations. It is comprised of three commissioners, including a chair appointed by the president, and two associate commissioners appointed by the secretary of the interior. The IGRA stipulates that two of the three commissioners must be enrolled members of a federally recognised Indian tribe, and no more than two members are to be from the same political party (United States 1988: ss 3–7). Although this body contains a majority of 'Indian' representatives, its voice is symbolically selected, since tribal nations themselves have no role in either electing or selecting these representatives and therefore no structural means of holding them accountable.

In the mid 1980s, the US Congress amended several of the more prominent federal environmental statutes, creating mechanisms to recognise designated tribes as the primary environmental stewards *vis-à-vis* natural resources on reserve lands. The relevant federal statutes include the Clean Water Act, the Clean Air Act, and the Superfund Act (dealing with hazardous waste sites). Similar to the Tribal Self-Governance Program, the process, known as TAS (treatment as states), requires interested tribes to demonstrate both their jurisdictional authority and existing managerial capacity over reservation resources prior to assuming their stewardship authority (Duthu 2000b). One specific example is timber management. In 1990, congress passed the National Indian Forest Resources Management Act (NIFRMA). One of its specific provisions requires the secretary for the department of the interior to assume a role in the management of Indian forestlands, with the participation of the tribal owners of those lands. The Act provides authorisation and funding for tribes to develop their own forest management plans, which can be administered exclusively by the tribe or in partnership with the federal government. Tribal management plans must be approved by the federal government, which continues to retain a comprehensive regulatory authority over tribal forests (Duthu 2000:7–9). This case is interesting for the sake of comparison, but it is not included in the matrix since it does not involve the creation of a separate board or council. The relevant decision-making body is still the tribal government, whose controlling voice in this jurisdiction extends to the level of implementation and delivery.

Institutions of co-management or consultation in the specific domain of natural and non-natural resources are also encountered on the informal or non-statutory level in the USA. Examples include the participation of tribal representatives in the processes leading up to the negotiation of the 1985 Pacific Salmon Treaty with Canada (updated in 1999), and provisions for their ongoing involvement in the resultant conservation and management regime. Similar initiatives exist in Washington state respecting cooperative environmental management regimes involving tribal nations, government, industry and environmental groups. Examples include the Timber-Fish-Wildlife Agreement relating to timber harvesting on private land, the Chelan Agreement over water allocation, and the Sustainable Forestry Roundtable (Ross 1999).

Moving to the southern hemisphere, a somewhat different sort of example is the Australian Aboriginal Land Council. Land councils are independent statutory authorities which assist in the preparation of land claims, make decisions about the use of Aboriginal land, and assist Aboriginal peoples in various aspects of land, wildlife and resource management in Australia. For example, under the Aboriginal Land Rights and Northern Territory Act 1976, the Northern Territory is divided into two sections with a land council in each (Australia 1976: s. 21). The members of a council are elected by and chosen from among the Aboriginal peoples living in its area, by means to be determined by the Minister of Aboriginal Affairs. A chair and deputy chair are to be elected by the council from among its members. Decisions are carried by a majority of the votes of members present and voting. The presiding member holds both a deliberative and a casting vote (Australia 1976: ss 29–31). In carrying out its functions with respect to any Aboriginal land in its area, a council is mandated to have regard to the interests of the traditional owners of that land, and to refrain from any decision that does not meet with their informed consent (Australia 1976: s. 23). The type of voice is controlling but the council's primary function as an advocate and a consultant, rather than a decision-maker, places it outside of the matrix in terms of extent.

Bearing a closer resemblance to the Canadian cases are schemes for the co-management of national parks in Australia. Such schemes are either in force or under consideration in five of the eight Australian states and territories. In fact, the 1985 Amendment to the National Parks and Wildlife Conservation Act 1975 (Cwlth) stipulates that where a national park is on Aboriginal land, the minister and the relevant Aboriginal land council must establish a board of management, comprising an Aboriginal majority nominated by the traditional owners (Altman and Allen 1992:125, 128–34; Craig 1992). To take one among several different examples, Gurig National Park was created in 1981 under the Cobourg Peninsula Aboriginal Lands and Sanctuary Act (NT). The park occupies 2,270 square km on the Cobourg Peninsula, 250 km northeast of Darwin in the Northern Territory. It is the first park in Australia to be jointly managed by Aboriginal people and a park agency through a formal board of management structure. An earlier arrangement in Kakadu National Park (1979) provided Aboriginal people with a voice that was neither formalised nor guaranteed (Foster 1997:1–2). The Cobourg Act came as a result of a negotiated settlement between the Northern Land Council (NLC), acting on behalf of the traditional owners of the territory, and the territorial government (Foster 1997:5). It established the Cobourg Peninsula Sanctuary Board to manage the park in accordance with the Act. The board has eight members, four nominated by the NLC from among the traditional owners, and four nominated by the Minister for Conservation. The chair must be a traditional owner, and holds a casting vote. There must be a quorum of six members for a meeting of the board, four of whom must be traditional owners (Foster 1997: 11). The board's primary responsibility is to develop a management plan for the park, which must be approved by the territorial legislative assembly. The broad aims of the management plan are to facilitate the principle of conservation and the sustainable development of the economic potential of the park, and to help realise the needs and values and interests of the traditional owners. The board functions alongside a governmental agency, the Conservation Commission of the Northern Territory, which handles the day-to-day management and control of the park (Blowes and Chambers 1992:151–2; Foster 1997: chap. 3). In effect, then, the voice of the traditional owners is controlling, although in practice translating this into effective control has been difficult (Foster 1997: passim). In terms of extent, their voice is implementation and delivery of a management plan within the park boundaries, under the ultimate authority of the NT government.

A range of similar examples can also be found in New Zealand. For example, as part of their overall claim with the New Zealand crown, Ngai Tahu, a large South Island *iwi*, was granted limited representation on a variety of management boards (New Zealand 1998: ss 274–80; Dawson 1999:209). One example is the New Zealand Conservation Authority, established under the Conservation Act of 1987 (New Zealand 1987: ss 6a-k). Working under the ultimate authority of the Minister of Conservation, this body plays an advisory, planning and management role with respect to the conservation estate in all of New Zealand. Te Runanga o Ngai Tahu (the governing body representing the *iwi*—see above) nominates one of the thirteen members of the Authority, to be appointed by the minister. The Minister of Maori Affairs also nominates two of the thirteen members (New Zealand 1998: s. 272). On those boards whose jurisdiction falls entirely within the Ngai Tahu Claims Settlement Area, Te Runanga o Ngai Tahu nominates at least two of the twelve members to be appointed by the minister. On those boards whose jurisdiction is partly within the settlement area, the *iwi* nominates one member. The Boards are responsible for advising, and recommending management strategies to the conservation authority within their territorial jurisdiction (New Zealand 1998: s. 273). The authority and boards must also have 'particular regard' to Ngai Tahu values, and are bound to consult and have 'particular regard' to its views in their decision-making (New Zealand 1998: ss 241–2). For both bodies, their voices are clearly symbolic elected with a voice at the level of implementation and delivery.

In a limited number of cases, such as the management of muttonbirds on the Titi Islands, Ngai Tahu has a controlling voice at the level of implementation and delivery. In this case, the *iwi* is granted full title to the Islands, and together with its Rakiura (Stewart Island) *hapu* nominates the entire board, to be appointed by the minister, whose function is to formulate and implement a management plan under her authority (New Zealand 1998: ss 333–7 and schedules 109–11; Dawson 1999:218). In another somewhat unique case, Te Runanga Ngai Tahu is appointed as a statutory adviser, providing advice directly to the minister regarding the planning and management of designated sites with special significance to the *iwi*. The minister is directed to have 'particular regard' to this advice (New Zealand 1998: ss 231–3).

Electorates

This section considers special forms of electoral representation. The main cases are Maori, Scottish, Welsh and Quebec MPs, senators for Nunavut and Quebec, and minority-majority districts in the USA. A separate electoral roll and thus separate MPs for a group is rare, although a longstanding practice in New Zealand. However, in Britain there is some recognition of national identity in the drawing of electoral boundaries. All MPs are elected using the single member constituency plurality system, but under rule one of the Parliamentary Constituency Act the minimum number of MPs for Scotland and Wales is guaranteed, regardless of population changes. Since 1944 Scotland has been entitled to seventy-one MPs and Wales thirty-five (McLean and Butler 1996:23). This guaranteed minimum for Scotland will be removed after the 2001 census and resulting electoral boundary changes because of the power that the Scottish Parliament now has. Northern Ireland also has a higher number of MPs

than they would have purely on the basis of population. While Stormont was operating there were fewer MPs but the number was raised when decision-making power over all matters in Northern Ireland returned to London.

In contradistinction to its predecessor, the Parliament of United Canada, in the Canadian Parliament there is no established quota of seats for Quebec, although a proposal to guarantee them 25 per cent of members in perpetuity was part of the failed Charlottetown Accord. Section 51 of the BNA Act stipulates that representation should be based roughly on population. The 1985 Representation Act departed from the principle of strict proportionality by guaranteeing a minimum number of seats to the smaller provinces. It further stipulated that no province would receive fewer seats than it had in 1976 or during the 33rd parliament which passed the bill in 1985. In 2000, Quebec accounted for roughly a quarter of the Canadian population and seventy-five out of 301 MPs in Ottawa, which is also a quarter. There has traditionally been a strong Quebec presence in government, including more than a quarter of recent prime ministers. By convention, each province must have at least one cabinet minister, and Quebec and Ontario are usually allocated ten to twelve ministers apiece from a total of some thirty to forty. This consociational practice is a consequence of political custom not institutional agreement. In recent years Quebec's voice in parliament has been augmented by the formation of the Bloc Québécois, a federal political party committed to Quebec independence. In 1991 the party captured fifty-four of Quebec's seventy-five MPs, enough to form the official opposition. In the 2000 election the party won thirty-eight of Quebec's seventy-five seats.

The senate is the upper house of the Canadian Parliament. Senators are allocated to all provinces and territories based roughly on population, and are appointed by the Governor General on the advice of the Prime Minister. The senate possesses all of the powers of the house of commons except that of initiating financial legislation. In 2000, of the 105 members Quebec had twenty-four and Nunavut one. When New Zealand had an upper house, the legislative council (1872–1950) two of the ten appointed members were Maori (Durie 1998).

New Zealand's system of Maori seats is distinctive. When representative government was first instituted, Maori, who mostly held their land in common, were effectively disenfranchised by the individualistic nature of the property-related voting criteria. This was addressed in 1867 by the Maori Representation Act, which provided for the election of four Maori representatives in single member electorates overlaying the existing pattern of territorial representation. Only Maori could vote or stand for election in the Maori seats, but qualified Maori were entitled to vote in both European and Maori constituencies. This was not the first experiment with differentiated representation in New Zealand. Separate seats existed from 1863 to 1867 to meet the needs of pensioners in Auckland and South Island goldminers (Fleras 1985:556–7; Sorrenson 1986: B-19). Crown motivations for creating the Maori seats included the desire to foster cooperation with *pakeha* laws and institutions, to facilitate state consolidation and capitalist expansion, and to pre-empt any alternative Maori political movement that could threaten *pakeha* pre-eminence (Fleras 1985:555–8). Furthermore, the seats were seen as a temporary measure until Maori were fully assimilated. When this did not occur the measure was extended for five years in 1872 and then again indefinitely in 1876 (New Zealand 1986:83).

In 1893, the provision allowing for dual-constituency Maori voting was abolished, setting the system of separate electoral arrangements for Maori and non-Maori firmly in place. In 1967 the Electoral Act was amended to remove prohibitions against those on the Maori electoral roll standing as candidates in a European electorate and vice-versa. In 1975 the Electoral Amendment Act allowed all self-identifying Maori to choose inclusion on either the Maori or general roll, and for the first time sought to peg Maori seats to population numbers as in the general roll. The latter measure was repealed in 1976 after a change in government (New Zealand 1986:83–4). In the beginning there were four Maori seats regardless of population changes. In the 1890s there were four Maori seats for 50,000 Maori compared with seventy-two European seats for 250,000 people (New Zealand 1986:82–3). In 1993 there were 101,585 people on the Maori roll electing four MPs compared to 2,220,079 voters on the general roll electing ninetyfive MPs (Electoral Commission 1997). So in the 1890s there were 12,500 people in a Maori electorate and 3,472 people per European electorate and in 1993 there were 25,356 people in a Maori electorate and 23,369 people per European electorate. The move closer to parity was due to population change and the choice of many Maori to register on the general roll or not to register at all, rather than due to any move by the government to ensure population parity across electorate types. Population parity in the Maori seats was successfully reintroduced in 1996 with the inception of the new proportional representation system (MMP), and in the 1999 election there were six. The number of Maori seats will continue to increase or decrease as the relative size of the Maori and European rolls change using the basic premise that Maori and general seats have the same number of registered voters. In 2001 the local government in the Bay of Plenty area, which has a large Maori population, requested legislation to enable it to create Maori seats so that the Maori in the area could elect two councillors.

The Committee for Aboriginal Electoral Reform (CAER), created as part of the Royal Commission for Electoral Reform and Party Financing in 1991, proposed a similar system of Aboriginal electoral districts for Canada (Canada 1991a). These would not be guaranteed seats, but rather a guaranteed procedure for their establishment should numbers warrant. Registration was to be based on self-identification, and given the Aboriginal population at the time would have amounted to eight seats out of 295 in the house of commons (Schouls 1996). Guaranteed representation in central legislatures is often floated as an option for indigenous peoples in Canada and Australia (Bennett 1999:82–4), but rarely with any discussion of the challenge posed by

a handful of indigenous representatives faithfully representing an often extraordinarily diverse indigenous constituency (Schouls 1996:742–7). Likewise one complaint about the Maori seats is that they do not corresponded to tribal boundaries and thus do not reflect traditional differences. The small number also means that other diversities within Maoridom cannot be adequately reflected. With respect to the Canadian case, one or two notable exceptions aside (Courchene and Powell 1992; Henderson 1994), even less energy has been devoted to institutional means of addressing this diversity deficit. One version of special Aboriginal electoral participation in Canada seeks to address this issue in that it envisions re-drawing selected federal and provincial electoral boundaries to conform to historic treaty areas as well as to Aboriginal communities. As such, the chosen delegates would not simply be the chosen representatives of an Aboriginal electoral district drawn on the basis of population numbers alone, but the chosen representatives of specific treaty First Nations (Henderson 1994:325–6). Neither these nor any other measures to guarantee Aboriginal representation in provincial or federal legislatures has been implemented to date.

The option of representation in national assemblies for sub-state national groups is often criticised as irrelevant or even antithetical to their desire for autonomous self-government and a measure of separation from mainstream political institutions. Many see this measure as a clever form of cooptation whose ultimate aim is the assimilation of their territories and populations. There are good historical reasons for this argument. Enfranchisement was directly linked to the policy of assimilation in Canada (Canada 1995: vol. 2, part 1, s. 4.4; Carens 1995a: 8–9; Cairns 2000:17–18), and in New Zealand the Maori seats were originally intended as a means of both maintaining *pakeha* legislative dominance and heading off a nascent movement for independent Maori self-government (Fleras 1985:555–8; Hawkes and Morse 1991:179). Nevertheless, as we intend to argue in Part III, there are persuasive reasons for viewing this type of institutional presence as an essential corollary of autonomous self-governing institutions. The key is to be clear about what purpose this type of institutional voice is intended to serve, how it can be most effectively structured, and how its authority will be harmonised with that of the group's independent governing bodies.

In the USA minority electoral engineering began in earnest with the passage of the Voting Rights Act in 1965. Initially designed to eliminate procedural barriers erected by Southern states to effectively disenfranchise their African American populations, this legislation was amended in 1975 to cover Hispanics and linguistic minorities. Subsequent amendments in 1982 were enacted to encourage electoral redistricting favouring increased minority legislative presence, this times as a direct response to deliberate minority vote dilution by particular states (Spinner 1994:113–39). The US Supreme Court was an active partner in this process, ruling that African-American and Hispanic voters should not be disadvantaged in their ability to elect a candidate of their choice due to the way in which district boundaries are set (Grofman and Davidson 1992:24; Peterson 1995:113; Phillips 1995:85–6). This combined legislative and judicial initiative eventually led to what are known as either minority-majority districts or racial gerrymanders. The basic idea behind the minority-majority district is that, wherever there is a sizeable Hispanic or African-American population, the electoral boundaries can be redrawn such that the minority group constitutes a sizeable majority in the new district, thereby substantially increasing their chances of electing one of their own members to the legislature. However a 1996 Supreme Court ruling placed limitations on this procedure by demanding that racial motives cannot be the only reason for redistricting and that compactness of area is also an important consideration. This latter ruling was in reaction to a number of very long and meandering districts which sought to link a number of different areas, sometimes linked only by a highway (Williams 1998: 3–4, 110–15).

In terms of matrix placement, the Maori seats were symbolic elected pre-1996 because their number was static regardless of the population base. Post-1996 they are, like Quebec MPs, proportionately elected. In terms of extent, both can participate in all aspects of the legislative process and thus can help to set the agenda, although their actual ability to do so depends upon whether or not they are in government. Their place in parliament but not a place in government is guaranteed, so in institutional terms the actual extent of their voice is at the decision-making level: they can submit legislation for scrutiny in committees and they can vote in parliament. This is taking a realistic rather than a theoretical view of the power of an MP, because while any MP can introduce a bill, in both cases few backbench-sponsored bills are ever enacted and real policy debate happens in cabinet. So the post-1996 Maori MPs and Quebec MPs have a proportionate voice at the decision-making stage. Senators from Nunavut and Quebec, and in the past Maori members of the legislative council, are symbolically selected, with an actual political voice which extends to the decision-making level, but is probably less than that of an MP due to the conventional predominance of the house of commons. MPs from Scotland and Wales and Northern Ireland are likewise guaranteed a role in decision-making. Categorising for type is harder as size is definitely not population based. Symbolic representation usually means a few members, not more than would be proportionate, but underlying symbolic representation is the idea that presence signifies acceptance of difference, which is the case here. So Scottish and Welsh MPs will be categorised as symbolic here. In the USA the type is also symbolic because the number of minority-majority districts is not directly related to population size but the rulings by the Supreme Court recognise distinctive political needs of the group. However as African and Hispanic Americans do not constitute a sub-state national group this case is not in the matrix.

Indigenous peoples might also play a role in developing party policy through positive measures to include their input within party structures. For instance in 1990, the Liberal Party of Canada created the Aboriginal Peoples' Commission (APC),

designed to encourage the active participation of Aboriginal peoples at all levels of the party (Liberal Party of Canada 2001). The New Zealand Labour Party also has a strong Maori caucus with a place in the policy process. Since the introduction of the MMP electoral system, where each party presents a ranked list of candidates, all New Zealand parties have sought to have a Maori candidate near the top of their slate. The Labour and Alliance parties take this further by considering the ethnic balance of the list at regular intervals during the selection process (along with other criteria such as gender and experience) (Catt 1997). In examples such as these, although the group gains the capacity to choose their own members, it does not guarantee that the candidates will be elected and thus does not fall within the matrix.

Secretary of State for Scotland

Many British politicians saw the creation of a government department for Scotland (1885) and Wales (1957) as the start on the road to devolved power (Madgwick and Jones 1979; Brown *et al.* 1998). In Northern Ireland, however, the Secretary of State only gained power when the devolved assembly (Stormont) was suspended in 1972. Australia (1967), New Zealand (1861) and Canada (1876) also have a minister whose portfolio includes policy relating to the indigenous populations. In all cases there is a government minister with responsibilities for matters that affect that group across a range of areas covered by functional departments. Where there are no MPs from the national group, or none within the government party, then the minister will not be of the group but instead assigned to look after their interests. In Australia and Canada the dearth of indigenous MPs means that a 'European' must run the ministry. In New Zealand Maori MPs were all from the Labour Party until 1993 so again the Minister of Maori Affairs has not always been Maori. The British Conservative government of 1983–1997 had so few Welsh members that MPs elected in English constituencies held the post of Secretary of State for Wales. The Secretary of State for Northern Ireland has always been an MP from a non-Irish constituency in part because neither the Conservatives nor Labour contest the election in Northern Ireland and therefore have no suitable candidates. To the extent that the existence of a ministry symbolises recognition of the distinct needs of the group, then their existence is symbolic. But the fact that the minister is often not from the sub-state national group means that this is not a voice for the national group. Scotland is the only one of the sub-state national groups mentioned above to have always had a minister who is from the group and therefore is the only one with a place on the matrix.

The role of the Scottish Minister, created in 1885, was to represent Scottish interests in the cabinet and to oversee a range of policy areas within Scotland. The role is interpreted as management with a Scottish accent, for instance ensuring that the welfare state was dispersed according to Scottish traditions (Keating 1996; Brown *et al*. 1998:18). So the Secretary of State for Scotland had a role in policy areas which in England were overseen by a distinct ministry. With the creation of the Scottish Parliament the Scottish Minister's role has been greatly reduced but is still held by an MP from a Scottish electorate. While the existence of a separate ministry facilitates differentiated implementation, the fact that ministers are cabinet members means that they can also influence the agenda. The existence of the ministry is symbolic recognition of distinct needs and the Prime Minister fills the position with no input from the people of Scotland, and usually with no input from the Scottish MPs, so this falls into the symbolic selected category. The input from the Scottish voters is indirect in that they elected the MPs for Scotland and the Prime Minister then chooses from amongst these MPs.

The bureaucratic part of the Scottish Office is involved in a great deal of implementation of legislation and in several areas there are marked differences between Scotland and the rest of Britain: education being the most marked and remarked upon (Brown *et al*. 1998:101–3). The bureaucracy of the Scottish Office is based in Edinburgh, having been moved from London in 1939, and all employees are recruited in Scotland. Likewise the Welsh Office is staffed by Welsh people and operates from Cardiff (Balsom and Burch 1980). The Northern Ireland Office is in Belfast but when it was created a number of highlevel positions were filled with people from the London civil service. Te Puni Kokiri in New Zealand, the Bureau of Indian Affairs in the USA and the Australian Department of Aboriginal Affairs and the Aboriginal Development Commission, along with ATSIC also seek to recruit indigenous people. The intent in each case is to have bureaucratic decisions on detail taken by people from the sub-state national group involved (Phillips 1997; Brown *et al.* 1998: 55–6). As civil servants play a major role in the details of implementation the bureaucrats could be considered for inclusion in the matrix under controlling and implement decisions. This is one case where the people with control are selected rather than elected. However as the positions are bureaucratic jobs rather than the traditional forms of political voice these cases are not included in the matrix.

Parliamentary committees

In all parliaments much work is now done by committees rather than by all MPs. Two roles in particular have been devolved to committees in the Westminster Parliament: detailed discussion of bills, and scrutiny of the executive (Ryle and Richards 1988). Names for these committees are not consistent across countries. For instance, in New Zealand select committees fulfil both roles while in Britain standing committees consider bills and select committees scrutinise ministries. Rather than use the specific names from each country this discussion will use generic names based on the function of the committee. So two types

of committee will be discussed: committees of legislative oversight which consider legislation in detail; and scrutiny committees which question the executive. In Britain there has been a strong tendency to use committees within Westminster to provide input for Scottish and Welsh views. An early experiment with a Scottish affairs select committee from 1968 to 1972 was part of an overt recognition of a distinct Scottish dimension (McConnell and Pyper 1994). However, many Welsh MPs have opposed devolution seeing it as unnecessary because of a perception that Welsh interests could be met through parliamentary procedure thus holding 'a view which implicitly presumed that territorial politics could be managed within the framework of the Westminster parliament' (Jones and Wilford 1986:6).

All committees for legislative oversight refine legislation so they fall into the third category for the extent of voice. Since 1907 all Welsh MPs have been entitled, through standing order 86 of the House of Commons, to take part in any committee created for oversight of specifically Welsh legislation. However, very little legislation deals just with Wales so such a committee is rarely created. One issue with a specific Welsh character was changes to local government structures in 1994. However, because the Conservative government was unable to command a majority on a committee which all Welsh MPs were entitled to attend, the government moved to change the rules. By moving a vote to suspend standing orders the government was able to conduct the committee stage of the legislation without all Welsh MPs having the right to participate (Osmond 1995:19). So although the Welsh MPs have a formal right to participate the power of parliament can (and does) remove it on a simple vote. Under standing order 86 the type of voice is controlling and the extent is the ability to refine details.

All Scottish MPs have had the right to look at Scottish legislation since 1957 but, unlike the Welsh case, this is not specified in a standing order. Due to the different legal system in Scotland, there is much legislation just for Scotland, with many acts having one document for England and Wales and another for Scotland. In reality there are two separate committees operating at all times so as to handle the sheer number of bills that need consideration (Norton 1981:86–8). Therefore while a committee of Scottish MPs sees individual bills, each bill is not seen by all Scottish MPs, as is the case with Wales. Due to the low number of Conservative MPs from Scotland there were English MPs on the Scottish Standing Committees during the Thatcher and Major governments to give party balance, a state of affairs that caused much controversy when they passed the poll tax legislation against the wishes of most Scottish MPs. These committees do not have the same guarantees as their Welsh counterpart so the type of voice is in the hands of the government and thus symbolic selected. Since 1975 the legislative oversight committee for Northern Ireland has included all MPs for Northern Ireland plus other MPs to give party balance (Griffith 1981:119) and so is also symbolic selected.

In New Zealand the Maori select committee was created in 1871 and its role combines legislative oversight and ministerial scrutiny. However, the committee is not comprised solely of Maori MPs. Prior to 1996, the National Party did not have any Maori identifying MPs and thus had to have Europeans on the committee to ensure party balance when it was in government. Traditionally the non-Maori members were chosen because they worked with Maori, or represented electorates with a large Maori population. Until 1996 there had not been enough Maori MPs to fill the committee but from the start the four Maori electorate MPs were members. In 1996, with the increase in the number of Maori MPs the committee was almost all Maori, the sole exception being a Pacific Island born MP. Even if there continues to be sufficient Maori MPs to fill the committee and ensure party balance, Maori membership is determined by the party leaders and is not guaranteed: the voice is symbolic selected. Neither Canada nor Australia has sufficient indigenous MPs for them to comprise a committee of any kind and there is no equivalent committee for matters relating to Quebec or Nunavut.

Committees designed to scrutinise the work of the ministry were created for Scotland, Northern Ireland and Wales in 1979 in the aftermath of the failed devolution referendums (Norton 1981:133–4; Drewry 1985). Members are expected to be MPs for constituencies within the country but the government also expects to have a majority. This need for party balance meant that between 1987 and 1992 the Scottish Affairs Select Committee did not meet as the Conservative government had too few Scottish MPs and there would have been an outcry if English MPs had been members (Brown *et al*. 1998:100; John 1998). The role of the select committee is to question the ministry, so it is not part of the policy process and falls outside the matrix. Scrutiny committees in Australia, Canada, Quebec and USA do not have to contain indigenous members and thus are also outside the matrix.

A third form of committee used in Westminster to guarantee a voice for the MPs of Scotland and Wales are the Grand Committees, established in 1907 and 1960 respectively (Norton 1981:87; Brown *et al*. 1998). Each Grand Committee comprises all MPs from each country, plus, in the past, a few other MPs for party balance, therefore the type of voice is controlling. The Welsh Grand Committee meets four times a year to discuss the 'Annual Report on Developments and Government Action in Wales' and debate issues related to it. The role is scrutiny rather than decision-making and even then it has little real power, being more a symbolic recognition of the distinctiveness of Wales. This committee is another case outside of the matrix.

Not really a committee but playing a major role in the scrutiny of legislation is the upper house and a number of proposals have been made for these to have a major indigenous presence. In Canada there has been discussion of creating a separate legislative house alongside existing national legislatures, comprised exclusively of group representatives. This idea has been

floated periodically by Canadian academics (Hawkes and Morse 1991:179–80), and was a solution advanced by the Native Council of Canada (now the Congress of Aboriginal peoples) during the Charlottetown negotiations, but again never implemented. The idea was revived in the 1995 Final Report of the Canadian Royal Commission on Aboriginal peoples, comprising one of their major recommendations for a renewed Aboriginal-state relationship in Canada (Canada 1995: vol. 2, part 1, s. 4.4). Ideally, each distinct Aboriginal people or nation would gain at least one representative, for a total of 75 to 100 representatives, but the commissioners recommended a transition period to facilitate First Nation capacity-building, during which a smaller legislature of some 36 members would be drawn up using provincial electoral boundaries (Canada 1995: vol. 2, part 1, s. 4.4). This First Nations House is modelled along the lines of the various Scandinavian Saami parliaments, the crucial difference being that it would have real policy clout, rather than mere advisory or consultative powers (Hawkes and Morse 1991:179–80; Canada 1995: vol. 2, part 1, s. 4.4; Craig and Freeland 2001: s. 3). Therefore, the commission proposed that the Aboriginal parliament be assigned the power to initiate legislation, and to review all government legislation with a veto power on issues crucial to the interests of Aboriginal peoples. It also suggested they be accorded representation on legislative committees, and the capacity to review and comment upon draft legislation from the senate and house of commons in the early stages of its development (akin to rolling devolution) (Canada 1995: vol. 2, part 1, s. 4.4).

Similarly, in 1990 the Anglican church of New Zealand adopted a governance structure with three houses or *tikanga*, one for each of Maori, Pacific and *pakeha* peoples. In 1997 the report from their Commission on Constitutional Arrangements suggested a number of models for New Zealand. One copied the church structure with a *tikanga* for Maori and one for *pakeha*. Each would pass legislation in areas all agreed affected only their people. On issues of ‘common life’ the two houses would need to agree. In another model the Maori *tikanga* would act like a senate to an unchanged parliament and would have power of veto on a few issues but on most would send legislation back to parliament for reconsideration (James 2000). Such a First Nations or Maori House would place the institutional access at the level of agenda-setting because they could initiate legislation. Type of voice is symbolic elected because the number of representatives is not related to the relative population. If such a body were to be given veto powers then they would be controlling.

ATSIC (Aboriginal and Torres Strait Islander Commission)

ATSIC, created in 1989, is an elected body that has roles of policy advice and budget allocation. Aboriginal and Torres Strait Islander peoples elect members across Australia. When there are few or no MPs from the sub-state national group then advice and scrutiny cannot come from within the legislature. This was the situation facing Australia with no Aboriginal or Torres Strait Islander MPs but a recognition of the need to involve Aboriginals in policy delivery so as to meet some of the social needs of the people. The Royal Commission on Aboriginal Deaths in Custody recommended:

> that government negotiate with appropriate aboriginal organisations and communities to determine guidelines to procedures and processes which should be followed to ensure that the self-determination principle is applied to the design and implementation of any policy or programme or the substantial modification of any policy or programme which will particularly affect aboriginal people.
>
> (RCADC 1990: recommendation 188)

The Australian government’s solution was to create a separate body with the role of working with the Ministry of Aboriginal Affairs.

ATSIC was the third in a succession of government-created, elected advisory boards. It replaced the NAC (National Aboriginal Conference), which had operated from 1977 to 1985 and which had replaced the NACC (National Aboriginal Consultative Committee) created in 1973 (Sanders 1994; Coombs and Robinson 1996). All three were more fully instituted than the equivalent New Zealand elected advisory body, the Maori Council (Metge 1976:207; Durie 1998) and unlike the Canadian National Indian Brotherhood, which was created by First Nations. The Labour government in creating ATSIC used structures and ideas raised in reviews of NACC by Hiatt and of NAC by Coombs and then O’Donoghue, which all argued that previous structures had been ineffective and a new body needed greater formal links with government and some aspects of self-management (Coombs 1984; O’Donoghue 1985). The ATSIC legislation did not enjoy cross-party support but when the Liberal/National coalition government replaced Labour they kept ATSIC.

Aboriginal voters who are on the electoral roll elect ATSIC regional council members. The Coombs report had suggested that existing Aboriginal and Torres Strait bodies such as land councils or health and welfare organisations choose the members of the commission but the consultative process by O’Donoghue suggested that election was more popular (Coombs 1984; O’Donoghue 1985). However many of those who have been elected are from existing Aboriginal and Torres Strait Islander groups and the idea of formalising this form of representation has not disappeared (Rowse 1996). Elections to the councils use the same electoral system as used for senate elections (STV) but, unlike other elections in Australia, voting is not compulsory. In fact there is no separate electoral roll used for ATSIC elections, due mainly to problems of determining who

would be eligible to enrol. Parties are not involved in elections, with candidates standing as individuals, although many have connections to Aboriginal groups or bureaucracy (Rowse 1996). In the first election a number of positions were not contested as the community leaders had agreed on their preferred representative and therefore only one candidate was registered. There is some suggestion of a lack of representatives from poorer or working-class backgrounds because of a tendency to think that councillors and commissioners need to be educated and know how to 'talk the white man's way' (Dyck 1983:95–112). There have been women elected and the first head commissioner, appointed by the government, was a woman, Lois O'Donoghue.

The missions of ATSIC are to promote participation, development, understanding, self-management and self-sufficiency (O'Donoghue 1985:3). The commission forms one of two layers of administration. Australia is divided into thirty-six regions, and within each region Aboriginal voters can elect members to a council. The 1992 review led to a decrease in the number of regions (from sixty) and the recognition that being a commissioner was a full-time job. The regional councils, since 1993, play an active role in the allocation of certain budgets to community projects and also formulate a regional plan to improve Aboriginal well-being in social, economic and cultural life. The regions are organised into sixteen zones each of which, along with the Torres Strait region, elects one member for the commission. The members elect the chair of the commission although the government chose the first leaders. The elections and two-tier structure are based on regional diversity but there are arguments that this does not represent the real internal differences (Smith 1996; Sullivan 1996a: 122).

ATSIC looks at policy matters handled by the Ministry of Aboriginal Affairs, that is issues deemed by government to affect Aboriginals and Torres Strait Islanders. Many issues that affect the well-being of Aboriginal people are not handled by the ministry and so are not available for comment from ATSIC members. Likewise a significant part of the money spent on Aboriginal people is administered by other government departments and therefore is outside of ATSIC's purview. So commissioners do not play a direct role in setting the agenda or making decisions. The role of ATSIC is to assist with implementation, and at times suggest alternative methods, within the general policy. As their main role is fund allocation and ministerial advice, the extent of voice is implementation. Even in the area of money distribution ATSIC is under very stringent accountability and ministerial oversight. In discussion of the success of ATSIC a recurring theme is the tension between the commissioners' role as elected representatives accountable to the voters and their role as administrators accountable to parliament (Sanders 1994). In terms of the matrix, ATSIC has a controlling voice over implementation and delivery of policy.

Torres Strait Islanders have also sought greater autonomy and in 1994, in response to the 1992 review, the Torres Strait region was transformed into the TSRA (Torres Strait Regional Authority). Their main roles are to devise and implement programmes, to monitor programme delivery by all agencies and to provide advice to the minister. Their jurisdiction covers all Torres Strait Islanders and Aboriginal peoples in the region. In 1997 the ATSIC legislation was changed so that the TSRA is given a separate, one-line budget (Sanders 1999). Members are primarily the chairpersons of the island councils in the region with two elected under the ATSIC protocol.

Table 5 Matrix placement of the cases from Chapter 4

	Type of voice	*Extent of voice*	*Reason not in matrix*
Alsek Renewable Resource Council	controlling	implement	
Assembly of Wales	controlling	implement	
ATSIC	controlling	implement	
Australian Aboriginal Land Council	controlling		advocate
Cobourg Peninsula Sanctuary Board	controlling	implement	
Committee to scrutinise ministry			scrutiny
Cree band corporations	controlling	implement	
Cree Regional Authority	controlling	implement	
First Nations Senate	symbolic elected	agenda	
Grand Committees			scrutiny
Indian band council	controlling	implement	
Indian Gaming Commission	symbolic elected	implement	
James Bay Hunting, Fishing and Trapping Coordinating Committee	controlling	implement	duplicate
Joint Fisheries Management Committee negotiated as part of the Nisga'a Final Agreement	controlling	implement	duplicate
Maori Council	controlling		advisory
Maori MPs post1996	proportionate elected	decisions	

	Type of voice	*Extent of voice*	*Reason not in matrix*
Maori MPs pre1996	symbolic elected	decisions	
Minority-majority districts	symbolic elected	decisions	not a sub-state national group
NAC and NACC	controlling		advisory
National Council on Indian Opportunity	symbolic selected	propose solutions	
Nga Tahu	controlling		corporate
Nga Tahu on Conservation Boards	symbolic elected	implement	
Northern Territory community government	proportionate elected	implement	
Nunavut Wildlife Management Board	controlling	implement	duplicate
Scottish & Irish & Maori committee for scrutiny of legislation	symbolic selected	decisions	
Scottish MPs in Westminster	symbolic elected	decisions	
Scottish Office	controlling	implement	Bureaucrats
Secretary of State for Scotland	symbolic selected	agenda	
Senators Quebec and Nunavut	symbolic selected	decisions	
Torres Strait Regional Council	proportionate elected	implement	
TSRA	controlling	implement	
Welsh committee for scrutiny of legislation	controlling	decisions	
Welsh MPs in Westminster	symbolic elected	decisions	
Yukon Fish and Wildlife Management Board	controlling	implement	

Table 5 continued

Part III

Using the matrix

This third part demonstrates the relevance of the matrix as a tool for analytical rather than merely taxonomical purposes. In addition to its usefulness in terms of analysing existing institutional structures, ultimately we seek to use the matrix as a shopping catalogue of structures that may be suitable for others seeking a political voice for a sub-state national group. We hope that these insights will spur the development of more sophisticated normative models of multinational political accommodation, which are more closely informed by concrete case studies and insights from the literature on policy access and decision-making. A summary of the next three chapters is provided at the end of this introduction. As a prelude to using the matrix we first discuss how easy or difficult it was to place cases within the matrix and look for patterns in matrix placement in relation to group types.

All existing categories have stood the test of application and while in some cases it can be hard to distinguish, in any absolute sense, between the ability to propose a solution and to refine details or make a decision this is a useful distinction that highlights several key differences among competing institutional designs. The proportionate selected category within the type of voice has no cases but should also remain for completeness of the theoretical ideas this variable represent, as discussed in Chapter 1. Filling in the matrix also drew attention to differences in the range of issues where the body has jurisdiction. For instance the Scottish Parliament and Sechelt Indian Bands are in the same cell but while the former has jurisdiction over most policy issues the latter can act in fewer, prescribed areas. This dimension is interesting when considering the cases as real examples. However the structures are not directly related to the jurisdictional range and so discussion of institutional structure does not need the inclusion of jurisdiction. For instance, Sechelt governing institutions could function with a wider range of issues just as the institutions of the Scottish Parliament could function if it exercised power in just four specified policy areas. The range and variation of jurisdiction is discussed in Chapter 5 and includes a table showing jurisdiction in some broad categories.

Throughout the case description and categorisation in the previous chapters a number of cases were discussed but not included within the matrix (see Tables 4 and 5 at the ends of Chapters 3 and 4). Some of these exclusions are where

Table 6 Classification of political voice—the cases

		TYPE				
EXTENT		*Controlling*	*Proportionate elected*	*	*Symbolic elected*	*Symbolic selected*
Can set the agenda	CAFN general assembly Nisga'a Lisims government Nisga'a village government Northern Ireland Assembly, using parallel consent Scottish Parliament (1997 & 1979) Sechelt District Council Sechelt Indian Band Council Stormont (for Unionists) US tribal governments	Nunavut legislature Northern Ireland Assembly using normal votes Quebec cabinet		First Nations Senate	Scottish Minister Welsh Minister and Minister of Maori Affairs some of the time	

		TYPE		
	Yukon First Nation Councils			
Can propose solutions	CAFN council	Rolling devolution in Northern Ireland		National Council on Indian Opportunity
Refine details and make decisions	Standing Committee for Wales	Maori MPs (post1996) Quebec MPs	Maori MPs (pre-1996) Parliament of United Canada (1840) Scottish and Welsh MPs	Standing Committee for Scotland Maori Affairs Select Committee Nunavut and Quebec Senators
Implement & deliver	Alsek Renewable Resource Council Assembly of Wales ATSIC Cobourg Peninsula Sanctuary Board Cree Band Corporations Cree Regional authority Indian Band councils Indian Gaming Commission TSRA Yukon Fish and Wildlife Management Board	Northern Territory community governments Torres Strait Regional Council	Ngai Tahu on New Zealand Conservation Authority	Indian Gaming Commission

Note.
*Proportionate selected was included as a category in the discussion in Chapter 2 but there are no cases that fall in this category

there are a number of very similar cases, such as wildlife management committees, where the listing of all cases would add no new information to the matrix. Another set of exclusions were those which fell outside of the matrix either because the group was not a sub-state national group (for instance African-Americans) or because the extent of voice was not one of the four used in the matrix. A number of these latter cases provide advice for, or scrutiny of, government departments. In future use of the matrix it may be that these categories are a useful addition as rows at the bottom of the matrix although this change would extend the idea of the extent of voice beyond the normal policy process. Bearing these issues in mind the matrix has proved usable and most of the cases that we considered fit within it. This success is not due to judicious selection of cases as we have covered all major initiatives for the sub-state national groups that are included in the study.

The filled matrix contains forty-four cases from fourteen sub-state national groups in five countries and thus provides a means of comparing countries and groups to ascertain the extent of similarity and distinction in the structures provided. If structural solutions were specific to certain types of groups then we would expect to see some patterns and clusters in the matrix. A variety of ways in which cases can be categorised are considered in this context. The cases cover indigenous and non-indigenous groups but there is no clear divide between the two in terms of matrix placement and all cells that have more than one case contain examples from both indigenous and non-indigenous groups. Within the indigenous groups there are no patterns based on whether or not they have a treaty. However the colonising approach followed in each country does indicate some patterns. Indigenous cases from Canada and the USA are found in the agenda-setting row whilst those from Australia and New Zealand are not. In the former pair colonisation tended to set up quasi self-governing units for the indigenous tribes whereas in New Zealand the crown signed a treaty with Maori setting up a partnership and in Australia they were not recognised. Indigenous groups in North America tend(ed) to be in isolated areas while Maori were and are dispersed and geographically integrated across the country. The impact of these geographical differences forms the structural bases for discussion in Chapter 7.

No one country dominates any cell in the matrix. Three of the countries used are federal and the other two are unitary. One cell, that for symbolic selected and agenda setting, has cases only from the unitary states but this does not seem to be a result

of unitary structures. Rather the explanation seems to be the relative size of the sub-state national group's population. The cases here are all instances where a cabinet minister heading the department charged with overseeing the affairs of the national group is a member of the national group. The Minister of Maori Affairs and the Secretary of State for Wales are sometimes from the relevant group while the Secretary of State for Scotland is always from a Scottish electorate. In Canada, Australia and the USA the equivalent minister has not routinely been of the group, in large part because there are few MPs from the group. So the number of Scottish, Welsh and Maori MPs is the key factor, not the fact that the UK and New Zealand are unitary states. However, more generally, relative group size also fails to create any discernible patterns in matrix placement. Concentration of population such that it dominates in a geographical area also fails to form a pattern. Australia and New Zealand are the two countries where there is no such concentration of population and the only aspect their cases share is that they do not fall within the agenda-setting category for extent of voice.

One variable that shows some pattern on the matrix is date of creation. If this exercise had been conducted in 1990 then sixteen cases would be absent, eleven in the controlling voice column. Indeed most of those in the controlling and agenda-setting cell were created in the 1990s but there are notable exceptions such as Stormont from 1920. The only cases from the nineteenth century that has a controlling voice are Indian band councils in Canada and USA tribal governments in the USA. At the other extreme, all but one of the cases in the symbolic-elected and symbolic-selected cells were created before the 1970s (New Zealand Conservation authority), many of them decades earlier and half in the nineteenth century. Symbolic representation had much greater acceptance and usage in the nineteenth century, particularly in Britain, where many areas of the country, including some thriving cities, did not have an MP. The widely accepted Whig view was that each form of economic interest needed a voice but if one copper mining area had an MP then others had no need for one because this MP would raise their concerns. Representatives were to raise rather than protect interests (Catt 1999a:91). Colonial administrators in New Zealand who had to design representation for the Maori were familiar with these ideas and thus the symbolic nature of the Maori seats is not surprising.

Five of the sub-state national groups have a number of cases on the matrix so their path can be tracked. Again there is no consistent pattern of progression across the matrix. Maori cases are all in the bottom right quarter as the Minister of Maori Affairs is not guaranteed while the voice for Unionists in Northern Ireland is contained in the top left quarter. Quebec started in the middle of the matrix and then in 1867 moved slightly in three separate directions. Scotland and Wales cover most areas of the matrix. So while in general terms there may be a time shift towards the top left cell, in individual groups chronological progression is not all in the same direction.

These observations on the lack of clear patterns in matrix placement suggest that there is no firm link between political context and form of political voice. Indeed there seems even to be a lack of tendencies for context to match matrix placement amongst the cases considered here. The idea that structures can cross type of group, historical context, demography and culture is discussed in more detail in Chapter 7. Judgements as to the comparative suitability of institutional arrangements across cases and contexts already appear in some of the normative and policy literature on self-determination (Dodson 1996: 60–1; Bennett 1999: 198), but often they are based on little more than anecdotal or highly generalised evidence. In comparison, the empirical and analytic detail provided by this study promises political scientists and policy-makers alike a firmer intellectual platform from which to make such judgements. The discussion includes consideration of the extent to which the matrix could be used as a shopping catalogue for those seeking to create such a structure or improve an existing one. A number of real examples are discussed to illustrate the point. Chapter 6 considers the extent to which the matrix provides a hierarchy in terms of legitimacy and stability, concluding that both are based on factors other than the type and extent of the political voice. The analysis here illustrates that cases in all parts of the matrix provide institutional structures that can work and be accepted by groups and national government. Chapter 5 considers the extent to which normative theories of group rights and self-determination match the types of structures that have been created. It uses the matrix as a means of classifying structures so that analysis can move to comparative discussion rather than single case description.

Given the manner in which this part of the book has been structured, there is a certain necessary overlap between the themes canvassed the following two chapters. For example, questions of jurisdiction and representativeness of institutions are central themes in Chapter 5, but they also speak, in important ways, to the issue of legitimacy, the subject of Chapter 6. This overlap is designed to effect a complementarity rather than a duplication of insights and conclusions. Each chapter should be viewed as adding another layer of depth and complexity to the overall analytical portrait we are attempting to sketch. In this sense, the insights offered in Chapter 5 serve as a means of anticipating and broadly contextualising what follows in Chapters 6 and 7. This metaphor of analytical layering is also a useful way of looking at the themes internal to each chapter. Specific themes may reveal a very different, and possibly misleading, perspective on a particular institution when examined in isolation, so it is important to look at each as part of a larger organic whole.

Clearly these are just a few of the many ways in which the matrix could be used as a tool for analysis. Using the matrix cells as the explanatory variable could facilitate comparison of structural impact on policy outcomes or group sustainability. For instance, if data were collected on literacy rates or participation in post-compulsory education, unemployment levels or fluency in the indigenous language, or incarceration levels for time periods before and after the creation of the cases, then

outcomes could be compared to discern if any structures are more successful than others. Such studies would be hard to conduct in some policy areas due to problems of obtaining the necessary information needed for the analysis to be robust and meaningful. Also many are new and so will need time for any impact to be evident.

5
Theory and practice

Group-differentiated forms of citizenship and self-determination are issues which continue to intrigue normative political theorists at the dawn of the twenty-first century. As we indicated in the introductory chapter, an enormous amount of valuable research has been conducted in this area. Nevertheless, it is not unfair to say that the preponderance of this research has been organised around certain key themes to the exclusion of others. In particular, questions such as which types of groups deserve differentiated rights, what are the similarities and differences among these groups, which types of rights are suitable to their needs and demands, and how these rights can be justified and accommodated in terms of existing theories of state and society have predominated. This pattern of investigation is showing signs of change. In a survey of the normative literature, Kymlicka and Norman conclude that the emphasis of the 'first wave' of theory on group differentiated citizenship, having successfully fulfilled its mandate, is being followed by a 'second wave' concerned with the consequences of these new forms of recognition for the virtues and practices of citizenship, and their corresponding impact on the stability and governability of internally diverse polities (Kymlicka and Norman 2000: introduction). In this chapter, our aim is to strike out in a distinctly different direction by examining the degree of congruence between the normative imperatives of national self-determination and the institutional means by which they have been addressed by contemporary multinational states.

This subject has received comparatively little attention in the existing literature, resulting in an ever-widening gap between normative theory and state practice. Our first step towards closing this gap was to showcase, in Chapters 3 and 4, the variety of intriguing institutional solutions which states have created to accommodate their sub-state nationalists. In this third part of the book we build on this empirical work by analysing the relationship between normative imperatives and institutional practice. More precisely, we seek to establish what sort of structural capacities these institutions deliver into the hands of the national group in question, and how they measure up in terms of the purposes they were intended to serve. Given limitations on space, we can cover neither all of the cases nor all of the relevant normative themes. Instead, we have selected a cross-section of some of the more important issues, incorporating cases from the widest possible range of the matrix categories. Accordingly, the chapter is divided into four sections. The first three sections investigate whether the matrix reveals any general patterns with respect to three broad themes in the normative literature on sub-state national groups. The first section looks at the subject of representation; the second section the question of access, and the third section the question of autonomy. In each section, we endeavour to isolate examples of the distinctive needs and aspirations of different sub-state national groups, and to distinguish them from other types of groups which fall under the rubric of group-differentiated rights and representation. Furthermore, each of the sections is broken down further into sub-themes to provide a more focused and detailed analysis. The final section contains a brief conclusion, and a glance forward to the remaining two chapters.

Representation

One of the most fundamental themes in the normative literature on group rights is the need for states to accommodate their sub-state national groups with some special form of representation in political institutions (Kymlicka 1995: chap. 7; Phillips 1995: chap. 1; Williams 1998: introduction). Representation for sub-state national groups is often assumed to refer exclusively to participation in their own separate institutions, but this assumption is contestable in both theory and practice. Federal and consociational states, for example, rely on a combination of autonomous local self-government and representation of local authorities at the political centre. Indeed, the necessity of augmenting localised self-government with central representation is identified by some theorists as one of the most central problems facing existing multinational democracies (Borrows 2000; Cairns 2000). In other cases, representation at the centre might even be viewed as a sufficient, if not preferable, alternative to autonomous self-rule. As we indicated in part II, many Welsh MPs opposed the creation of a separate assembly on the grounds that Welsh interests would best be served by augmenting their influence through the reform of Westminster institutions. Up until the 1990s, a majority of Scots were also content to see their interests represented through their various access points at Westminster. Moreover, these access points have been retained as an essential component of Scotland's new quasi-federal relationship with Britain.

There are several different components to the broader theme of representation. One component is the presence of the group's own members in representative institutions (Phillips 1995:5–7). Many national groups are unlikely to be satisfied with an institutional design which, in some fashion, takes their distinctive needs and values into account, but which excludes their members from direct participation (McLeay 1991:33–4). The different rationale for a politics of presence was discussed in detail in Chapter 1, so we will only briefly review them here. Presence is deemed to be essential first of all because members are more likely to be attuned to the distinctive needs and perspective of the group, based on factors such as a common stock of experiences and shared social circumstances. This argument is frequently cited by indigenous groups, such as the Inuit of northern Canada (Légaré 1997:406). Presence also speaks to the issue of trust, or lack thereof. National groups may not trust non-members to act as their representatives, judging that they have neglected the group's interests in the past and, in all likelihood, will never be as motivated as the group's own members to defend those interests in the future (Williams 1998:13–14, 30–1, 174–5). Trust is a theme that is covered in more detail in the section on autonomy, and in Chapter 7. Symbolic recognition of the national group's equal status and stature in society, and as a capable and valuable contributor to the political life of the state, is another key dimension of presence. This sentiment has sometimes been linked to continuing support for separate Maori electorates (New Zealand 1986:108). Guaranteed presence is an institutional feature which may help satisfy a group's democratic demand for inclusion as autonomous subjects rather than captive objects of government policy, and frequently, as in the example of federal and consociational systems of government, constitutes a key means of developing cooperative and mutually beneficial relationships among different national groups in a multinational state (Cairns 2000:5–7, 90).

As we just mentioned above, representation in central political institutions is frequently a useful and necessary corollary of localised forms of self-government. When central institutions enjoy the capacity to modify or revoke the existing powers of the group, such representation may help ensure this cannot be accomplished without first consulting the group or gaining its consent (Kymlicka 1995: 32–3; Schouls 1996:739–42). It can also be conceived as a means of introducing the group's concerns into national level forums and debates (Fleras 1985:575; New Zealand 1986:89–90; Bennett 1999:82–4), and of contributing the distinctive perspective of the group to legislative initiatives which have an impact on the country as a whole e.g., the environment. One example which illustrates this point nicely is the Bloc Québécois, a Canadian federal party dedicated to Quebec sovereignty. The Bloc was formed by Quebec nationalists who felt that their interests could not be adequately represented in the Canadian House of Commons by Quebec MPs, beholden to traditional federal parties, who explicitly rejected the sovereignty option. Others have argued that this form of representation may help prevent the marginalisation or ghettoisation of the group, instead promoting cooperative and mutually beneficial relationships among different national groups and their governments (Henderson 1994:322–3; Schouls 1996:739–40; Cairns 2000:146–52).

A quick look at the matrix indicates that presence is not always assured, even in a reduced or minimal form. In the symbolic elected category, presence is guaranteed regardless of numbers, as in the case of Quebec's representatives in the Parliament of United Canada. In contrast, the category for symbolic selected designates a voice from the group but not necessarily for the group, regardless of an institution's placement on the axis for extent of voice. Under certain formulas for selecting members, as in the case of senators from Nunavut and Quebec, presence is guaranteed, but in others such as the Maori Affairs Select Committee, this is subject to the discretion of the governing party, which is not bound to include Maori members. Similarly, there is no structural requirement that the Minister of Maori Affairs be Maori, and both Maori and non-Maori MPs have held this portfolio in the past. The category for proportionate elected also does not guarantee presence. This is dependent on factors such as the electoral formula employed and the population of the group. In practice, this guarantees a voice in all of the cases we have categorised because each group comprises a significant percentage, sometimes even a majority, of the total population. However, this will not always be the case. As the Canadian Committee for Aboriginal Electoral Reform remarked, when recommending the creation of Aboriginal electoral districts for Canada, such an institutional innovation would not amount to guaranteed seats, but only a guaranteed procedure for their creation should numbers warrant (Schouls 1996:730).

Be that as it may, institutional presence in itself may not be enough to satisfy particular national groups, who will also demand the capacity to choose their own representatives who can be held directly accountable to the group. Again summarising briefly our discussion in Chapter 1, this can be based on arguments that a member chosen by and accountable to the group is more likely to understand and pursue its values and objectives (Williams 1998:6–7), but also as recognition of the community's entitlement to make choices for itself as part of its democratic right to self-determination (Brown *et al*. 1998: 228; Walker 1999: 118–21; Murphy 2001a). Accountability to the group is also key to establishing a politics of trust among representatives and the represented (Williams 1998:14, 166–7). We will examine the elements of choice and accountability separately in terms of matrix placement.

Direct choice of one's own representatives is possible in any area of the matrix except the symbolic selected category, although elected members from the group may acquire a voice in an institution if selected by government, as in the Standing Committee for Scotland. This argument also applies in theoretical terms to the proportionate selected category, even though none of the cases we classified fell into this category. In the proportionate elected category, if the group qualifies for

representation they are guaranteed the right to choose these representatives themselves, as in the examples of Quebec's members of the National Assembly and the Canadian House of Commons. The controlling category presents a different variation on this guarantee, given that either election or selection are options, but it is always members of the group, or their own chosen representatives, that make the choice. For example, the Welsh, the Sechelt and the James Bay Cree all directly elect their own representatives, but in the case of the Yukon Fish and Wildlife Management Board, representatives are chosen for all Yukon First Nations by their representatives in the Council for Yukon First Nations. A guaranteed right to choose one's representatives should not be interpreted to mean that someone from the group will necessarily be chosen as their representative (Alfred 1999:111). In certain cases, such as Indian Act band councils and the Cobourg Peninsula Sanctuary Board, this will be inevitable, since the structure stipulates that only members are eligible to participate in the institution. However, in other cases, such as the Yukon Renewable Resource Councils, non-members can, and in many cases have, been appointed as representatives of First Nations (ALSEK 2000). In Northern Ireland, although members of the assembly must self-identify as either Unionist or Nationalist, there is no stipulation that they be elected solely by these constituencies, and a certain amount of voting across sectarian lines does, in fact, take place.

The matrix also offers some interesting insights into the dimension of accountability. At a very basic level, institutions in any of the categories which allow sub-state national groups some means of choosing and deposing their representatives provide, thereby, some measure of accountability. Most of the institutions in the upper levels of the category for extent provide high levels of structural accountability, particularly when both electors and representatives are made up exclusively of group members. Examples include US tribal governments, and the Sechelt and Yukon First Nation Councils. However, this accountability is diluted somewhat in cases like the Quebec National Assembly, Scottish Parliament and the Northern Ireland Assembly, because representatives are also accountable to their parties, and party discipline is very strong in Westminster systems. Similarly, as one moves downwards on the axis for extent, structural accountability in itself does not ensure that the group's representatives are accountable only, or even primarily, to the group. A case in point, Welsh MPs on the Standing Committee for Wales are directly accountable to Welsh voters, but also to the Westminster Parliament, and once again to their political party. This fragmented and cross-cutting form of accountability is more evident in institutions at the level of implementation and delivery. One of the clearest examples of this is ATSIC. Although all of the ATSIC commissioners must themselves be Aboriginal, structural accountability to their Aboriginal constituency is already partially diluted by the fact that they are not directly chosen by Aboriginal electors, but by their elected regional representatives. Compounding this problem is the fact that these representatives are also, many would argue primarily, accountable to the Australian Parliament through the federal Minister of Aboriginal Affairs (Sullivan 1996a: 121–2; Galligan 1997: 213–14; O'Donoghue 1998). This dual form of accountability constitutes a serious potential impediment to the group's capacity to be assured that the individuals who represent them will be guided by the priorities and objectives of the group rather than those of the Australian government. On the other side of the coin, some institutions at this level provide very high degrees of structural accountability. For example, the Cree Band Corporations provide the same structural accountability as any of the institutions at the agenda-setting level, which suggests that there is no absolute link between accountability and extent of voice.

Choice and accountability are linked in interesting ways to another challenge posed by institutional representation for sub-state national groups, which is the need to accommodate internal diversity (Young 1990:234–40; Tully 1995:6–11; Offe 1998: 129–31). This challenge manifests itself in a number of distinct forms. First, it refers to diversity internal to the national group itself (Parekh 1991). Indigenous groups in Australia, Canada, New Zealand and the USA often maintain that forms of representation and self-government should be designed to accommodate populations comprising numerous different constituent political and cultural sub-communities, such as Maori *iwi* and *hapu* in New Zealand, distinct Aboriginal communities in Australia or different indigenous nations in Canada and the USA. By way of illustration, the failure to account for this form of diversity was a clear factor in the demise of Canadian Aboriginal self-government initiatives in the 1992 Charlottetown Accord, and the tentative Yukon agreements in 1976 and 1984 (Turpel 1993; Cameron and White 1995: 27). This form of internal diversity also covers issues related to socio-economic indicators, for example variations in the relative economic deprivation of populations of different geographic regions, as well as differences related to gender, culture, age and sexual orientation. For example, Aboriginal women in Canada have voiced their opposition to self-government arrangements which they fear will entrench the dominance of Aboriginal male elites (NWAC 1992). A second form of internal diversity relates not to the composition of the national group itself but to the larger population inhabiting the territory controlled by the sub-state national group through a particular institution. The province of Quebec, for example, is home to the Québécois but also a large Anglophone community and eleven indigenous First Nations. This is also a live issue in the United States, where tribal nations often share their reserves with a large minority of non-aboriginal residents who because they are not citizens of the tribal nations, do not enjoy an automatic right to participate in tribal politics.

Broadly speaking, the matrix does not appear to offer any useful generalisations regarding the accommodation of internally diverse forms of representation for national groups, other than that this is a possibility in virtually every cell. One might plausibly argue that this is more likely to be achieved in the higher levels of the proportionate elected and controlling categories, since these institutions tend to be larger and more complex, and hence offer greater opportunity to accommodate

internal diversity. However, large and complex institutions are also possible in the symbolic category, as in the cases of the Parliament of United Canada (1840), and the proposed Canadian First Nations Senate. Alternatively, one might argue that the closer an institution is to the top left corner of the matrix, the more opportunity the national group in question has to determine for itself what forms of internal diversity should be accommodated. Nevertheless, the fact remains that it is not matrix placement which provides us with insights regarding the likelihood that internal diversity can or will be accommodated but instead other non-structural factors such as the political will of the relevant decision-makers or the time period in which the structure was created. Discussion in the next chapter indicates that diversity in the way decisions are made is more common than in the way representatives are chosen.

With this large caveat in mind, what forms of internal diversity have been accommodated in the matrix cases? Perhaps not surprisingly, such measures were contemplated almost exclusively in the case of institutions of fairly recent vintage, possibly in response to pressures from social movements and/or in reply to theoretical advances in the domain of group representation. Equal represen tation for women was contemplated in the processes leading up to the creation of Nunavut and the Scottish Parliament, but ultimately rejected in both cases. As a compromise in the Scottish case, some of the political parties adopted a candidate selection process which produced a first parliament comprising 37 per cent women. A similar initiative by the Welsh Labour Party helped ensure a figure of 40 per cent for the first Assembly of Wales. The Belfast Agreement stipulates that the British government will, pending the devolution of powers, pursue broad policies for promoting social inclusion, with particular emphasis on the advancement of women in public life, but makes no specific guarantees for their representation in the assembly (Northern Ireland 1998a: 19; O'Leary 1999: 77–8). The Nisga'a and groups like the CAFN have created elected councils of elders and/or youth as a means of advising and reviewing the activities of their governments, from the point of view of the specific interests and perspectives of their constituencies (CAFN 2000:9–10; Nisga'a Nation 2000:15). In the case of the CAFN, one elder and youth councillor are also guaranteed a place on the seven-member First Nation Council (CAFN 2000:7–8). Regional differences were accommodated in the electoral system for the Scottish Parliament, thereby guaranteeing a voice for sparsely populated areas such as the Orkneys and the Shetlands. A limited degree of regional representation is also provided in the planning structures of ATSIC (Wolfe 1993). Taking one last example, as we mentioned in the introduction to Part III, the Sechelt and certain US tribal governments have created advisory bodies to their primary governing institutions in order to accommodate the views of their resident non-citizens, but direct participation in tribal government remains, for the most part, a right exclusive to citizens.

Access

Choosing representatives and holding them accountable are two key stages in a national group's quest to secure their cultural, socio-economic and political objectives, but it leaves open the question of what those representatives are structurally capable of doing. Here we come up against the question of access. National groups frequently express their dissatisfaction with institutional arrangements in which their chosen representatives are merely consulted but ultimately denied a direct and meaningful role in the decision-making process (McLeay 1991:33–4; McGarry and O'Leary 1995:392–3; Dodson 1996:59), particularly in areas of jurisdiction which they take to be central to their interests (Grand Council of the Crees (Eeyou Astchee) 1998:128–9; Seymour 2000: 245–7). For their part, normative theorists have provided several general surveys of different forms of institutional representation or participation which might serve the interests of national groups (Young 1990; Kymlicka 1995; Phillips 1995; Levy 1997; Williams 1998). Parallel literatures on institutionalism and public policy have provided specific assessments of the importance of access points in the policy process and jurisdictional issues as they relate to the issue of political influence (see Chapter 2). However, there has been comparatively little interest in studying the intersection of these two literatures in the context of substate nationalism. This section takes a measured step in that direction.

We will look at two dimensions of this question: access to the decision-making process itself, and jurisdictional access or what policy areas are covered by the group's decisions. Since the advantages to a group of jurisdictional access are clearly related to their access in the policy-process dimension, these two dimensions should be read in conjunction with one another. We begin with the question of access to the decision-making process. The theoretical dimensions of policy access points were thoroughly discussed in Chapter 2; moreover, as the defining components of the variable measuring extent of voice, their details should be clear enough not to bear repeating here. Generally, the most extensive opportunities for direct and guaranteed access to policy-making exists in institutions occupying the top left cell of the matrix. This can be provided for in different ways, as in the creation of a grand coalition-style of executive for the Northern Ireland Assembly, which includes representatives from both unionist and nationalist camps, or in cases like the Scottish Parliament and the Sechelt Indian Band Council where members of the executive, in addition to legislative committees in the Scottish case, are always from the group and elected only by other members of the group. Significant opportunities for participation in decision-making also exist in the proportionate elected category at the level of agenda-setting, although as in cases like the Quebec National Assembly, this is dependent on the national group winning control of the cabinet through electoral competition with competing national group (s). Nunavut presents a somewhat different variation in the sense that, even in the unlikely event that the Inuit failed to win

control of the executive, the distinctive decision-making structure of the Nunavut legislature is such that any elected member has some capacity to place an issue on the agenda. This is also the case for the Northern Ireland Assembly and the Scottish Parliament (see Chapter 3 summaries).

In structural terms, anywhere below the level of agenda-setting, and this applies equally across the categories for type of voice, the sub-state national group's policy input can be accepted or rejected at the sole discretion of those who control the institution in question. This scenario plays itself out in slightly different ways, depending on the category for extent in question. For example, under rolling devolution, both Unionists and Nationalists (the latter chose not to participate) could propose changes to draft legislation passed down by Westminster, but received no guarantees that such changes would be made. As we noted in Chapter 3, many of these recommendations were accepted, but it is important to note that final decision-making authority in all matters remained in the hands of the parliament at Westminster. A similar point can be made with regard to Quebec MPs in the Canadian House of Commons, and Welsh and Scottish MPs at Westminster. Each can debate and vote on proposed government legislation, propose amendments of their own at the committee stage, and in rare cases introduce a private member's bill but, structurally speaking, they have little direct access to policy-making if they are not part of government, and cabinet in particular, which tends to dominate the policy process.

At the level of implementation and delivery we encounter a different variety of examples. Here we find a number of representative and quasi-legislative bodies which, unlike standing or select committees, are not component parts of the legislative process in a central institution but instead are forms of local government and administration. Many of the institutions in this category provide access to fairly substantial decision-making powers in their established jurisdictions, but it is important to bear in mind the nature and parameter of decision-making powers at this level. These bodies have the capacity to develop or recommend variations on policies which are often important to the interests of the sub-state national group in questions, but they are still only variations on policies and legislation developed by those who set the agenda. In other words, the sub-state national group does not occupy the role of primary decision-maker, but instead the role of direction and oversight at the level of implementation and administration. The Yukon Fish and Wildlife Management Board, for example, is designated as the primary mechanism for managing fish and wildlife in the Yukon, but its decision-making powers, in institutional terms, are limited to policy advice and recommendations to different First Nations and the Yukon government. The legislative and policy agenda in these areas remains under the control of the Yukon and federal governments. A similar argument applies to institutions such as the Cree Regional Authority and Northern Territory community governments which, like most conventional municipalities, have the capacity to make local resolutions and by-laws within the framework of a legislative agenda established by state/provincial and federal levels of government. Another interesting example in this regard is the National Assembly for Wales, which has the capacity to enact secondary or subordinate legislation in areas devolved to it by Westminster. As we indicated in chapter 4, this does not constitute the standard sort of by-law making authority wielded by institutions like the Cree Band Corporations, but instead represents the authority to vary the details of primary legislation passed down to the assembly from Westminster. The assembly's degree of access at this subordinate level is further subject to the discretion of Westminster, which can vary considerably the precision of their primary legislation and the corresponding degree of variation to which it is susceptible. The assembly can also suggest primary legislation to Westminster, but receives no institutional guarantees that its suggestions will be implemented. In summary, although the assembly is guaranteed a voice at the level of implementation and delivery, the strength of that voice is also a function of political will and circumstance, and could conceivably be reduced to a bare minimum by a more centralist or uncooperative Westminster administration. This is turning out to be a subject of much debate in the theoretical and policy literature (Silk 1998; Laffin *et al*. 2000; Marinetto 2001).

The second element of access is the question of jurisdiction, or the policy areas to which an institution provides the group access. A generalised overview of these areas of jurisdiction is provided in Table 7 below. Again, we refer the reader back to Chapter 2 for an overview of the theoretical dimensions of this subject. As we indicated in that chapter, the subject of jurisdiction is large and complex, so we will examine just a couple of key ideas here. Additional elements of jurisdiction are covered in the section on autonomy. To begin with, does the institution provide access to a broad or comparatively restricted range of jurisdictions? As we concluded in the second chapter, national groups often want access to a broad range of jurisdictions but, in cases like functional boards for example, there are good arguments to be made in favour of narrow or single jurisdiction institutions. Matrix patterns for jurisdictional breadth are decidedly more ambiguous than those along the dimension of decision-making access. One could point to the fact that, other than two exceptions among our chosen cases, the Parliament of United Canada and the Secretary of State for Scotland, all of the institutions with a fairly broad range of either primary or secondary legislative jurisdictions fall under the proportionate elected or controlling categories. However, this has more to do with the fact that contemporary democratic norms tend to reject symbolic methods of choosing representative in such institutions, rather than a structural impediment which would prevent an institution with broad jurisdiction from appearing in one of the 'selected' categories.

It is also fair to say that institutions with the broadest range of policy jurisdictions tend to be found at the agenda-setting level, although exceptions include Quebec MPs in the Canadian House of Commons and Scottish and Welsh MPs at

Westminster. Moreover, not all of the institutions at this level have broad jurisdictional access, in fact there is quite a range among the classified cases. Whereas the Scottish Parliament and many US tribal governments have access to an extensive array of legislative jurisdictions, covering almost the entire spectrum of their interests, those of the Sechelt Indian Band and Stormont are much narrower, in both comparative and absolute terms. The same might be said with regard to the initial list of jurisdictions of the assembly for Northern Ireland, the difference being that it has the potential to access a virtually open-ended number of additional jurisdictions, with the consent of the Secretary of State for Northern Ireland, and subject to control by Westminster (Northern Ireland 1998a: ss 3, 27; United Kingdom 1998a: s. 8). The question of jurisdictional breadth becomes more complicated once one factors in partial and concurrent jurisdictions. This factor is particularly relevant in the indigenous cases, the vast majority of whose jurisdictions are partial or held concurrently with other levels of government. Yukon First Nations Councils and Nisga'a Lisims government, for example, have fairly extensive lists of enumerated jurisdictions, but few of these powers are held exclusively, and many do not constitute broadly defined powers such as those enjoyed by the Quebec National Assembly (Canada 1986:30–37 and passim; Canada 1994:21–3; Canada 1998: chap. 12 and passim). We will revisit the issue of concurrency in the section on autonomy, with specific relation to the question of paramountcy.

Moving down the matrix, those institutions with the narrowest range of jurisdictions tend to be located in the category for implementation and delivery. For example, ATSIC does not have full access even to all those issues deemed by government to have an impact on Aboriginal and Torres Strait Islander interests, in education and health services for example, and administers only 60 per cent of the budget designated for Aboriginal programmes and services (Sullivan 1996a: 121–2; Galligan 1997:214). Likewise, the Assembly of Wales is responsible for only about half of the public expenditure in Wales (Laffin *et al*. 2000:232). Others, like the Alsek Renewable Resource Council and the New Zealand Conservation Authority are single jurisdiction institutions. On the other hand, institutions like the Cree Regional Authority, and the Assembly of Wales have a comparable range of jurisdictions to those enjoyed by institutions at each of the higher levels for extent, for example the Maori Affairs Select Committee, rolling devolution and the Welsh Minister. In fact, there is nothing in the construction of the matrix categories that would preclude the appearance either of a single jurisdiction institution like a functional board in the agenda-setting category or of a very broad-jurisdiction institution like the Quebec National Assembly at the level of implementation and delivery.

One final aspect of jurisdiction to be covered in this section speaks to whether an institution provides a sub-state national group with access to key jurisdictions comprising part of what they would consider to be their core interests. Table 7 below contain a general summary of key jurisdictions in a number of the matrix cases. Some common examples of these core interests include land and resources, culture and education, justice, economic development and social services. Taking some specific examples from the cases, language, property and civil law, and immigration are enormously important to Québécois, as are citizenship, justice and natural resources to US tribal governments like the Jamestown S'Klallam. Having said this, it is essential to recognise that these will vary depending on the group. For example, certain Maori spokespersons have warned of the dangers of narrow definitions of 'areas of concern to Maori' which lie exclusively in the cultural and spiritual (as opposed to say, the economic or political) realm (McLeay 1991:36). Bearing this argument in mind, what can the matrix categories help us predict in the area of key jurisdictions? In brief, the results in this dimension of jurisdiction are even more ambiguous than those examined in the preceding section. Beginning again on the axis for extent, functional boards for Aboriginal groups at the level of implementation and delivery provide access to some of their most prized jurisdictions such as wildlife, natural resources, and land and environmental management. Two examples not formally categorised in the matrix are the James Bay Hunting, Fishing and Trapping Co-ordinating Committee and the Nunavut (land use) Planning Commission (Quebec 1976: 367–75; Canada 1993d: article 11). The Assembly for Wales has jurisdiction in many key policy areas, including health and health services, the Welsh language, education and economic development. Of course, there are just as many counter-examples at this level of the matrix. Indian Act band councils are the most obvious, whose by-law making authority notably does not encompass education, renewable or non-renewable resources or language, and only minimally enters the domain of justice (Canada 1985: ss 81–5). Cree Band Corporations enjoy limited jurisdiction in the protection of the environment and natural resources, and restricted jurisdiction over wildlife, but no jurisdiction over either language or education, and only minimally in the area of justice (Canada 1984: ss 45–8).

Moving one level up in the matrix, Maori MPs can debate and vote on any government legislation which impacts their core interests, such as education and language, health and social services, and the environment. Similar access is provided via the Maori Affairs Select Committee, providing of course that Maori MPs are included as members. In the controlling category, the Secretary of State for Scotland was created to fulfil just such a role. Although this role was reduced when the Scottish Parliament came on line, in its previous manifestation it was designed specifically as a means of overseeing policy development and implementation in Scotland's historic areas of interest, such as education and the institutions of the welfare state, as well as providing a Scottish view on all policy areas. Institutions like the Nunavut legislature provide the Inuit with direct access to key jurisdictions such as justice, land use planning and language, because of their capacity to develop primary legislation in these areas (Canada 1993b: ss 23–7). Examples like this notwithstanding, location in the agenda-setting category in no way implies that an institution will necessarily provide access to key jurisdictions. Contrary to popular belief, for example,

the Quebec National Assembly does not enjoy full jurisdiction over questions of language in the province, but instead shares this jurisdiction with the federal government (Herperger 1991:48; Chevrier 1997:37). Neither do they enjoy exclusive authority over immigration into the province, but instead exercise this authority concurrently with the federal government (Herperger 1991:48). Immigration and membership (criteria for political participation), two areas which have a key bearing on the capacity for the Inuit to continue to play a controlling role in government, are not within the jurisdictional purview of the Nunavut legislature (Canada 1993b: ss 23–7).

Autonomy

Autonomy, in the terms of our study, refers to the freedom enjoyed by a sub-state national group to make independent decisions free from various structural impediments which might provide the possibility of external interference or being overriden by another level of authority. We are not talking here about a group's real capacity to act autonomously, but about the structural-institutional aspects of autonomy. By way of elaboration, we are interested in studying whether a group has the institutional capacity to generate its own revenues, but we will have little to say about whether or not this capacity enables them to generate sufficient revenues in practice. This is a question for a separate study. We view autonomy not as some absolute quality, but something that is enjoyed in degrees. It is not a capacity which a group either has or does not have, but rather a group can be said to be more or less autonomous than another. At its upper limit, autonomy translates into independence or secession, and full political

Table 7 Legislative jurisdictions[a]

	N.I. Assembly	*Scottish Parliament*	*Assembly of Wales*	*Quebec National Assembly*	*Nunavut Legislative Assembly*	*Nisga'a Lisims Government*	*Sechelt Band Council*	*Yukon First Nation Councils*	*Cree Band Councils*	*Indian Act Band Councils*
Taxation	–	L	–	E	E	E	L	E	*L*	*L*
Citizenship	–	–	–	–	–	E	E	E	*E*	*E*
Immigration	–	–	–	M	–	E	E	E	E	*E*
Natural resources	M	M	*M*	E	L	M	M	E	*M*	*L*
Environment	E	E	*E*	E	M	L	L	E	*L*	*L*
Agriculture	E	E	*E*	M	E	–	–	L	–	*L*
Language	E	E	*E*	E	E	E	–	E	*L*	–
Culture	E	E	*E*	E	E	E	M	E	*L*	*L*
Primary and secondary education	E	E	*E*	E	E	M	E	M	–	–
Post-secondary education	E	E	–	E	E	M	E	M	–	–
Policing	–	M	–	E	–	M	M	M	*L*	–
Civil law	–	–	–	E	L	M	M	M	*L*	–
Administration of justice	–	L	–	E	E	M	–	E	*L*	*L*
Social services	E	E	*E*	E	–	M	M	M	*L*	–
Health	E	E	*E*	E	L	M	M	M	*L*	*L*
Municipal matters	–	E	*E*	E	E	E	E	E	*E*	L

Legend:

	N.I. Assembly	*Scottish Parliament*	*Assembly of Wales*	*Quebec National Assembly*	*Nunavut Legislative Assembly*	*Nisga'a Lisims Government*	*Sechelt Band Council*	*Yukon First Nation Councils*	*Cree Band Councils*	*Indian Act Band Councils*

E Extensive (and in some cases exclusive) jurisdiction, M Moderate jurisdiction, L Limited or restricted jurisdiction,—No jurisdiction, *Italics* By-law making authority

Note:

[a]This table provides only a general indication of some key areas of jurisdiction for selected institutions capable of primary or secondary legislation. It is not intended as either an exacting or exhaustive listing of legislative powers for any of the cases that have been included. Factors which prevent the inclusion of a comprehensive comparative listing of powers include: the absence in some cases of a defined list of powers; the existence of powers not included in existing lists of enumerated powers e.g. powers defined by judicial review in federal systems; some institutions have acquired only part of a broader jurisdiction e.g. sentencing as opposed to the administration of justice; and the use of a variety of different names across cases for similar jurisdictions.

More comprehensive accounts of the legislative powers of these institutions can be found in the following sources: (Quebec 1976; Quebec 1978a; Canada 1984; Canada 1985; Canada 1986; Canada 1986a; Wilkinson 1987; O'Brien 1989; Canada 1992; Canada 1993; Canada 1993a; Canada 1993b; Canada 1994; Canada 1998; Northern Ireland 1998a; United Kingdom 1998; United States 1998; United Kingdom 1998a; United Kingdom 1998b).

sovereignty for a sub-state national group. This degree of autonomy is off the scale of the matrix in terms of extent, hence it too is no part of our concern here. Absolute autonomy is, in any case, more of an ideal than a political reality, for even the most powerful and independent states in the international system are restrained in their autonomy by global interdependence and the choices of other state and non-state actors (Held 1995).

Autonomy is among the most central concepts emphasised in the normative literature on national self-determination. Most of these theorists emphasise individual autonomy (Tamir 1993; Kymlicka 1995; Philpott 1995), but in such a way that it is made dependent on the corresponding autonomy of the sub-state national group of which these individuals are a part. Without delving too deeply into the nuances of these different arguments, each defends a political space within which members of minority national groups can make individual and collective decisions about their futures, decisions that are shielded from the democratic preferences of the dominant national group with whom they share a state (Tamir 1993:73–5; Kymlicka 1995: chaps 5–6; Philpott 1995:357–8). As Tamir puts it, although not every nation can be guaranteed a state, each is entitled to a public sphere within which they constitute the majority (Tamir 1993: 150). Providing sub-state national groups with this sphere of autonomy helps facilitate the principle of equal respect for the minority and majority national groups (Kymlicka 1995; Macklem 1995:37–40; Philpott 1995:362), and their democratic right to be as free as possible from external interference by other national groups (Philpott 1995:360; Murphy 2001a). The egalitarian and democratic aspects of autonomy, in turn, are fundamental components of the appropriate recognition of the distinctively national identity of the sub-state national group in question (Taylor 1994; Moore 1999; Murphy 2001a).

Normative theorists have also expressed their wariness regarding the potential excesses of group autonomy. Autonomous self-government at the sub-state level potentially leads to balkanisation as members focus their allegiance and solidarity inwards on the group rather than on the larger state and political association of which they are a part. This tendency in turn may breed inter-communal suspicion, hostility, even violence, and a potential crisis of governability and national integration (Kymlicka 1995:181–2; Shapiro 1999: 216–20; Cairns 2000:5–8). These concerns should not be taken lightly, but they tell only part of the story. In the first place, they tend to obscure one of the fundamental reasons why sub-state national groups seek autonomous self-government and a measure of separation from the wider society and state: to preserve and promote their distinctive interests without fear of interference or override by an external and alien authority. This desire is especially apparent among sub-state national groups that are relatively small and powerless in comparison with the larger state. In the absence of substantial group autonomy, their interests can simply be ignored or being overridden by the dominant national group. A case in point, this has overwhelmingly been the experience of the James Bay Cree with regards to the various functional management boards on which they were denied final decision-making authority under the terms of the JBNQA (Feit 1989:82–3; Hoekema 1994:186–8; Grand Council of the Crees (Eeyou Astchee) 1998:113, 128–9; Rynard 1999:223). As one commentator concluded, these bodies have served Cree interests only when they coincided with those of government (Feit 1989:96). A second point to bear in mind is that autonomy does not necessarily lead to balkanisation and inter-group alienation, and in fact may be a necessary step in a viable process of national integration (Kymlicka 1995:183–5, 189; Seymour 2000:253). Again, this is particularly true in cases where there is a power imbalance and an absence of trust among the groups in question. For example, it will be difficult enough for a group which has faced historic domination or oppression by another to join that group in cooperative decision-making bodies, let alone trust them to look after their interests in a 'one person one vote' majority rule situation. If national integration is to be achieved in such cases (and this is never guaranteed), it may be that the only option is to grant autonomous self-governing authority to national minorities, thereby providing them with a platform of security upon which inter-group trust and cooperation can be built, perhaps through some future

combination of self-rule and shared rule, as in federal and consociational systems of government. These issues, and different institutional means by which they might be achieved, are taken up in greater detail in Chapter 7.

In looking at the cases, we should emphasise that autonomy as we define it here presupposes that one is dealing with a sub-state national group's chosen representatives, so cases in the selected category will not be considered. For sake of coherence, we will also confine ourselves to discussion of cases where the voice of the group is *de jure* or *de facto* controlling, so we will look exclusively at cases in the controlling and proportionate elected columns of the matrix. The matrix is a useful analytical tool for investigating several different dimensions of the question of autonomy, but we have enough space to look at only a few of them here. We begin with perhaps the most obvious question: can the decisions made by a group's representatives be overridden or otherwise interfered with by a superior authority? This issue overlaps somewhat with the question of access to the decision-making process covered in the previous section, but it also yields some new insights. As one might anticipate, decisions emanating from institutions in the category of implementation and delivery are vulnerable in this regard. For example, each of the functional co-management boards in the bottom left cell provide the group with the capacity, within the parameters established by the agenda-setters, to make the initial decision on an issue, but in all cases a government minister enjoys an additional power of effective veto over these decisions. Referring specifically to the wildlife, fisheries and environmental co-management bodies created by the Nisga'a Final Agreement, one commentator concludes that they are best described as a form of subordinate participation (Rynard 1999: 230). The Minister of Indian Affairs in Canada wields a similar veto power over all by-laws passed by Indian Act band councils. Numerous indigenous commentators in Canada and abroad have voiced their opposition to such subordination (Grand Council of the Crees (Eeyou Astchee) 1998:127–9; Alfred 1999: 99–100; Walker 1999), appealing instead to the principle of equality of peoples or national groups (Dodson 1996:62). Voicing a different perspective, Peter Ittinuar says the Inuit agreed to the principle of a ministerial veto over the decision of functional boards in Nunavut, provided the Inuit were authorised to make the initial decision, and if the veto was subject to certain mutually agreeable conditions (Ittinuar 1985:51). This compromise appears to be what was instituted in the final agreement and legislation (Canada 1992; Canada 1993b; Canada 1993c; Canada 1993d), although it remains to be seen if Inuit faith in ministerial discretion will be repaid in practice.

Institutions in the agenda-setting category are relatively more immune to external interference or override, although there are a number of fascinating variations within the category as a whole. In other words, immunity is more likely, but by no means guaranteed. The Quebec National Assembly, like all other provincial legislatures in Canada, is assigned a wide range of constitutionally enumerated jurisdictions in which it alone has the exclusive authority to legislate. Examples include property and civil rights, the administration of justice and direct taxation in the province (Canada 1986: ss 92–3). The constitution does stipulate that the lieutenant governor of the province (federally appointed) has the authority to reserve any provincial legislation for further review by the federal cabinet, which has a year in which to decide whether to disallow that legislation (Canada 1986: s. 90). Nevertheless, these powers have fallen into abeyance, to the extent that they might be said to be virtually unusable. Of greater concern from Quebec's point of view is the federal spending power. The Canadian government is not allowed to pass laws in areas of exclusive provincial jurisdiction, but it has the constitutional authority to allocate spending on programmes and services in these areas of jurisdiction (Trudeau 1969; Canada 1986: ss 91 (1A), 91 (3)). This issue has been a perennial concern for Quebec governments and Quebec nationalists, who view such federal spending as a direct infringement on their legislative autonomy in areas like health and education (Rémillard 1986:43–4; Seymour 2000:246). No other institution at this level enjoys such a wide range of exclusive legislative powers. First Nations governments have a small number of exclusive powers, which basically encompass the internal administrative affairs and operation of their legislative councils, and the management and administration of entitlements attached to their land claims (Canada 1994: schedule 3; Hogg and Turpel 1995:210, 219). US tribal governments also exercise a limited number of exclusive powers, the specific details of which are too complex to discuss in any detail here (Wilkinson 1987: 73–88; O'Brien 1989:199; Duthu 2000a).

None of the other examples in the agenda-setting category enjoy exclusive authority in any area of jurisdiction. Instead, their powers are held concurrently. In the absence of exclusive jurisdiction, another level of government has the authority to legislate in all of their areas of jurisdiction, with clear implications for the legislative autonomy of the institution in question. This, in turn, is dependent on the question of which institution enjoys legislative paramountcy in the case of conflicting or inconsistent legislation. Paramountcy confers another kind of immunity, a legislative veto if you will, but not always in an absolute sense. For example, if one interprets inconsistency narrowly (read contradictory laws), as Canadian courts do (Hogg and Turpel 1995:202), the laws of both institutions will, in cases where there is no direct contradiction, be allowed to stand. This interpretive strategy can work both to the advantage and disadvantage of a national group, in the sense that it may allow one of their laws to stand in an area where they are not the paramount authority, but it may also allow a law passed by another institution to stand in an area in which they do enjoy paramountcy. Such uncertainty regarding the division of powers is part and parcel of the flexible and continually negotiated power dynamic of federal and quasi-federal systems of government. In any event, few of the institutions we covered enjoy paramountcy in their areas of concurrency. This is true, again in a very complex sense, of US tribal governments, subject as they are to different rulings of the US Supreme Court (Wilkinson 1987: 88; Duthu 2000a). Nisga'a laws are paramount to federal and provincial laws in several jurisdictions, including citizenship,

language and culture, and in the areas of secondary and post-secondary education (Canada 1998: ss 100–5), but not in others, such as the solemnisation of marriages, social services and public order, peace and safety (Canada 1998: ss 59–62, 75–7, 78–9). Sechelt laws are paramount to those of British Columbia, but not those of Canada.

At the other end of the scale, Scottish Parliament, the Nunavut legislature and the Northern Ireland Assembly are not the paramount authority in any of their areas of jurisdiction. In fact, all laws passed by the Nunavut legislature are, like many of the institutions in the bottom category of extent, subject to disallowance by the federal cabinet. The Northern Ireland Assembly is an interesting case in this sense. On the one hand, the rules of parallel consent ensure that neither the Unionist nor the Nationalist communities can be dictated to by the other in key decision areas (Northern Ireland 1998a: s. 5(d)). However, all of the assembly's decisions can be vetoed by Westminster, which retains its position as the supreme legislative authority in Northern Ireland (United Kingdom 1998a: s. 5(6)). As we already noted in some detail in Chapter 2, some analysts argue that an institution's *de jure* subordination may not always affect its legislative autonomy in practice. For example, Bogdanor makes a convincing case that it will be very difficult for Westminster to exercise the sovereign right it retains to legislate in all matters for Scotland, since the basic premise of devolution is that there is a separate will in Scotland, and the new parliament, rather than Westminster, will come to be viewed as the legitimate expression of that will (Bogdanor 1999:185). Persuasive as this might be, in the absence of exclusive legislative jurisdictions and/or paramountcy, the degree of legislative autonomy in cases like these will remain dependent on contingent factors such as political will and circumstances rather than structural guarantees.

Moving on to another aspect of autonomy, what can the matrix tell us with respect to how secure the content of an institution's existing jurisdictions are from unilateral alteration by an external authority? By alteration, we mean the augmentation of existing jurisdictions, their diminishment or possibly their elimination. Across the different categories for extent, the pattern of institutional variations on this theme at first might appear to mirror those discussed in the previous section. Upon closer examination, however, the results are significantly more ambiguous. Working from the top end of the matrix, many institutions in the agenda-setting category tend to enjoy a high degree of security in this domain of autonomy, but again, subject to a number of interesting and important variations within the category. The greatest degree of security is provided for institutions like Nisga'a Lisims government and the Quebec National Assembly, whose jurisdictions are constitutionally entrenched and, therefore, cannot be altered without their consent (Canada 1986: s. 38; Canada 1998: ss 1, 36–43). These are the only two institutions we categorised at this level which enjoy such constitutional guarantees, but others enjoy 'regular' legislative guarantees that their jurisdictions will not be altered without their consent. The 1998 Northern Ireland Act, for example, prohibits the Secretary of State for Northern Ireland from either adding to or subtracting from the list of transferred or reserved powers with respect to Northern Ireland, unless the assembly first passes, with cross-community support, a resolution requesting that such a change be made (United Kingdom 1998a: s. 4). Expansion of the assembly's authority into reserved areas also is possible, but requires the consent of the Secretary of State for Northern Ireland (United Kingdom 1998a: s. 8). Jurisdictional guarantees were not a feature of rolling devolution, which provided the Secretary of State for Northern Ireland unlimited discretion in this regard. Yukon First Nation Self-Government Agreements contain guarantees that their terms, including their areas of jurisdiction, cannot be altered without the consent of Canada, the Yukon and the First Nation in question (Canada 1993a: s. 6).

The potential shortcoming of constitutionally unentrenched arrangements like these is that, although the institutions' jurisdictions are legislatively guaranteed, and thus not subject to alteration by mere executive order, these legislative guarantees can themselves be erased by further legislation. The result could be a diminishment of jurisdictions or, at the extreme, the temporary suspension or permanent abolition of the institution itself. On the other hand, referring back to Bogdanor's observation at the end of the previous section on the security of decision-making, this sort of external interference, though structurally possible, will frequently prove difficult and politically costly once the institution in question gains a foothold in practice. In some cases, like Scotland and Quebec, it would likely provoke more vigorous forms of nationalism, perhaps even calls for secession (Brown *et al.* 1998:228–30; Seymour 2000:245–53). This does not mean that the temporary suspension or abolition of an institution is politically impossible once it becomes entrenched, but this is not an action which governments will take lightly. As an example, it took an acute political crisis and increasing violence in Northern Ireland, which Stormont seemed increasingly less able to control, to precipitate the 1972 suspension of the institution after fifty-one years in existence. In the case of a less firmly entrenched institution such as the Northern Ireland Assembly, suspension is a comparatively simple (though by no means unproblematic) matter. By November 2001, the new assembly had already faced two suspensions each imposed in an attempt to protect the long-term integrity of the institution despite political crisis. Ultimately, as we foreshadowed in part of our discussion in Chapter 2, a sound strategy for accommodating sub-state nationalism will have to identify and balance the structural and non-structural factors relevant to successful institutional design (Marinetto 2001:318–21).

In many of the other cases in this category, there are neither constitutional nor legislative guarantees that an institution's existing jurisdictions will not be altered or even eliminated. The Nunavut legislature and the Sechelt District and band councils are two examples of this type, although there is some question regarding the Canadian government's latitude in this

area, because of their constitutionally mandated fiduciary duty to legislate for Aboriginal peoples with the best interest of those peoples in mind. The degree to which the federal government is constrained in this regard remains uncertain (Murphy 2001). At the time of publication, the Sechelt are negotiating within the British Columbia treaty process for firmer, possibly constitutional, guarantees for their self-governing authority, after leaving the treaty process in protest temporarily in the summer of 2000 (Sechelt Nation, British Columbia *et al.* 1999: chapter 15, especially s. 15.3.3). In the case of Nunavut, at the insistence of the Canadian government, the governance provisions for the new territory were denied constitutional protection, although some argue that they may have acquired this status despite this insistence (Hogg and Turpel 1995:211–12). Turning to one last example, the 1998 Scotland Act gives the executive at Westminster the authority to make unilateral changes to their list of reserved powers, which means that the legislative competence of the Scottish Parliament can be augmented, but also diminished, without its consent (United Kingdom 1998: s. 30). As we will come to see in a moment, on this dimension at least, many of these institutions in the agenda-setting category end up looking not much different than other institutions we will examine at the bottom level of the axis for extent.

Taking a cursory glance at the level of implementation and delivery, we can easily pick out institutional examples whose autonomy is likewise potentially threatened by their lack of jurisdictional security. Indian Act band councils and Northern Territory community governments are two such examples. Nothing in the Indian Act prevents the federal cabinet, by order in council, from altering the jurisdictions of band councils or from simply disbanding them altogether, but the same caveat regarding its fiduciary duty to Aboriginal peoples applies here as well. Australian governments, in contrast, are not constrained by any similar constitutional principles in their dealings with devolved institutions for the country's indigenous inhabitants. Hence, ATSIC enjoys far less structural security than a band council, since its survival as an institution and its jurisdictional autonomy is a matter of unconstrained ministerial discretion. This is no different than rolling devolution, two categories up on the axis for extent, whose jurisdictions, within a fixed range, can be augmented or diminished at the sole discretion of the Secretary of State for Northern Ireland. A somewhat more complex example from this category is the Assembly for Wales. Whereas its jurisdictional competence can be altered by a simple order in council at Westminster, any such orders which vary or revoke its existing competence must have the consent of the assembly (United Kingdom 1998b: s. 22). This rule of course must be read together with the fact that, in practice, Westminster can vary these jurisdictions to the point of near elimination, simply by drafting the terms of primary legislation such that the assembly will be left with little real opportunity for input (Silk 1998:74–7; Laffin *et al.* 2000:224).

The differences between the top and bottom levels of the matrix for this aspect of autonomy appear even more ambiguous once we begin to look at some of the other cases. Indeed, many of the institutions at the level of implementation enjoy the same kind of constitutional guarantees as institutions at the level of agenda-setting, meaning again that their structure and terms cannot be changed without the consent of the sub-state national group in question. All of the functional co-management bodies we looked at for the Canadian indigenous cases enjoy protection under the Canadian constitution, either as part of a land claim or a self-government agreement. Arguably, this is also the case for the Cree Band Corporations and Regional Authority, each negotiated as part of the larger James Bay and Northern Quebec land claims agreement (Canada 1986: s. 35; Hogg and Turpel 1995:211). Although their range of jurisdictions are narrower than those of the Quebec National Assembly or Nisga'a Lisims government, their jurisdictional integrity is just as secure. Hence, contrary to what we concluded regarding the previous measure of autonomy, on the question of jurisdictional integrity there does not appear to be any clear hierarchy in the matrix categories. Different degrees of protection, ranging from custom or convention, through legislative restrictions and constitutional principle, to formal constitutional guarantees are present at both the upper and lower levels for the category measuring extent of voice.

The final theme to be considered in this section is fiscal autonomy. Given our focus on structural questions, we want to know what sort of jurisdictional capacity an institution possesses to generate its own revenue. We will focus exclusively on the domain of taxation, as opposed to other means of own-source revenue, such as the management of assets and natural resources arising from land claims, or forms of public sector corporate investment. As we explained in Chapter 2, economic autonomy is of particular value to sub-state national groups, since an institution may rate quite highly in terms of issues like representativeness, access and the two measures of autonomy already examined, but if it remains economically dependent its capacity for effective action may be radically diminished. In this dimension perhaps more than any other, it is important to recognise the difference between the structural capacity to generate revenues, and the actual revenues that can be generated in practice. For example, complete jurisdiction over taxation means little in practice without a tax base large enough to generate revenue sufficient to cover the cost of programmes and services, a problem faced by most of the indigenous groups included in the study (Hogg and Turpel 1995:209–10; Légaré 1997:418–19).

For this measure of autonomy a fairly clear pattern emerges in the matrix, with institutions in the agenda-setting category enjoying the greatest potential for inde pendent revenue generation through taxation, and those at the level of implementation and delivery enjoying the least. Once again, there is some variation on this pattern at the top end of the matrix. Nisga'a Lisims government and the Quebec National Assembly enjoy a fairly extensive jurisdictional capacity for direct taxation of citizens on their territories, which again is constitutionally protected (Canada 1986: s. 92(2); Canada 1998: chap. 16, s. 1). This is a

jurisdiction which both institutions exercise parallel to federal and/or provincial powers of direct taxation on their territories. The Nisga'a Final Agreement also leaves the door open for future negotiations to provide for Nisga'a powers of direct taxation on resident non-citizens (Canada 1998: chap. 16, s. 3(a)). The Nunavut legislature enjoys powers of taxation similar to Quebec and the other provinces, with the caveat that it is not a constitutionally entrenched jurisdiction (Légaré 1997:418). Yukon First Nation Councils also can levy property and other (unspecified) forms of direct taxation on their resident citizens, although the Sechelt enjoy only the power to levy municipal-like property taxes (Canada 1986a: s. 14.1(e); Canada 1993a: s. 14.0). Scotland also diverges from the norm in this category, in its own unique way. Direct taxation remains a jurisdiction reserved by Westminster, but the Scottish Parliament enjoys a limited capacity to vary the rate of taxation for citizens resident in Scotland, and in this sense has the capacity to either increase or decrease, as the case may be, the amount of revenue available for its use (United Kingdom 1998: ss 73–80, and schedule 5, s. A1). The Northern Ireland Assembly is a true exception in this regard, for it has no capacity at all to generate revenue through taxation. It remains entirely dependent on Westminster for monetary transfers to support its legislative and policy agenda. This was equally the case for Stormont, not to mention rolling devolution in the next level down the axis for extent.

At the level of implementation and delivery, there is much less internal variation. All of the institutions at this level enjoy a very limited structural capacity in the domain of independent revenue generation through taxation. Indian Act and Cree Band Councils are similar to the Sechelt Indian Band, in that they have only the capacity to levy property taxes on resident citizens, with the difference being that for the Cree this power is subject to regulation by the federal cabinet, and for Indian Act bands this is subject to the approval of the Minister of Indian Affairs (Canada 1984: s. 45(1)(h), 45(4); Canada 1985: s. 83(1)(a)). ATSIC is even less autonomous in this regard. It has a voice in determining its spending priorities within its areas of competence, but the Commonwealth government enjoys full discretionary powers over budget allocation levels, and so is capable of reducing ATSIC's funding in the absence of consultation, let alone consent (Ivanitz 2000:5–6). ATSIC has no capacity to generate its own revenue through taxation, and is further constrained by the extraordinary standards of accountability to which it is held by government for its allocation of public funds (Sanders 1994; O'Donoghue 1998; Ivanitz 2000:6–8). The Assembly for Wales is not likely to be subject to such stringent standards of accountability, but like ATSIC, it has the capacity only to determine its spending priorities across its given jurisdictions (Laffin *et al.* 2000:224), but no authority to engage in any manner of direct taxation of citizens. Looking at one final example, functional boards such as the fish and wildlife co-management bodies created for Nunavut and Yukon First Nations lack both the capacity for independent revenue generation, and the capacity to finalise their own budgets, which are subject to review and approval by federal and/or territorial governments (Canada 1993: s. 16.7.9; Canada 1993d: s. 5.2.19).

In summary, an institution's location in the agenda-setting level of the matrix (in the proportionate elected and controlling columns), does not always guarantee it substantial autonomy in the domain of revenue generation through direct taxation, but this appears to be far more likely than for institutions at the agenda-setting level, which are uniformly dependent in this regard on another level of governing authority.

Conclusion

Our aim in this chapter was to demonstrate the usefulness of the matrix as a means of closing some of the gaps between the theory and practice of institutionalising sub-state nationalism. This task was accomplished by examining specific structural capacities of different institutional designs and asking whether, and in what manner, they measured up in terms of satisfying a set of key demands we selected from the normative literature and, wherever possible, from the statements of spokespersons from different sub-state national groups. In addition to acquiring a better understanding of the performance of particular institutions in selected issue areas, our conclusions demonstrate the value of the matrix as a tool for predicting patterns in these different variables. In certain areas, such as the representation of internal group diversity, no clear patterns emerge in the placement of cases, but along others, such as the economic and decision-making autonomy of the institution, clear patterns were observed. We build on this analysis in the following chapter through an examination of the theme of structural legitimacy. The insights gleaned in both chapters form the analytical basis for our discussion, in Chapter 7, of the matrix as a shopping catalogue for institutional designs to suit national groups characterised by a diversity of needs, priorities and circumstances.

6
Legitimacy

Legitimacy is the final analytical dimension we consider before moving, in Chapter 7, to a discussion of the matrix as a catalogue of political structures to suit sub-state national groups in different cases and contexts. Legitimacy refers to the public acceptability of the institutional details in cases across the matrix categories. The rhetoric of self-determination implies that legitimacy is one of its central components: the desire for change is premised on a sub-state national group's decreasing acceptance of the state as the exclusive or primary decision-maker. Often the introduction of a new structure that is accepted by the group is portrayed as an example of replacing external authority with internal legitimation (Taylor and Paget 1988) and the institutionalisation of a political order means that the structure has become widely accepted by the people (Long 1990: 754). In other cases the sub-state national group attributes the failure of a new plan or structure to its rejection by the public because it is a government plan (Metge 1976). In some cases there is also a feeling that there is such a gap between the wishes of the government and the sub-state national group that no acceptable settlement is possible: Lloyd George argued that part of the problem for Northern Ireland is that no proposal acceptable to parties in Britain is acceptable to parties in Ireland and vice versa (House of Commons (UK) 1920: 1,322). While legitimacy is a core, and assumed, part of self-determination the extent to which structures are accepted and therefore accorded legitimacy differs. What follows is a consideration of various aspects of legitimacy and the extent to which they are found across the cells of the matrix.

Legitimate structures?

For a structure to work politically it has to be seen as legitimate by those who use it. A legitimate political institution is one where the governors can assume that the governed will obey their decisions regardless of the content of those decisions (Gerth and Mills 1958; Barker 1990, 1994; Gutmann and Thompson 1996; Merelman 1998)—this means all of the governed and not just the majority and in particular not just the majority faction (Herzog 1989:206). Legitimacy is a relationship between the governing institutions and the people (Barker 1990:2), and does not imply that every decision is perfect but that they pass a certain threshold that is good enough (Herzog 1989:205). Legitimacy is rooted in the structures that determine who the governors are and how they make decisions and not in the content of those decisions. A political crisis is more likely to arise in reaction to the rules of decision-making and resource allocation than to be sparked by a particular allocation decision (Krasner 1984:234). For instance a group which feels that the rules preclude their participation will commonly question the legitimacy of the state (Lipset 1981). Here we are considering legitimacy from a descriptive rather than a prescriptive perspective: the question of whether power is accepted rather than whether it ought to be. A legitimate regime is one that has the appropriate political institutions for a particular society (Lipset 1981) and therefore will differ across time and place. In other words, going back to Locke, legitimacy is that to which you would consent (Dickerson 1992:8). However, as most of the people will not be actively thinking about the legitimacy of the rules by which they live, questions of legitimacy realistically come down to the views of those who are politically active and who represent different groups within society (Barker 1990:196, 200).

Much of the academic debate on legitimacy considers its different sources, both historic and normative. Reference is routinely made to Weber's trio of sources: tradition, charisma or legality (Gerth and Mills 1958). That is people accept rulers who base their claim on tradition, such as an hereditary monarchy, a charismatic personality, or a legally specified set of rules. Authors mention Weber as a prelude to criticising him as often as to build upon his ideas and in particular there are objections that he does not discuss democracy and legitimacy (Barker 1990). However it could be argued that democracy is one, indeed the most prevalent, form of rationally created rules and thus does not need a separate category. So common themes in legitimacy are that the rules are accepted because they are based on shared values and are those that would be explicitly consented to should such a situation arise (Herzog 1989; Barker 1990). This chapter will use the idea of legitimacy as a scheme for considering details of the case study structures and the process by which they were created. To do so we use a three-point structure outlined by Beetham (Beetham 1991) which suggests that legitimacy is present if the structure or position was created using accepted rules that are based on common beliefs and values about who makes a good leader, common interest and reciprocal benefit and is further enhanced if the structures are used because such voluntary actions

indicate an acceptance of the processes akin to consent. Being part of negotiations, implementation of policy and voting are all examples of action indicating legitimacy. So this model uses the ideas of shared values, acceptability, usage and consent. This framework is useful when looking at the legitimacy of the structures in the matrix as the three core components directly relate to the creation and functioning of the institutions under consideration. Therefore debate at the time that the structures were created is our focus.

As structural creation or change implies a break from the past and replacing structures legitimised by tradition this means that legitimacy for the new structures must be derived from other sources (Barker 1990:41). Institutions relate to their context as they cannot start with a clean slate but must fit within the wider institutional structures in the country. As discussed in Chapter 2, institutionalists assume that new structures are created with a backward rather than a forward gaze. An institution is normally designed to address past mistakes and existing problems and therefore is likely to reflect old debates rather than future problems. Acceptance of the structure must therefore be in relation to the existing political context and structures. There will be concerns that the new structure does not cause instability nor introduce structures and processes that are alien to the existing ones. The Quebec National Assembly was created as part of Canada's original constitution and the Indian Act and band council government also derived from the new powers of the federal government under the original 1867 Constitution. However as none of the other cases were created after civil war or at the time of a totally new constitution they must garner legitimacy based on established values and must work within the existing structures. In most cases the existing parliamentary structure will be taken as the starting point in creating a new structure.

While countries rarely have written rules specifically on how to create structures for self-determination there are rules for general institutional change. The countries covered here, with the exception of Australia, do not need a referendum to change their national constitution although many Canadian politicians and academics argue that as a result of recent practice this is now a *de facto* requirement in Canada. While not mandatory, referendums may be used in the other countries to provide additional legitimacy from the people within the sub-state national group. Formally structures need to be encapsulated in acts passed by the legislature but there is an informal norm of discussion and agreement between the government and the sub-state national group in creating these structures. The actual process by which the structure was created is easily ascertained from official records and is discussed in the next section.

Somewhat harder to ascertain but nonetheless possible is the link between common values and the new structures. Using debates and consultation documents at the time that the structures in the case studies were created, the match between values and structures will be considered. One component of this discussion relates to the idea of sub-state national groups' traditional methods of decision-making and power structures and the extent to which these have been included. Colonising or dominant societies frequently stressed homogeneity to the detriment of minority groups who did not share the values and goals of the dominant society (Tully 1995:6; Taylor 1998:144). So self-determination for sub-state national groups includes the ability to have structures which accord to their own customs (Tully 1995:4) or at least the capacity to choose when to use traditional structures and when to adopt other forms (Mayall 1999:489). Likewise Young argues that self-determination 'demands the recognition of certain aboriginal beliefs and customs…and of the need for people to maintain language, law and other elements of behaviour' (Young 1988:82). However, the wider set of values is also important for overall legitimacy: the structure needs to be accepted by the state as well as the sub-state national group. Liberal democracy is the key set of values we need to consider in this context So another important consideration is the extent to which there are any common values about power and decision-making and thus legitimacy for all involved in the negotiations. Discussion will focus on the fit between values and structure at the time that each institution was created.

There is danger of a legitimacy deficit when there are no common norms (Beetham 1991:17) and this is often a cause or symptom of a more general lack of trust. Another potential cause of a legitimacy deficit is significant changes in values amongst part of the community (Beetham 1991:17). The third component of legitimacy, use of the structures, is one way of discerning such a deficit as any decline in the use of a set of institutions is likely to signal lessening legitimacy. Those cases that have been dissolved or where there are significant problems will be discussed. The remainder of this chapter considers the cases in relation to these three components of legitimacy and discusses how this relates to the matrix cells.

Consultation in the process

An important component of legitimacy derives from the process by which the institution was created. Creation must follow norms, both formal and informal. Government created all of the cases, by definition of case choice, so all follow the formal norms. Here we consider the informal norms of which two aspects are crucial: wide community consultation; and popular final acceptance. Awareness of these norms was noted during the debate on the bill to create the Northern Ireland Assembly: 'We have had the talks about talks, the elections to talks, the talks themselves, the negotiations, the deal, and the agreement' (House of Commons (UK) 1998:836 Opik). Problems due to a lack of consultation were noted in Australia when an MP suggested that ATSIC should not go ahead because the Aboriginal people did not identify with it due to inadequate consultation (House of Representatives (Australia) 1989b: 2,714 Smith). In addition to the processes themselves, the fact that

both sides voluntarily take part in consultation is in itself a sign of the legitimacy that each accords to the whole debate and therefore the idea of creating a new structure. By taking part the group has some ownership of the process and resulting structure, in contrast to systems imposed under policies of assimilation or paternalism. Of course when the sub-state national group feels pressured to take part then this is not an example of real consultation and therefore cannot be taken as a sign of acceptance or legitimacy.

Before considering the cases it is important to note the difference between consultation and negotiation. During consultation the decision-making body seeks the views of those who will be affected but is not bound to follow the views expressed. Consultation is therefore not a plebiscite. However consultation is also not just a process of showing people the proposal but rather must allow for the possibility of change as a result of the discussion. When embarking on consultation the decision-making body must have at least some areas, if not all, of the proposal where flexibility is possible and be willing to consider concerns that they had not incorporated in their original thinking. This definition of consultation is specified in the New Zealand Local Government Act (Local Government New Zealand 1998; McKinlay 1998). The duty of those wishing to consult is to provide the public with sufficient details of its proposal so that they can make meaningful comment, to assess the comment with an open mind and then to make a decision. In considering the extent of consultation we are looking at what information was provided to the people and if those designing the structure were open to other views.

For consultation and acceptance to occur, a helpful component is some level of empathy or understanding amongst the groups involved in discussion, and at least no overriding negativity. One problem in achieving such levels of understanding are differences in language, which may need much discussion before both sides share an understanding of key terms and ideas (Tully 1995; Kymlicka 1999: 120–5). So in New Zealand there is wide debate as to the proper English translation of *tino rangatiratanga* because the common translation as self-determination is said to miss crucial nuances in Maori understanding (Durie 1998). Likewise the Inuit encountered problems in Quebec because ‘achieving a working relationship is difficult when one party cannot comprehend the interests of the other because of divergent backgrounds’ (Gray 1994:12). Another vital component is discussion based on respect. For instance, ‘respect for the diversity and distinctive traditions’ of Scotland and Wales was one of the guiding principles in government negotiations over devolution to those two countries (House of Commons (UK) 1977:52 Millan); throughout discussion over Nunavut there was acceptance that the Inuit and Dene have different traditions and cultures and that government should reflect this difference (House of Commons (Canada) 1993:20,397 Anawak). In all cases there is inequity in power but mutual respect and empathy are vital. In a number of cases there was a feeling that at least one group had been forced into an agreement and they feel that such an inequality of position means that there is a lack of legitimacy. For instance, the Cree felt unequal in their negotiation to such an extent that the resultant ‘extinguishment of land title’ was described as ‘a brutal conquest’. There continues to be a feeling that this original inequality remains in the new structures and negotiations held in that context (Rynard 1999:233–4). The Grand Council of the Crees complained that they had been denied the right to determine their own institutions, even though this was one of the rights in the UN draft declaration on the rights of indigenous peoples. The process had not recognised the right of indigenous groups to decide their own priorities for development, to ensure effective and to participate in formulating, implementing and evaluating proposals, plans and programmes that affect the Cree (Grand Council of the Crees (Eeyou Astchee) 1998:128). Similar objections prompted the Sechelt to temporarily pull out of the BC Treaty Process in 2000, and echo the voices of other First Nations leaders and intellectuals who feel the negotiation process is inflexible and dominated by government (Alfred 1999: 119–28; SteffenHagen and Willcocks 2000). Northern Ireland demonstrates both situations of inequality and of respect. Both sides in Ireland opposed the Stormont proposal but the Good Friday Agreement was the result of long discussion in an elected convention. There had been a convention before Stormont was created but the government chose not to follow most of the suggestions that it made (House of Commons (UK) 1920:1,142–3 Devlin, 1,158 Guiness). In contrast details in the Good Friday Agreement were worked out through discussion and consultation starting with a blank sheet.

The long process of discussion undertaken by the Scottish Constitutional Convention (SCC), which was created from stakeholder groups, incorporated a range of ideas raised by different interests. Two examples of this are the protection of rural electorates and the adoption of ‘business day’ working hours. Throughout the discussion process the aim was to reach consensus and to work on principles rather than the legislation (Lynch 1996). The decision to drop attempts at incorporating gender equity into the electoral system is an example of consensual decisions being paramount. In this instance the consultation took place before the government was involved and the final legislation used the SCC’s structure. The Nunavut public government agreement was also the result of detailed community consultation based around a series of discussion documents (Gray 1994:28) which provided detailed background information for people so that they could take part in constitutional debates. On the other hand the development of ATSIC, while incorporating some results of a consultation tour with Aboriginal and Torres Strait Islander groups, did not meet all of the issues that had been raised. In addition, the consultation occurred after the government had created a proposed structure so those consulted could only comment on details rather than propose a different approach (Lochead 1998: 22). Thus there is the suggestion that if sub-state national groups are to achieve a structure that reflects their values and goals then they need to be involved in discussion before or at the beginning of government involvement rather than be asked to comment on fully drafted proposals.

Another problem is when the new institution lacks cross-party support within the national parliament For instance the opposition parties in Australia vehemently opposed the creation of ATSIC. At the senate select committee the Liberals presented a minority report against the ATSIC proposal saying it was 'unjustified, unnecessary and culturally inappropriate'. They suggested that it would lead to worse outcomes and less accountability for the people it was intended to help (House of Representatives (Australia) 1989b:2,714 Smith). However, on coming to power in 1996, the Liberal coalition government did not abolish ATSIC as they had threatened to do when it was created. Members of the governing Labour Party as well as the Conservatives opposed the proposed devolution for Scotland and Wales in 1979 and this was a contributing factor in the failure of the referendum. Another sign that a new structure is not being given status by the government is the time and speed with which it is debated. So Australian MPs complained that the ATSIC bill was debated after midnight with the length of the debate constrained by a guillotine motion (House of Representatives (Australia) 1989b:2,714 Smith). The Nisga'a deal was debated with great heat and length in both provincial and federal parliaments with its passage not assured until the final vote. In contrast the Nunavut Act was not hotly debated but instead parliament heard a series of congratulatory speeches because agreement across the parties had already been reached. A lack of community acceptance was signalled as a problem in a number of cases but particularly in Northern Ireland. The need for cross-community support in Northern Ireland, while generally lacking, has been long recognised and was expressly discussed in parliament by Asquith and Lloyd George in 1920, Whitelaw in 1972, Steel in 1979 and Prior in 1982 (House of Commons (UK) 1920:1,120 Asquith, 1,322 Lloyd George; House of Commons (UK) 1972:242 Whitelaw; House of Commons (UK) 1979:485 Steel; House of Commons (UK) 1982:700 Prior). Asquith accepted that Westminster was not well qualified to work out the details of Irish administration but argued that, given the situation, it was impossible to bring together a really representative body in 'impartial deliberative conclave' (House of Commons (UK) 1920:1,119 Asquith).

To be acceptable, agreements and new structures need ratification by both sides and this is often taken to mean a referendum amongst the sub-state national group and legislation passed in the national legislative assembly (Cameron and White 1995:27). In the parliamentary debate on the Northern Ireland Assembly speakers stressed the extensive consultation and popular tests of support the structures had gathered. So the Minister for Northern Ireland said that 'The Bill represents the triple lock—people, parties and now Parliament' (House of Commons (UK) 1998:814 Mowlam). A referendum is the most common means of acquiring final acceptance by the sub-state national group and was used for the Nisga'a, Northern Ireland, Nunavut, Scotland, Sechelt, Wales and for US tribal government. In Northern Ireland the Belfast Agreement was put to a referendum but Stormont and 'rolling devolution' were not. Nunavut is unusual in that those people living in the Western part of the Northwest Territories were also involved in the referendum which created Nunavut in the Eastern part of the Territory. In contrast, only Nisga'a people voted on their agreement and the people of England were not asked to vote on the new structures in Scotland, Wales or Northern Ireland. However, in the case of the Belfast Agreement, the Republic of Ireland was involved as part of the agreement was that they change their constitutional aim of a united island of Ireland (House of Commons (UK) 1998). The other structures where there was no referendum were passed by central legislatures but not necessarily explicitly endorsed by the people in the sub-state national group. So generally acceptance by the state is expressed through the legislature, rather than the people as a whole.

Often the referendum question and legislation provides a starting point and leaves details such as standing orders to be refined by the newly created body or an implementation committee. Scotland, Nunavut and Wales are recent examples of this process and the Yukon Umbrella Agreement likewise expects individual First Nations to determine details of procedure. ATSIC had a review of process after three years of operation built into the legislation and the review did lead to some fundamental changes. However, Stormont as usual provides a contrast because as part of its general desire not to differ from Westminster it never changed its original standing orders (Wallace 1971:36) and the only change in structure, relating to the electoral system, was instrumental in its ultimate demise.

Structures based upon negotiation and community consultation which are then ratified by referendum and parliament are particularly prevalent in the controlling and agenda-setting cell. Nunavut, in the proportionate elected and controlling cell, fits the same profile. The full consultative process for cases in these cells may also reflect a feeling by those involved that such structures are more important than those in other cells as they provide greater power for the sub-state national group and therefore need formal legitimation. Another explanation is the dominance of 1990s initiatives in these cells. However it is not the case that all recent structures were the result of consultation. For instance the change in 1996 for Maori electorates was part of wider legislation changing the electoral system and did not incorporate consultation with Maori about the form of representation that was desired. The change to ATSIC that provided a distinct role for Torres Strait Islanders likewise was part of a wider review. The discussions amongst Torres Strait Islanders suggests that they want much more and of a different nature (Sanders 1999) but these ideas were not incorporated into the ATSIC changes that created TSRA. Neither of these examples is in the controlling and agenda-setting cell suggesting that there is some connection between this cell and full consultation. Cases in the bottom rows of the matrix tend to be the result of legislation but not referendums although many, such as the Yukon Fish and Wildlife Management Board, are part of larger land claim or self-government agreements that result from long and detailed negotiation between government and a sub-state national group, ratified by referendum. Many

of the cases for symbolic presence were created in the nineteenth or early twentieth century when widespread consultation was not part of the prevalent view of democracy. In addition, it may be that the Westminster tradition followed in most of the case countries means that the norm of parliamentary sovereignty and a suspicion of referenda have had a major impact on ideas of due process for establishing new institutions. Throughout, and by definition of the cases, the structures were created by the government and therefore follow western traditions of due process. Only recent cases and especially the controlling ones involve widespread consultation. In the formal sense they are legitimate but issues noted here may be the source of problems in the future and are already the basis of discontent amongst Australian Aboriginals, many Canadian First Nations and Québécois.

Based on norms and beliefs

An integral part of a legitimate process or structure is that it is based upon shared norms and beliefs. In cases where structures are created for sub-state national communities within an existing western nation state there are two distinct sets of political values: traditional and liberal democratic. There are arguments that self-determination implies the use of traditional procedures (Ponting 1997; Mayall 1999:498), that a set of practices or way of life is one important way in which groups differentiate themselves from others (Young 1990:186) and that structures need to be changed from the alien to the familiar (Boldt and Long 1985:54). But here the important consideration is that without the inclusion of traditional practices or at least the creation of new procedures based on traditional values then the structure will lack legitimacy. This is not an argument about rights but rather one of pragmatism. Many of the sub-state national groups covered here, particularly indigenous peoples, have experienced policies of assimilation, for instance in Australia from 1867 to 1945, where traditional practices were outlawed (Lochead 1998:3). Some of the institutions covered were perceived as alien impositions rather than traditional structures, as in Canada where band councils and the INAC programmes they administer are taken to be anchored in ‘principles that deny the essential spirit of Indian government’ (Cassidy and Bish 1989:50). These examples suffer from a legitimacy deficit because the group does not accept the values behind the structures.

In many of the debates surrounding the creation of the institutions there was some discussion about the extent to which traditional methods and norms had been replaced by the western liberal-democratic model. In particular there was talk of elections and votes replacing participation and consensus; no role for elders and traditional knowledge; and an emphasis on individuals rather than the community. In other cases, for instance Nunavut, politicians in the western tradition welcomed the chance to learn new methods from indigenous cultures. Many cases are in fact an ‘intricate weaving and blending of traditional and contemporary forms’, for instance using by-laws to impose traditional conservation of fisheries and elected members making decisions by consensus (Cassidy and Bish 1989:74–5). So for the structures to have legitimacy, they have to have sufficient basis in both sets of beliefs to be acceptable to both the sub-state national group and the national government. When norms are shared this is easy but where the values of the sub-state national group and the nation are seen as intrinsically opposed then there will be legitimacy problems for one or both parties. This section considers some of the problems when discussing political norms in different cultures and then considers some key areas of similarity and difference. It also considers the extent to which cases across the matrix are able to use strands from both traditions within their structures.

One basic area of commonality in values is that, despite perceived differences between traditional indigenous and western beliefs, both are seeking to provide decision-making based on the will of the people. To take just a few examples from the debates surrounding the creation of the case structures: the Sechelt wanted to control their own affairs completely and be out of the Indian Act and INAC (Allen 1988:1); ATSIC was heralded as an end to paternalism, where others decided what was best for Aboriginal people (Australian Senate 1989: 1,355 Tate). Two comments on Northern Ireland use the same theme: (the Northern Ireland Assembly) gave to the elected representatives of the people of Northern Ireland the opportunity to…put in place better government— government closer to the people and more responsive to their needs (House of Commons (UK) 1998:827 Trimble); the Northern Ireland problem was not whether it had good or bad government but that it had come from outside (House of Commons (UK) 1920:1335 Lloyd George). The very nature of the call for a political voice is based on a desire for greater democracy. Whether using the language of self-determination, sovereignty or consultation the underlying desire is for members of the sub-state national group to be involved in the decisions that affect the group, an idea residing at the core of the democratic ideal (Philpott 1995; Murphy 2001a).

Moving beyond this basic agreement and given a willingness on the part of the national government to acknowledge and incorporate other traditional values into the new structures there are still two major problem areas. As already discussed above, there are always issues of language and shared understandings about the meaning of key terms. The other problem is that each side needs to determine what it considers to be its traditional values and practices so that they can be reflected in the resulting structures. There is heated debate about what is meant by tradition and whether it is frozen or evolving. On one hand is the view that practice evolves because values and beliefs remain even though the people no longer live in traditional ways: people respond to the changing situation but related to core, unchanging values (Marule 1984:37). There is a growing consensus in the theoretical literature that cultures evolve to respond to changing community needs, priorities and

circumstances (Geertz 1973; Clifford 1988; Said 1993; Kymlicka 1995; Tully 1995). Government actions mirror this understanding. In the Mabo case the Australian court held that changes in land use traditions did not render a claim based on traditional land-use invalid (Brennan 1993:248). Under the Indian Act the minister may allow variations on the method of choosing the chief and councillors such that they are administered 'according to the custom of the band'. However the system adopted under this dispensation does not need to be the traditional system used and in practice is often a blend of old and new (Cassidy and Bish 1989:77). In the debate on Nunavut their MP in Ottawa demonstrated this willingness to mix styles: 'We see this as a chance for the Nunavut government to use some of those traditional ways of governing along with the new methods of governing we have learned over the years.' It is a chance to take the good from both and work them together (House of Commons (Canada) 1998:1710 Karetak-Lindell). So while the new institutions may look more Westminster than indigenous they may still incorporate traditional ideals and thus being based on common values have legitimacy. Such arguments are based on ideas of tradition evolving. In stark contrast, Alfred has argued vigorously that the First Nations peoples of Canada must return to traditional ways and values as the only way to gain true self-determination and avoid cooptation and assimilation by the non-indigenous majority. He suggests that a mixing of styles leads to dilution and corruption of the traditional rather than an evolutionary process (Alfred 1999:xiv–xvi). When traditional philosophies are all embracing then it is hard to opt out of some parts of the customs of the group, making compromise difficult and the idea of mixing norms or structures impossible (Brennan 1993:249).

The idea of a collective community is widely articulated by indigenous peoples (Metge 1976:71; Marule 1984:37; Long 1990) and is also prevalent in Wales (Griffiths 1996:44) and Quebec (Keating 1996:74). In indigenous communities collectivism can be based on factors such as the belief that all are created equal by the creator (Long 1990:765) or arguments of group rather than individual consciousness (Ponting 1997:316) or on pressures to 'place the good of the group above personal wishes and convenience' (Metge 1976:71). Alternatively, the collectivist approach can be seen, as in Nunavut, as a cooperative model of development based on communities working together, with the government, to improve the situation for the whole community (House of Commons (Canada) 1993:20,403 Funk). In contrast the collectivist ideas in Wales and Scotland are more closely related to socialist ideas. Scotland is perceived as having different values from England, with an emphasis on social solidarity, a sense of community and a greater concern for an integrated welfare state (Keating 1996; Brown *et al.* 1998:18, 21). Whilst these might be self-perpetuating myths, Scotland votes Labour more often than England, even taking account of class differences. Also the perception or myth of a widely shared Scottish collectivist view was an important point of agreement for the range of groups involved in challenging Thatcherite policies and in agreeing on the draft proposal from the Scottish Constitutional Convention (Brown *et al.* 1998:117). Likewise in Wales, while many question the reality, there is a strong perception of a Welsh radicalism and community ethos that rejected Thatcherite individualism (Phillips 1997:48–53). In Quebec there is a pluralist and collectivist tradition that is perceived as starkly different from US liberalism. This collectivist view manifests itself in views and policies about the desirable form of society and policy on issues such as welfare provision and related social programmes (Keating 1996:74). In both indigenous traditions and the collectivist norms of Wales, Scotland and Quebec there is an emphasis on community and society.

Whilst there is argument about both the exact nature of traditional decision-making methods and the differences between the traditions of each group, there are some commonalties of belief or values. Legitimacy needs structures that adhere to commonly shared values so it is these rather than specific practices that are of primary importance in this discussion. To generalise, indigenous traditions stress the collective and group decisions taken by consensus within a holistic approach. These ideas are also common within the ideas of participatory democracy (Catt 1999a). However, for the national governments democracy means liberal democracy which is interpreted as being based upon the ideal of individual equality, manifested primarily through the institutions of elections and majority votes (Dahl 1989; Beetham 1994a). So the groups and government have different perceptions of democracy ranging along a continuum from full participatory democracy through collectivist ideas to individualistic liberal or representative democracy. For legitimacy from all concerned the new structures need to incorporate both sets of values. The following discussion considers a number of areas of coincidence and contrast and the ways in which structures have met these challenges.

Deriving from the collectivist view is a tendency to favour consensus decisions and to reject the idea of voting and bare majority decisions (Metge 1976:172; Marule 1984; White 1991; Gray 1994). Consensus is valued because it supports collectivist views and is seen as the means of protecting equality among individuals (Boldt and Long 1985:538) and is contrasted to the western tradition of debate and vote that is portrayed as 'crystallising differences' (Cassidy and Bish 1989: 74) and 'petty partisanship' (House of Commons (Canada) 1993:20,404 Funk). Such consensus government is not like the Lijphart version, which has power-sharing at its core, but instead is rooted in traditional native patterns of leadership: the need to make decisions in the best interest of the group as a whole; the need to share skills and resources. It was based on the need for a harmonious group for survival and thus decisions based on consensus not confrontation (White 1991:508). Alfred argues that the use of consensus is based on mutual respect and thus the feeling that the group cannot compel compliance from those who did not agree (Alfred 1999:25–6) and that there is also a collective consciousness. Such arguments are also found amongst those who favour the use of participatory democracy, particularly in situations where compliance cannot be enforced

and where group unity is paramount (Catt 1999a: chap. 3). This is one example of a distinct difference from liberal democratic traditions wherein the superiority of a majority vote is paramount.

Both traditional ideas and the participatory democrats also emphasise discussion and deliberation and the importance of all members taking part. Participation of the people, one core component of liberal democracy, is recognised as important for success across the countries covered (House of Representatives (Australia) 1989a: 1,994 Hand; Gray 1994:4; Stevenson 1997: 340). Whilst in liberal democracy participation often relates solely to voting in elections (Dahl 1989; Vanhanen 1997), it has a wider meaning for many of the groups considered here. Australian Aboriginals talk of doing business conversationally (Sullivan 1996a:79), and Maori use public meetings where all can discuss issues (Metge 1976), as do Indian bands. All see citizen involvement as more important than elected accountability (Cassidy and Bish 1989:78). Several of the structures have a general assembly with real powers which all can attend and where all of age can vote. Discussion is prized but many new decision-making bodies limit the time available for debate. For instance Nunavut adopted the NWT model which has full discussion then a vote (Cameron and White 1995:56). Particularly in Canada, the aim of consensus and the use of a three-quarter vote rather than a bare majority exemplify acceptance of a preference for discussion and consensus. The Yukon Fish and Wildlife Management Board, Nunavut and some band councils are all examples of this practice. The strength of all-party committees within the assemblies for Northern Ireland and Wales is another example of emphasising discussion and agreement rather than the power of the majority vote. Power-sharing institutionalises concerns about the majority vote. Northern Ireland could not use consensus due to differences between the groups that cannot be resolved through discussion and so instead uses guaranteed protection for both sides through two forms of parallel consent. Predominantly cases where consensus is at least recognised are in the controlling voice column suggesting that government will accept these practices when they do not have to adopt such practices within their own structures. However some of the cases do contain a number of members not from the group, for instance wildlife boards where the group's representatives have a veto power.

One recognised component of legitimating beliefs is agreement on which types of people have the expertise or skills needed to make decisions for the group. A critical component of the values of liberal democracy is that those who have been elected are, by definition, the ones with the necessary skills and expertise to make decisions for the whole. However, valuing the knowledge of elders is a common theme in indigenous communities. For instance Maori *kaumatua* (the recognised elders) are considered wise in personal and social relations, and experts in language and culture (Metge 1976:173). Inuit elders have the important role of passing down traditional skills (Hamley 1995:229; Stevenson 1997: 339) and Aboriginal elders are deemed to be important decision-makers by those in their family or wider community (Brennan 1993). However, none of these communities has an institutional structure that provides a role for the elders. Canadian First Nations also respect elders as carrying the traditions and knowledge of the band (Cassidy and Bish 1989:80–1). The Nisga'a, Champagne and Aishihik First Nation and some Indian bands do include a council of elders. Again these are cases where only members of the group are involved in the structure.

Even when elections are used there are some differences in how these are interpreted. Another part of the collectivist tradition is the rejection of representation and in favour of the norm of giving leaders responsibility for specific acts while the group retains the right to rescind that power. Such views equate strongly with delegate rather than trustee ideas of representation (Catt 1999a: chap. 5). So in all cases involving elections a crucial question is the extent to which elections are accepted as providing the voice of the group and the match between government and sub-state national group ideas of the role of the representatives. A recurring comment from spokespersons within indigenous national groups is that those who have been elected have been corrupted by the white man's ways. For instance Crowfoot suggests that legitimacy 'refers to the degree of consistency which constituents perceive to exist between the values they hold and the vales which they believe the leader (or candidate for political office) holds, as inferred from the leader's…behaviour and personal characteristics'. He goes on to argue that one foundation of legitimacy is being seen as a 'real Indian' and that authenticity is greatest when the leader is like those being led, for instance in education, employment, skin colour, language and knowledge of cultural traditions (Ponting 1997:310–11). Similarly amongst Torres Strait people there are worries that to be an effective representative you need to be able to 'talk to white people' but that this then distances you from the majority in your constituency (Eckett 1983). There are also indications of differing views on the role of the representative. In Canada 'members of reserves still conceptualise political recruitment in terms of communal kin group involvement' and the individualised basis of representation has not taken hold (Long 1990:762). In ATSIC there are suggestions that the elected members are mediators rather than representatives (Sullivan 1996a) and widespread expectations from Aboriginal voters of pork barrel politics and the delivery of benefits to the mob (Rowse 1996). In contrast the Australian government expects the elected representatives to speak for the whole Aboriginal community, to provide an organised group who can advise on the views of Aboriginals and to assist the government in its programmes (Weaver 1983).

Often related to these ideas of pragmatic collective and consensual decisions is an emphasis on the local and the tradition that government is close to the people (Cameron and White 1995:59). As discussed above, one argument behind self-determination is that decisions be taken by those most directly affected. So moves for devolution in Wales were often portrayed as part of wider efforts to devolve more power to local government and therefore were not about nationalism but

about decentralisation of power and so applied to England too (House of Commons (UK) 1977a:409 Evans). An important argument in Nunavut was that Yellowknife, the capital of NWT, was too far from the people and therefore could not understand their needs (Dickerson 1992:189; House of Commons (Canada) 1993:20,397 Anawak). This approach is based on a recognition of different local needs and that using the smallest possible structure keeps administration under control and close to the people (Marule 1984:42). Taking the opposite view, one problem for Stormont was that the Unionists thought that the best government for Northern Ireland was from Westminster rather than more locally. Emphasising localism and decisions taken by those affected is very similar to the much-discussed subsidiarity used in the European Union (Catt 1999a:137–9). However, there are disagreements on which people are affected by a decision and which are best able to make decisions. The arguments about the composition of the committee to scrutinise legislation for Wales clearly illustrates this argument: 'the real question was whether the new government committee was to reflect the opinion and (party) composition of the existing house of commons or whether it was to be composed of the members for that particular part of the country with merely those added to bring it up to the necessary number' (House of Commons (UK) 1907:676 McKenna). However, some such arguments were not so much about those accountable to the people making decisions as about those with a shared identity. In debating the creation of the Scottish Grand Committee one MP questioned who other than Scottish MPs were pre-eminently able to settle Scottish matters but then went on to argue against the idea that the grand committee should contain only MPs from Scottish electorates. Instead he argued that as there are English-born people elected to represent Scotland and Scottish-born people representing English seats it was acceptable to have fifteen MPs from English constituencies on the Grand Committee (House of Commons (UK) 1907:1,534 Wason). Almost ninety years later a debate on the Welsh Grand Committee took the opposite line that 'only people with experience of, and who live in, Wales should be involved in such legislation because they know what is best for Wales' (House of Commons (UK) 1994:955 Williams). Complaints in Australia and New Zealand about the lack of coincidence of tribal and electoral boundaries are further examples of this general point. So Maori electorates treat all Maori as the same with no recognition of *iwi* difference (Durie 1998:224). Likewise ATSIC created an ethnicity of Aboriginal (Smith 1996:33–7) and imposed regional boundaries with no regard to local differences (Rowse 1996). The original structure also merged Aboriginal and Torres Strait Islander identities although this has been changed to some extent. The regional structure in ATSIC has been welcomed as recognising the importance of localism to Aboriginal and Torres Strait Islanders (Lochead 1998:26) but a common criticism of ATSIC is that the regions do not recognise kinship ties and communities of interest (Australian Senate 1989: 1,355 Tate).

Collectivist values also lead to a holistic view on policy issues because traditional philosophies provide an all-embracing worldview (Brennan 1993). One objective of the CAFN constitution is to 'create and recreate an environment allowing the Champagne and Aishihik people a lifestyle embodying spiritual and physical health and manifesting the dignity and pride of aboriginal peoples' (CAFN 2000). Central tenets of indigenous belief systems include the interconnectedness of the individual, the family, the community and the earth (Hylton 1994:249) and that land is a gift from the creator (Boldt and Long 1985a), which must be cared for: for seven generations hence. Thus wildlife boards in particular are deemed to have powers as stewards in accord with Aboriginal philosophy (Gray 1994:25). Similarly a sustainable economy is important to Inuit traditions (Stevenson 1997). Maori see issues holistically and seek to protect the land for future generations (Durie 1998). Such policy views can often be in conflict with the policy traditions of the national government based on individual land ownership.

Another important set of values that needs to be acknowledged is the existing legitimacy of the nation state for the majority who live there. So if the creation of the new structure is viewed as a threat to the unity and stability of the state then this will harm the structure's legitimacy. Federal countries tend to be more comfortable with devolution, since it is part of their political culture and hence conforms to the norms of the national government and the sub-state national group. Whilst the existence of these cases demonstrates an acceptance of the claims of the group, in many cases there was debate about this issue when the structures were created. One frequently heard set of arguments uses the idea that we are all the same so why make these distinctions? A critic of ATSIC argued that it provides for separate development whereas government should be enabling Aboriginal and Torres Strait Islanders to take their place 'as equal, responsible and independent Australians' (Australian Senate 1998:392 Short). Much of the debate about Scottish and Welsh committees inside the British parliament also revolved around the extent to which parliament is unitary with all MPS representing the UK or whether some MPs represented a particular part of the UK (House of Commons (UK) 1988:399 Wakeham). The existence of such arguments illustrates potential problems for legitimacy of the new structures.

Clearly there were fears of instability caused by the new institutions. For instance, the argument against a devolved assembly for Wales is that 'it threatens the unity of Britain by seeking to establish a system that would focus discontent and concentrate it in a form likely to create hostility to this parliament and the constitutional arrangements themselves' (House of Commons (UK) 1977a:382 Edwards). The slippery slope is a common argument: do not give in to pressure and provide some measure of self-determination because it will only fuel the demand for more. In Britain there were fears that some form of devolution for Scotland and Wales would inevitably lead to separation and thus the end of the United Kingdom. Such arguments were used in the nineteenth century when the Scottish Minister was created and have continued through every

proposal (House of Commons (UK) 1907:674 Parker; House of Commons (UK) 1977: 103 Ross). However there are those who suggest that the slippery slope can be remarkably unslippery. Michael Foot argued that reform has often taken a long time to reach its logical conclusions, for instance from the great reform act to universal suffrage in Britain took ninety-eight years (House of Commons (UK) 1978:1595 Foot). The other side of the slippery slope idea is that refusing to recognise the demands for devolved power will increase nationalist sentiment and instability and that the new structures tend to represent a compromise that provides advances for the group but probably does not meet their ultimate goals. The Scottish Nationalist Party reluctantly accepted a devolved parliament as a step towards separation and Plaid Cymru in Wales have the same step-by-step approach, arguing in 1977 that an assembly will not make Wales free but is a step in the right direction and part of the movement for submerged nations across Europe (House of Commons (UK) 1977a:406 Evans). Leaders among the Inuit and the Québécois in Canada have voiced similar arguments (Ittinuar 1985:52; Chevrier 1997:17). For some it is better to go ahead with a structure which is less than perfect than to keep waiting for the perfect deal (Long 1990: 752). So a new structure may gain legitimacy because it is a move in the right direction but some will still be pressing for further change and the extent of this pressure may depend upon the effectiveness of the new structures in delivering that which was most desired (Lipset 1981).

As this discussion illustrates, the different interpretations of democracy provide a number of areas of agreement but also some fundamental differences. Thus, in order to gain legitimacy on both sides, the structures often represent a compromise. Are there structures which can accommodate the values of both partners in the negotiation and where do they lie in the matrix? Again it seems that the more recent structures are better able to reach an accommodation and this is based largely on a recent switch away from aggressively assimilationist policies. So the predominance in the controlling and agenda-setting cell of cases where traditional practices are incorporated may again be due to when they were created. However, those that give a controlling voice provide more opportu nity for traditional norms, particularly as they tend to contain only members from the sub-state national group. In other words, national governments are willing to allow members of the sub-state national group to use their traditional procedures but are not so keen to adopt them as part of parliamentary practice. In New Zealand Maori MPs use parliamentary rather than traditional *marae* practices in parliament and all MPs follow *marae* protocol when they to go a *marae* outside of parliament.

Adoption of traditional practices seems to vary with the type of voice much more than with the extent of voice in that use of traditional forms more often occurs in the process of decision-making rather than in the choice of decision-makers. So it seems that liberal-democratic norms dominate in the type of voice and that when traditional practices are accommodated they are part of the extent of voice. In most discussion of liberal democracy the extent to which those who have been elected hold power is central but there is little discussion about the need for these people to make decisions in a particular way. Elected government is taken as more important than majority votes and the equality of power is usually discussed in relation to electors not elected representatives (Catt 1999a: chap. 7). Consideration of common values as the basis for the structures leads to a wide range of issues. The extent to which each component is important in a particular case will depend on the priorities of the group and the government. However this discussion does illustrate that structures found across the matrix can incorporate a range of values and the more recent structures tend to be more accommodating.

Are the institutions used?

Beetham's third component of a legitimate power structure is that it is used voluntarily (Beetham 1991). Any signs that either the government or the sub-state national group do not use the institutions suggest problems of legitimacy. Beetham suggests that such non-use is usually due to the absence of the second core component that the structure is based on common values and beliefs. In some cases the structure exists on paper but not in reality. For instance the James Bay Advisory Committee on the Environment has done nothing and is not fully set up, due to a lack of infrastructure support (Rynard 1999:231). More commonly, structures are created but then fail to function as intended due to an absence of commitment from some of those involved. Northern Ireland provides a range of examples of this phenomenon. The Republican parties have frequently boycotted elections or refused to take part in elected bodies such as the national assembly created under 'rolling devolution'. The Unionists have also boycotted elected bodies illustrating the problems of pleasing both sides. In particular the Republicans have been reluctant to participate in structures that do not give them protection and the Unionists have avoided structures where the government in Dublin is deemed to have a say and, more recently, where members associated with para-military organisations are involved. Rolling devolution was further hampered by a lack of widespread acceptance of power-sharing.

These examples of non-use are high profile but others are subtler. For instance Stormont basically declined to use its ability to make Northern Ireland different from Great Britain as the Unionist majority claimed they were part of the UK and thus did not need a separate parliament (see chap. 3; House of Commons (UK) 1920:1,126 Bonar Law; House of Commons (UK) 1982:865 Concannon). Still in the UK, the Thatcher government's refusal to follow norms on committee membership for Wales and Scotland indicated that they did not accept arguments that each country was distinct. Three times in twenty-two months the government suspended standing orders so that the committee to scrutinise Welsh legislation had a conservative

majority rather than containing all Welsh MPs. As MPs in the debate noted, the government had the right to do this but the actions suggested that the government did not accept the existing rules and thus should move to have them changed rather than repeatedly suspending them (House of Commons (UK) 1994:944 Morgan, 960–1 Carlile).

Another sign of a lack of acceptance is low turnout in elections. Whilst turnout overall in New Zealand is very high, the proportion of Maori who enrol on the electoral roll and the number of those who then vote is very low in comparison (Catt 1999). However Maori leaders are not calling for the abolition of Maori seats. In New Zealand there has been ongoing discussion on the retention or abolition of the Maori seats, particularly in the context of changing the electoral system in the early 1990s. The Royal Commission on the Electoral System suggested abolition (New Zealand 1986) but Maori leaders argued for their retention arguing that it was better to have an imperfect but guaranteed voice than no guarantees. The government took the view that any change would come only with the support of Maori leaders and thus kept the Maori electorates. McLeay argues that 'the case for retention involves acceptance of the validity of bi-cultural values and the political and structural recognition of those values' (McLeay 1991:50). It would seem that the Maori electorates gain legitimacy because they are based on shared values rather than because they deliver all that is desired by Maori. But many Maori do not vote suggesting a lack of acceptance of the system amongst many Maori. The very low turnout for ATSIC elections with the first two under a third of eligible voters is another example of non-use. The extent to which the government has established measures ensuring ATSIC accountability to parliament is an indication that the government is also less than wholehearted in its support of ATSIC. During the passage of the legislation the majority of amendments added mechanisms reinforcing accountability of ATSIC to parliament due to a lack of trust in the ability of ATSIC to work effectively (Sanders 1994; Lochead 1998:23).

Those who create the structures can address one potential source of non-use. For many groups the acquisition of a political voice also brings a wide range of responsible jobs that should be filled by sub-state national group members. One way to help make sure that a new institution works is by having people with the necessary skills to work within the structure. In many cases few members of the sub-state national group have the necessary experience and so an important component of the implementation period is training. For instance the majority of those elected to the Northern Ireland Assembly had never held office before so there were seminars on governance (Fletcher 1998). In preparation for ATSIC, Aboriginal groups made it clear they did not want to be set up to fail and so did not want to be part of the process if the legislation was flawed. They were happy to have increased responsibilities but only if they got the resources and training needed. They did not want to be blamed for the mistakes of others as has happened in the past (Australian Senate 1989:1,355 Tate). Training of bureaucrats is another crucial component and one of the activities undertaken in Nunavut during the long implementation process. The new structure offers great opportunities for the people but they need to be in a position to take advantage of those opportunities (House of Commons (Canada) 1993:20399 Anawak). Likewise the James Bay Cree needed a lot of training fast as they had to fill positions on more than thirty statutory bodies, committees and boards (Moss 1985: 690).

Those institutions that are not being used or where there are problems with legitimacy occur in the top left hand cell, the bottom left hand cell and further to the right so there is no automatic relation to placement on the matrix. Only the symbolic selected column has no cases that suffer from non-use. Stormont, perhaps the most well known of the failures is in the controlling agenda-setting cell which will be seen by many as the most desirable. However Stormont is placed in this cell in relation to only one of the sub-state national groups in Northern Ireland. Stormont guaranteed a voice for the Unionists but the Nationalists had no guaranteed voice. Rolling devolution gave the same voice to both Nationalists and Unionists but the former never took part in the body indicating that they did not accept the structure. Other cases clearly facing some legitimacy problems are ATSIC, which is continually scrutinised and criticised by people in government and Aboriginal circles as well as by commentators. The Scottish and Welsh committees faced problems during the Thatcher government due to a lack of acceptance by the Conservative Party at the time. These cases are in the controlling implementation and the symbolic selected implementation cells. Again the problems are more to do with accepting the idea of the sub-state national group than in the structures used. Those institutions which lack full acceptance reflect problems with the prior acceptance by all parties of the situation that leads to the provision of some form of political voice for the sub-state national group. So the National and Liberal parties in the Australian parliament did not agree on the need for an Aboriginal voice when ATSIC was formed and at the time that Stormont was created in Northern Ireland there was scant agreement on the best way forward.

Summary on legitimacy and the matrix

Some of the cases are more clearly established and receive more widespread support than others. Some face constant criticism for existing, others grudging acceptance and still others full acceptance. However legitimacy should be viewed as a threshold to pass rather than something which only occurs in its perfect state (Herzog 1989:205, Upset 1981:795). This consideration of a wide range of cases suggests that legitimacy first needs agreement on the sub-state national groups' rights to a voice and once that is achieved there is a wide range of institutional structures that can be used. Some of the cases covered have not succeeded because one of the parties involved did not accept the resulting power structure. However these cases where

legitimacy was lacking are not concentrated in one part of the matrix. Those cases that may face legitimacy problems in the future are ones where there is not extensive use of traditional values and customs. Consistently traditional practices occur in the way that decisions are made rather than in how the people are chosen: in the extent rather than the type of voice. The controlling voice column contains most of the cases where traditional practices are used suggesting that national governments are content to allow differences in process as long as they do not have to take part in them. Noticeably none of the structures that allows a voice within the national parliament makes allowance for traditional practices. The one possible exception to this is the Maori Affairs Select Committee where some aspects of Maori protocol are used but this is practice rather than written into the rules. In some cases, for instance Nunavut, Scotland and Quebec, structures that are not inherently based upon collectivist values can and are used to enact collectivist policies. Having spent two chapters considering differences across the matrix, and concluding that there is no clear hierarchy, we move in the next chapter to consider the ways in which the matrix can sensibly be used as a shopping catalogue for those seeking to provide a political voice for the nation within.

7
A shopping catalogue

As the final component of this section, we consider the ways in which those seeking to create an institutional voice for a sub-state national group could use the matrix like a shopping catalogue. For this exercise we look at four generic scenarios and suggest which cells from the matrix provide useful examples of structural design. Given that the search for patterns in the matrix, in the introduction to Part III, found few significant differences based on contextual dimensions of the particular cases a more generic approach seems not only justified but also sensible. The first scenario considers situations where there is a breakdown in trust between the sub-state national group or groups and the government. The other three scenarios consider situations where there is sufficient trust for reciprocity to be the norm. These remaining scenarios are distinguished by the geographical context of the group: the geographically concentrated, the geographically dispersed and integrated, and the urban. As one of the variables that did show a difference across some parts of the matrix is the relative size of the group, this aspect will be considered within each of the generic types. Analysing the matrix as a shopping catalogue for institutional designs is relevant both to groups outside the study seeking new structures, but also to those within the study seeking some alteration or augmentation of existing structures to better meet their needs. Therefore we consider how some cases could use this analysis to increase the fit between their aims and the workings of their existing structures. In compiling the details of the cases we have developed an understanding of some of the key problem areas and of the potential transferability of particular structural innovations from one case and context to another.

The intention is not to provide a detailed blueprint for institutional design and implementation in specific cases. The scale and complexity of such an exercise could easily fill a book of its own. Also it is important to clearly delimit what can legitimately be expected from an exercise that remains at a relatively high level of abstraction (Williams 1998:203, 233). We recognise that there are many practical political obstacles which could significantly hamper or prevent the implementation of some of the institutional options we recommend. Moreover, different institutional transplants or upgrades often require arduous and highly politicised legislative or constitutional changes, and may ultimately prove unac ceptable to either the state or the national group in question. Any number of such factors may come into play in the actual process of negotiating and implementing institutional solutions. These sorts of calculations are not relevant to our project. Instead, our purpose is to explore, with a little more analytical clarity than has previously been available, what areas of the matrix offer particular kinds of political voice. Details on specific solutions for specific cases will require much additional theoretical and empirical research, and, ultimately, negotiations between the state and its sub-state nations. What we provide here is a strategy for narrowing and analytically focusing a search for options.

Much of the decision about what is institutionally required depends upon the priorities of the sub-state national group. It is important to bear in mind that there are differences, sometimes subtle ones, among the specific demands of different sub-state national groups. So, for example, in Wales, where nationalism and a primary attachment to a sub-state national identity is somewhat more muted than in Quebec, the majority will likely be satisfied with a different form of recognition and institutional geometry than would the Québécois. It is also essential to maintain an awareness of the potential shortcomings of looking at individual institutions in isolation. For example, representation for a Yukon First Nation on a renewable resource council in itself does not appear to convey a high degree of political recognition or institutional voice, but viewed together with the powers of its legislative council the picture looks dramatically different. In fact, the optimum solution for many groups is probably a layering of a number of structures. Before moving on to the specifics of the different scenarios we first examine the matrix cells, using the ideas from Part I, to highlight the characteristics of different quadrants of the matrix.

What different cells deliver

Each cell of the matrix provides a different form of political voice, therefore to use the matrix as a catalogue one needs to understand what these differences are. Some of these are explicit in the definition of the categories within the type and extent of voice, but the full implications of most become clearer from the case descriptions. If the matrix is to assist those seeking to create a political voice for a sub-state national group then we need to identify the key characteristics of the structures within each cell so that focus can be concentrated on a smaller range of useful options. Given the desire on the part of the government

and the sub-state national group to create a structure that provides a voice for the group, there are two key questions to be asked that will determine which part of the matrix will provide the most useful examples. The first question is whether the group is to have a say in the creation of policy or in its implementation. This question determines where on the axis for extent of voice the solution will be found with a divide between the bottom row and the top three. In creating this variable in Chapter 2 we indicated that one issue on which public policy theorists tend to agree is that policy implementation is distinct from policy formation. The second question is how much influence the group seeks within the institutional structure itself: do they want to control the decision-making process or to have guaranteed input in the process? This question indicates which part of the variable for the type of voice to consider: anything to the right of the controlling category provides for input. With these core questions we can divide the matrix into unequally sized quadrants. In addition to these two primary structure-determinate questions, we will in places consider the nature and breadth of the jurisdictional issues to be covered by the group's decisions. While institutions found in any cell of the matrix can have either a very wide or a very narrow range of policy jurisdictions, the function of these supplementary questions is to help illustrate the variety of institutional options available within specific sectors or cells of the matrix. Two brief examples will illustrate the way in which these two primary questions focus attention on a particular quadrant of the matrix.

Imagine an indigenous group living mostly in one area which is concerned with the infant mortality rate amongst its people and so wishes to incorporate aspects of the group's distinctive cultural traditions into ante-natal care. They also want to employ members of the group for direct involvement in health-care provision to facilitate easier communication of relevant information and a more familiar and welcoming atmosphere for prospective patients. At this level, the desire is for delivery of a service and thus is at the level of implementation. In response to the second question they want decisions to be under the group's control. Therefore, potential structural solutions are to be found in the bottom left hand corner of the matrix: controlling and implementation. A large number of cases fall within this cell illustrating the range of structures that could be used. One example which seems particularly amenable to this sort of a situation is the Cobourg Peninsula Sanctuary Board. This structure mandates an equal number of indigenous and non-indigenous representatives, but the chair must be indigenous and holds a casting vote. Such a structure has the virtue of ensuring medical and health administration expertise on the board, if the group does not have many members with such training, while leaving overall control in the hands of the group's representatives. If the relevant skills are there, the group might move to a board composed exclusively of members of their own choosing, as in the case of Ngai Tahu's resource management board on the Titi Islands.

Imagine further that after a number of years of success with this project, the group wishes to extend its approach into all areas of health so as to have policy written in such a way that reflects the particular values and priorities of the group and to establish stronger chains of accountability between the group and their policy-makers. In order to achieve this goal it wishes to have control over the health budget spent on group members and to be able to make policy on health-care provision. This move changes the answer to the first question because now the group desires a say in policy creation. In answer to the second question the group wishes control over such policy-making decisions so we move our attention to the top three cells on the far left of the matrix. Structures to be considered include US tribal governments, or Yukon First Nation Councils, which would have health as one of a wide variety of legislative jurisdictions. This approach is possible only if the group is concentrated in one geographical area. If the group is numerically dominant with a large minority whose interests must also be represented, then a form of public government such as in Nunavut or the province of Quebec may be an option. Whilst this structure does not guarantee control, the population dominance in a system giving representation proportional to the population composition will provide *de facto* control. The best option would thus be dependent on the relative size of the group, and consideration must also be given to the number and type of jurisdictions to be covered, and the budget it was to administer. This example uses one area of health but the same ideas are true for any specific policy areas or for a wide range of policies.

Moving to an entirely different example: a sub-state national group wants to set the language of instruction in public schools serving its children, and to introduce changes to the curriculum which reflect its particular history, literature and national culture. There is no area of the country where the group constitutes the vast majority of the population but there are concentrated populations of group members both in cities and countryside. If the national government maintains a policy which prevents schools from introducing local variations, the group will seek to establish the means of controlling this policy themselves or at least influencing its change or creation at the national level. So in answer to the first structural question, the group wishes to influence policy creation rather than implementation. As the policy is determined by the national government, which they cannot control, then in answer to the second key question they want input in the decision. While the group is only concerned about the ability to influence the curriculum in schools where its children are educated, the policy specifying that schools can vary parts of their curriculum, once introduced, would apply to all groups. So here a desire to implement for the group can only be realised through involvement in policy creation for the whole country. For this, the group might look to the range of structures in the top right quadrant of the matrix. One possibility is to guarantee a number of MPs at the national level, elected by the group's members, who could at least raise the issues and have changes to education policy put on the legislative agenda. A greater concentration of influence would be yielded if the group could gain representation for a proportion of their MPs in a legislative committee like the Maori Affairs Select Committee or perhaps a ministerial portfolio

as in the example of the Scottish Minister. Once the new policy was established then there would be questions of control over its implementation and thus the role for sub-state national group members on regional educational committees or individual school boards. Whilst this example uses one very specific policy as an example it applies equally to any specific policy as well as to a general desire to ensure that group variations are accommodated in policy for the entire country.

These examples illustrate the way in which the matrix can be approached in the search for appropriate structures. The two basic questions of policy-making versus implementation and control versus having a presence provide answers as to which quadrant of the matrix is the most appropriate starting point in the hunt for structural solutions. Within each quadrant choice of structures to consider will depend upon the group's size and geography plus the number and type of policy areas in which they wish to have a voice. The following sections consider four scenarios in more detail again using the two questions to structure consideration of the matrix for possible structural solutions.

Structures where there is an absence of trust

It is a truism that multinational states are frequently characterised by a lack of inter-communal trust, in many cases accompanied by overt hostility, violence and bloodshed. Northern Ireland is the most obvious example among the cases that we have chosen, but a dearth of trust is also present among many of the indigenous cases and in the history of Canada-Quebec relations. Many factors contribute to a lack of inter-communal trust, one of the most important being a sub-state national group's historic experience of discrimination or oppression at the hands of a more dominant national group (Williams 1998: 13–14, 174–5). Given their experience with a colonial administration that was paternal in its best moments and brutal in its worst, there is no surprise in the fact that indigenous Australians manifest this lack of trust (Dodson 1996:57–62; Reynolds 1996:141–5; Zimran and Fletcher 1996:48–56). Québécois and indigenous peoples in Canada both cite a history of assimilatory pressures and imposed rule, which continues to fuel resentment and suspicion of the federal government (and of provincial governments as well in the indigenous cases). Republicans in Northern Ireland cite a similar history of discrimination at the hands of the Unionist majority. This resentment and mistrust have also been directed towards the British, the perceived backers of the Unionist cause, and an impediment to Irish self-determination. Unionists, for their part, have long feared submergence in a Catholic-dominated United Ireland. The Scottish and Welsh have enjoyed comparatively more positive experiences under Westminster rule; hence the degree of trust in these cases can be expected to be much higher than in the Quebec or Northern Ireland examples. On the other hand, we have already encountered the argument that a degree of breakdown in this trust was instrumental in increasing support for a Scottish Parliament (Brown *et al.* 1998:230). The Inuit, who due to their isolation were spared many of the more intrusive and destructive aspects of colonial rule, are comparatively more willing to place their trust in the Canadian state (Ittinuar 1985:47–51). The relative sizes of competing national groups can be a strong contributing factor to existing fear and mistrust. This is particularly relevant in the examples of indigenous peoples who often make up only a small fraction of the total population of the state and are frequently surrounded by the non-indigenous population, as in the Australian and US cases. Québécois express a similar fear of being overwhelmed, not just by the rest of Canada, but by a North American continent dominated by some 300 million English speakers. Some have plausibly argued that Unionists may have been willing to conclude an agreement in Northern Ireland in order to secure themselves against a demographic future fuelled by a more potent Northern Catholic birthrate (O'Leary 1999:92).

In this scenario we consider situations similar to Northern Ireland where there is an extreme lack of trust. In the three scenarios that follow we assume some trust, as in the case of the Scots, Inuit and Maori. In these cases there is sufficient trust for the sub-state national group to work and negotiate with the state government and so accept structures that do not guarantee control but allow for it if all sides act in a spirit of reciprocity. This assumes that each side treats the other as they would expect to be treated themselves, and that each group will not act intentionally to cause harm to the other. The James Bay Cree provide an example of a lack of reciprocity in government actions. They are structurally dependent on provincial and federal levels of authority, which have continually proven unwilling to cooperate with Cree initiatives unless these were perceived to be in their own best interest (Feit 1989:82–3, 95–6; Rynard 1999: 223, 230).

In the face of an extreme lack of trust, structural guarantees are often needed. In terms of our two structural questions this implies control over policy creation, which takes us to the top left hand corner of the matrix. A voice in this area of the matrix will often prove essential to a successful institutionalisation of sub-state nationalism where there is an extreme lack of trust. There is little doubt, for example, that the Belfast Agreement would not have been possible without the parallel consent and weighted majority provisions that provide a veto for both Unionists and Nationalists in key areas. Where the vast majority of people in the sub-state national group live in one area then an assembly with legislative powers such as the Scottish Parliament is another possibility. In this instance the group could either have control or trust that their population dominance is sufficient to give control when it is not guaranteed. Thus we move to the next cell to the right and into the proportionate elected column and the example of the Nunavut legislature. Even for groups like the Québécois, where trust is lacking, if they constitute a commanding majority in a territory a form of public government may be adequate to their needs. Some Québécois seek separation and an entirely sovereign legislature, but the majority has continually expressed its preference for greater

guarantees of the security and exclusivity of the National Assembly's legislative authority within the Canadian federation (Rémillard 1986:42–7; Seymour 2000:245–7). Even committed separatists such as former Quebec Premiere René Lévesque were happy to declare 'That democratic control of provincial institutions in Quebec supplies the Quebec people with a powerful springboard for self-affirmation and self-determination' (Chevrier 1997:17).

Another way of having a voice, but not control, in policy-making is the example of representation of the sub-state national group in state or countrywide legislatures. The guarantee of MPs for Quebec in the Charlottetown Accord or that in use for Scotland and Wales are good examples. Having a guarantee of MPs elected by the group has a substantive element in that it provides a group with a voice at the national level in defence of its interests at all levels. Québécois, for example, have steadfastly emphasised the importance of both the self-rule and shared-rule aspects of federalism (so long as they were going to remain a part of Canada). Even a smaller presence can have symbolic importance and help to build trust. For example, senators from Nunavut or other indigenous First Nations might have a significant symbolic impact in Canadian policy-making and change general perceptions about the status of the group, as might the selection of an Aboriginal Minister of Aboriginal Affairs. Trust and cooperation might also be increased through participation in legislative committees but clearly this will depend on the degree to which these bodies are perceived as a positive avenue for the advancement of the sub-state national group's interests. Instituting an indigenous upper house as has been suggested in Canada and New Zealand would again provide a voice and provide official recognition of the relevance of the group's involvement in political decisions. This institutional option was also a central feature of the 1970 and 1997 Fijian constitutions, designed to protect key interests of the indigenous Fijian population (Carens 2000: chap. 9).

When trust is the issue, it is particularly important to emphasise that this form of representation is not necessarily an alternative to forms of autonomous self-rule, but as a voice which is a necessary complement to self-rule. This point has particular resonance in indigenous cases, where processes of enfranchisement and legislative representation were originally intended as a means of under-mining efforts to establish autonomous self-government and thereby assimilating the indigenous population. In certain cases, it may be essential to proceed with institutions of self-rule as a necessary means of building a sufficient base of trust essential to the element of shared rule contemplated by representation in institutions at the centre. This message is sometimes lost on those who support the complementarity of self-rule and shared rule, but are critical of the prioritisation of the self-rule part of the equation (Cairns 2000:90–3, 157–8, 199–200 but compare note 177, p. 244). This point ties into our criticism in Chapter 5 of theorists who are sceptical of measures providing national groups with substantial autonomous self-governing authority because of worries that such measures will serve to reinforce divisions among groups and reduce the possibility of cooperation, mutual respect and trust-building (Shapiro 1999:216–20). These worries cannot be completely discounted, but in many cases it is even more unlikely that cooperation and mutual trust can be established via an institutional proposal which a national minority perceives to be yet another effort by the state to effect their cooptation and eventual assimilation. Sensitivity to this fact is a key element of Charles Taylor's notion of 'deep diversity' and constitutes one of the guiding principles of the constitutional theory underpinning the Final Report of the Canadian Royal Commission on Aboriginal Peoples (Taylor 1993a:236; Canada 1995: vol. 1, 675–97). In more concrete terms, it comprises one of the central political pillars upon which the current institutional arrangements in Northern Ireland have been established (O'Leary 1999).

Implementation may become a crucial matter in situations where there is a lack of trust, particularly in delivering on treaty agreements or areas where the government has agreed to recognise the special interests of the sub-state national group. For instance where a treaty or agreement recognises an interest in the use of historically important sites or in sustaining fisheries or in protection of the language then the sub-state national group needs to have a voice in the implementation process. The various functional or co-management boards are useful examples here. The sub-state national group may have a voice because it is guaranteed a number of seats on the board, as in the New Zealand Conservation Authority, or it may have a veto on decisions that gives control of implementation as in Alsek Renewable Resource Council. ATSIC, an elected body with a role in planning and the distribution of budgets, is another possibility.

As discussed in the opening of this chapter, issues of jurisdiction are germane along with the two structural-determinant questions. When there is a lack of trust then the security of jurisdiction is an important consideration. Establishing paramountcy for laws of Yukon First Nations in key areas of interest remains a central issue in providing them with adequate security in their self-government arrangements (Hogg and Turpel 1995:204). At present, individual First Nations can set the agenda in their areas of jurisdiction, but could face override by contrary federal legislation, which currently enjoys paramount status. The Scottish Parliament, in contrast, is likely to function quite well in the absence of formal structural provisions, relying instead on an informal protocol whereby Westminster will simply refrain from legislating in areas of Scottish jurisdiction (Bogdanor 1999:185). Constitutional protection of self-governing agreements has been a central pillar of indigenous demands for self-determination in Canada. Groups like the Nisga'a have achieved this security provision, but it has been expressly denied to others like the Sechelt and Yukon First Nations, and promises to remain a contentious issue in ongoing self-government negotiations. Of course, as we indicated in Chapter 5, constitutional entrenchment of an institution is possible in any cell of the matrix, hence many of the functional co-management boards such as the Alsek Renewable Resource Council or the Nunavut Wildlife Management Board enjoy constitutional protection in the bottom left cell of the matrix.

Clearly, then, constitutional entrenchment is only one aspect of security, and alone may be insufficient to address an absence of trust. Perfect examples are the various functional boards providing representation to the James Bay Cree. The continued existence and structure of these boards enjoys constitutional protection, but as we argued earlier, these institutions leave the Cree structurally subordinate to governments who have, for the most part, betrayed their trust. Even in the absence of constitutional protection, it seems likely that providing these boards with an institutional voice at the agenda-setting level delivers greater potential for advancing the group's concerns.

Structures for the geographically concentrated

A sub-state national group living in a geographic area wherein it constitutes the majority describes most of the sub-state national groups described in Part II. For many such sub-state national groups, a controlling voice is key to their demands, particularly when there is a very real threat of being overwhelmed in government by a much larger national group with whom they share a state. Thus the common aim is for control over policy-making. These institutions are found primarily in the top left quadrant. Cases include First Nation and tribal governments in North America, which seek to establish a controlling voice through different forms of ethnic government such as the Sechelt structures. The Scottish Parliament is a different case in this respect, because residence on Scottish soil necessarily implies membership in the national group, hence control is achieved but without an appeal to a strong ethnic criterion of citizenship. As so many cases fall within this cell and it seems to be the automatic response for many groups, these options will not be considered in detail. Rather we will examine some of the other approaches that a geographically concentrated sub-state national group could consider.

Having a say in policy creation provides a range of options in the top right quadrant. In the Inuit case, for example, public government yields *de facto* control due to their numerical dominance, while providing a voice to the large non-indigenous minority who might face disenfranchisement under Inuit-controlled ethnic government. So public government in the proportionate elected category may be a more satisfactory option for all involved. The success of such forms of governance obviously is connected to the group's capacity to retain their numerical dominance. As, by definition, the cases do not have total jurisdiction, there will always be some policy issues where the group has an interest but no jurisdiction. In many cases this will also involve shared or concurrent jurisdictions with other orders of government, who often will enjoy paramount authority. This quadrant also covers the presence of a guaranteed number of MPs within the national parliament. Where the sub-state national group is concentrated then this can be done by specifying the number of MPs from the area covered, a move which may entail allowing different electorate sizes, as in Scotland and Wales. Such MPs generally have a role in the discussion of legislation but if central legislatures in multinational democracies were revamped along the lines of those in Scotland and Northern Ireland, this issue of influence would be partially mitigated by the fact that all members would have some access to the agenda through the strong committee structure. A guaranteed presence in an elected senate, as has been suggested in New Zealand and Canada, with issue-specific veto and/or the authority to introduce certain types of legislation, would provide another option, this time in the agenda-setting cell in the symbolic elected column. It is important to see representation in central legislatures not solely as an alternative to, but also as a valuable, perhaps essential, corollary of autonomous self-government. This is already a well-recognised feature of standard federal systems, which combine state autonomy and representation in central federal institutions, and it is a notion gaining currency among supporters of indigenous and other forms of sub-state national self-determination (Weinstein 1986:41–2; Henderson 1994; Kymlicka 1995: 32–3; Bennett 1999:82–4; Borrows 2000).

It is possible that a single legislative assembly could simultaneously provide both a controlling and a proportionate voice to accommodate a unique set of circumstances. The Northern Ireland Assembly, designed to govern the territorially distinct region of Northern Ireland, is also equipped to accommodate the presence of two territorially intermixed national groups which inhabit that territory. It does so via the institutions of executive power-sharing, provision of a proportionate voice in certain areas of common interest, but a veto for each particular group in areas of key concern to their members. Such measures are particularly amenable where there is a lack of trust but some version of them may not be out of place in an example such as Nunavut, should a future demographic shift challenge Inuit control of the public government, and in the likely event that an exclusively Inuit form of self-government would prove to be an unpopular alternative option. Elements of control and proportionality might be combined in a more limited manner by simply providing representatives of a national group with a veto over key issues, but no other guaranteed form of influence.

In situations where a geographically concentrated sub-state national group wishes to have control over the delivery of services or implementation of policy then a body such as the Assembly of Wales or Cree Band Corporation would be suitable when a range of policies are to be covered. In effect these assemblies determine, for those group members living on the land base, details within policy passed at the national level. In the situation where only a few policy areas are to be controlled by the sub-state national group then a functional board with a controlling voice is a possibility. For instance the Alsek Renewable Resource Council where again the role is to determine details within the scope of national legislation. When a voice in implementation is the goal then the two Australian cases in the lower right hand quadrant are useful examples. In the Torres

Strait region, where Islanders are the dominant group, the regional council allows a role in differential delivery of services for all who live in the area. This is another example of public government where the group has *de facto* control due to population dominance with the differences being in role and jurisdiction. The community governments in the Northern Territories work on a similar basis and are created where there is a sufficient concentration of Aboriginal peoples.

In situations of a geographically concentrated sub-state national group wanting a controlling voice, structures are easier to imagine than in the other scenarios because the government can relate to all in a geographical area. Many indigenous groups in Canada have long called for legislative agenda-setting capacity and release from the strictures of the Indian Act, and this has become at least a limited reality for groups like the Sechelt, Nisga'a and many Yukon First Nations. In fact, the trend in Canada is towards the creation of First Nations governments with a more meaningful, if not always entirely satisfactory, agenda-setting capacity. Nevertheless, groups such as the James Bay Cree, despite being released from the Indian Act, are confined to by-law making authority. Unlike Indian Act councils, these are not subject to ministerial disallowance, but there is little doubt the Cree would embrace the opportunity to upgrade their legislative capacity from implementation to the agenda-setting level, at least in key areas of interest where their capacity for meaningful action is well developed (Feit 1989:82–3, 95–6; Grand Council of the Crees (Eeyou Astchee) 1998:113, 128–9). Such a shift will not necessarily impact upon the structure, as the same body could make primary rather than secondary decisions. So such a move is primarily dependent upon a shift in jurisdiction.

The Assembly of Wales is an interesting case in point. Given the relatively lukewarm enthusiasm for the creation of the assembly, it is hard to argue that there is a strong desire for a significant legislative agenda-setting capacity in a wide variety of policy areas (Jones and Wilford 1986:6; Taylor and Thomson 1999:xxii, 5; Laffin *et al.* 2000:224–5). On the other hand, the structural capacity of the assembly is so constrained in its present form, it would not be unreasonable to assume that this will become a bone of contention at some point in the near future. Indeed, some have argued that any substantial alterations in the assembly's legislative powers and responsibilities is likely to come only from vigorous and assertive action on the part of local Welsh politicians and activists (Marinetto 2001:320–1). Provided such pressure had an impact at Westminster, potential responses include addressing some of the existing limitations of the assembly, perhaps by moving it into the two middle cells on the axis for extent, with a voice in refining the details of primary legislation using the processes followed under 'rolling devolution' in Northern Ireland. An even more thoroughgoing reform would provide the assembly with primary legislative capacity in a limited number of jurisdictions, moving it into the same cell as its close cousin, the Scottish Parliament.

Geographically dispersed and integrated cases

In a number of our cases sub-state national group members do not live predominantly in a concentrated area. New Zealand *iwi* are found across the country and in no place do they form the vast majority of the population. Likewise while some Australian Aboriginals live on reserves, these are scattered and small. This situation is common in Europe too, as in the cases of the Sámi populations in Norway and Sweden (Craig and Freeland 2001: s. 3), and gypsies across Europe. It also speaks to the condition of certain sectors of the Canadian indigenous population. The related situation of urban populations is discussed in the next section. Key structural issues here are how to organise jurisdiction when the group is not geographically specified and how to ensure accountability to a scattered population.

In a situation where the dispersed sub-state national group wishes to play a role in the implementation of policy then functional boards are a good bet. If the group is to have a voice so that they can express their views and indicate a different approach to policy delivery then a good example from the matrix is the New Zealand Conservation Authority. There is an issue here of representation and accountability. If a sub-state national group has an internal organisation then they can nominate people for the position. When this is not the case then choice is likely to be in the hands of the government. These options would apply regardless of the relative size of the group or the actual policy involved, be it ante-natal care or all health services.

If the dispersed sub-state national group wishes to have some control over implementation of certain policies for its members, wherever they live, then a veto on functional boards is a clear possibility. Functional boards are a very flexible institutional solution in the sense that they could cover a particular piece of territory or settlement land, such as a national park in the case of the Cobourg Peninsula Sanctuary Board; a particular resource, such as forests or fisheries, as in the case of the Yukon Fish and Wildlife Management Board; or a particular jurisdiction, such as health or language policy. Yet the group in question need not be territorially concentrated. For example, a Maori-controlled language board could easily make decisions regarding the delivery of language training to Maori scattered throughout the whole country or a particular region, such as the Bay of Plenty. Similarly, in the case of a resource shared with members of another national group, such as fisheries, functional boards provide the option of co-jurisdiction or co-management, with representatives from each group speaking for a different territorially dispersed constituency.

ATSIC provides another sort of model for territorially dispersed groups. Elsewhere, we have indicated the many criticisms of the way that it works. Its current structure renders it at least as much, some would argue more, an instrument of

government as an instrument of indigenous self-determination (Fletcher 1996:3; Sullivan 1996a:112–13, 121–2). But with certain institutional modifications this model could be made more acceptable to indigenous Australians. Indeed, ATSIC bears a certain structural similarity to some of the layered approaches described in the preceding section on territorially concentrated groups. For instance, the many First Nations people in Canada who do not live on reserve land may wish to have a say in labour training due to worries about unemployment levels particularly amongst their youth populations. Employment and Immigration Canada has been consulting with First Nations groups to ensure local input (Eberts 1994). However if there was a desire for a voice in Ottawa on this area and in wider policy relating to education and unemployment benefits, then an elected body made up of First Nations' representatives could be created to work with the relevant ministries in differentiated service delivery or policy creation. While such a body is conceivable at the provincial and/or national levels, internal indigenous diversity again suggests that it is more likely at a regional level, at least in the short term.

When the creation of policy, either setting the agenda or making decisions, is the area where the sub-state national group wishes to have a guaranteed voice then possible structures are to be found in the top right quadrant of the matrix. These cells primarily cover structures which guarantee a presence in the national legislature. A guaranteed number of MPs is again an option but in this scenario they would need to be elected from a separate roll. If the group constitutes a large proportion of the population in certain areas then the minority-majority electoral model is a possibility but it would mean that not all members of the group have a chance to elect the representatives. New Zealand, of course, already has the Maori electorates, and despite criticisms regarding their efficacy and capacity to adequately represent the diversity within Maoridom, support among Maori for their retention remains fairly strong. Guaranteed indigenous representation has also been floated in the Australian context, but here the relative population sizes are important. In New Zealand the number of Maori MPs is related to the number of people on the Maori electoral roll but if the same were to happen in Australia then there would be three Aboriginal MPs. So for sub-state national groups which comprise a small proportion of the overall population the presence of MPs in the national parliament would have to be symbolic to ensure a sufficient number to be able to cover the range of policy committees where the sub-state national group has a particular interest. In those countries with an upper house then the sub-state national group could have a guaranteed number of members, elected or nominated in the same way as the other members.

Control of the agenda or other aspects of policy is to be found in the top three cells on the far left of the matrix and is the place to start looking when the sub-state national group wishes control on policy creation. For a dispersed group there are few existing examples from our cases. The Standing Committee for Wales and an assembly similar to that under rolling devolution with powers to suggest policy solutions are possibilities. Again, such bodies need not entail the exclusive capacity to set the agenda in a particular area, but perhaps a shared or equal jurisdiction with regional or national authorities, as proposed by many Canadian First Nations, like the Mi'kmaq, who also lack an exclusive land base (Canada 1995: vol. 2, part 1, s. 1.3).

As we mentioned in the previous section, the option of a layering of integrated structures incorporating local, regional and possibly national levels of authority and decision-making is applicable to both territorially concentrated and dispersed groups. Taking the example of Maori, a first step in the creation of a layering of institutional structures might be to expand the role of tribal Runanga from the management and distribution of crown settlement assets to the policy-making and/or implementation process at the local level. Local Maori governing councils with limited jurisdiction were in fact a feature of the New Zealand political landscape in the 1900s, but were eventually abolished (Sorrenson 1986: B 29–30; Ward and Hayward 1999:388–90). A similar strategy of devolving the delivery of government services and programmes to *iwi* played a central role in government policy in the 1970s and 1980s. The 'creation' of tribal runanga through the 1990 Runanga Iwi Act (since repealed) was a central aspect of this strategy, and local iwi who incorporated under the act were authorised to contract with the Ministry of Maori Development to deliver service to Maori people in their area (Ward and Hayward 1999:394–6). In our hypothetical institutional variation, local *runanga*, acting as the base-level authorities, could then choose, as in the territorially concentrated model described in the previous section, to delegate authority upward to regional or other higher levels of Maori authority, again so as to take advantage of pooled resources, expertise, bargaining power and economies of scale. They might also choose to delegate or leave certain jurisdictions in the hands of *Pakeha* institutions, if this was seen to be in the best interest of the members. In this context, it is interesting to note that one of the main criticisms of the earlier policy of devolution in New Zealand was the absence of a role for pan-Maori organisations in the design and delivery of programmes and services (McLeay 1991:40).

Other Maori have voiced support for a form of pan-tribal organisation modelled along the lines of the 1990 National Maori Congress, again emphasising the ultimate authority of constituent *iwi* and *hapu*, and the need for capacity-building led by the larger corporate *iwis* constituted through the Treaty settlement process (Walker 1999:121). Nevertheless, these higher levels of authority are not absolutely essential, and the local *runanga* could function effectively, though likely in a smaller range of jurisdictions, in their absence. An interesting feature of this sort of arrangement is that it could function both with respect to a particular piece of settlement land (or water, e.g., fisheries policy), to a series of settlements where the group's members are intermixed with other populations, or at a regional or national level with respect to all Maori (although there is still the question of how to involve those people who identify as Maori but not a particular *iwi*, many of whom live in the cities). The

Maori example also speaks to the circumstances of certain Canadian indigenous peoples who are more territorially dispersed, and in fact similar measures have received serious consideration by the Métis, a group comprising a hybrid of both territorially concentrated and dispersed populations. Aspects of this Métis model are covered in a little more detail under the section on urban populations (Canada 1995: vol. 2, part one, chap. 3, s. 1.3).

Australian Aboriginals are a clear example of a dispersed and integrated group. So what can the matrix suggest to change ATSIC's structure to provide indigenous peoples with a more direct role in policy-making? Where they do have influence it is in providing the detail of already-agreed-upon policy. Thus there seems to be a desire to increase the extent of voice that ATSIC enjoys by moving from implementation to policy creation. While there is some debate about the voice provided for Torres Strait Islanders there are no complaints about ATSIC having a role confined to the indigenous populations. Some of the objections to the suitability of ATSIC as a policy implementer and service provider could be relieved by providing the indigenous parties with a direct say in which jurisdictions they can exercise their authority and what their budget allocation should be, and by reducing the amount of ministerial oversight and the extraordinary burden of accountability to which the institution is currently subject. Using the matrix we should start looking at options in the top right quadrant A model akin to the rolling devolution in Northern Ireland could meet these needs. Maintaining ATSIC in its existing composition, but asking for its views on all legislation that has an impact on Aboriginal and Torres Strait Islander peoples, would increase government awareness of such concerns. This approach could be attained if ATSIC could consider legislation in parallel to select committee consideration of each bill. However the Australian Parliament has very strong party voting and so any input outside of the parties would not have an impact on legislation. Therefore ATSIC would need to be consulted by the ministers and bureaucrats as the bill was being created so that their views were incorporated at the 'propose solutions' stage. As with rolling devolution, where there was uncertainty from all concerned as to the effectiveness of such measures, this structure could start with a few agreed-upon policy areas and expand as those involved saw it working. Another approach would be to add senate members for the ATSIC population thus treating them like a state and providing twelve elected members who would have the chance to make comment on all legislation as it was debated in the senate.

A more thoroughgoing reform of ATSIC would see it moved into the top left hand cell of the matrix, at least within certain established jurisdictions. This could be accomplished by mirroring practice in Canada and the United States, wherein governments devolve entire legislative jurisdictions to a particular indigenous governing authority. In the case of ATSIC, this jurisdiction would apply only to indigenous Australians. These powers would most likely be exercised concurrently with non-indigenous governments, so rules of paramountcy would have to be developed. As in many of the above cases, a general list of available powers could be negotiated between government and representatives of the group, from which the institution could then pick and choose depending on the evolving needs and ends of its members. Potential jurisdictions could include natural resources, family law, social services and education. In certain cases, this legislative capacity would require at least a threshold number of members in a particular area to be viable, e.g., sufficient numbers for separate schools. In other cases, laws might require the presence of no more than a single member e.g. laws governing resource harvesting or family law could be exercised by single individuals in any particular area. As we noted in the case descriptions, this form of extra-territorial jurisdiction is already exercised by Yukon First Nations, and other indigenous groups (see chapter 3) (Canada 1995: vol. 2, part 1, chap. 3, s. 1.3).

Urban populations

The urban population seems to be one that all national governments covered in this study, as well as many others worldwide, will need to face in the early decades of the twenty-first century. In this scenario we will need to examine structures created for regional government and consider how they can be applied to urban local government. In many cases there are substantial numbers of citizens of the sub-state national group living in urban settings even when there are traditional homelands. At present, there are more Torres Strait Islanders in Australia's cities than live in the Torres Strait area and the same is true of many Canadian First Nations. Although we might anticipate a certain percentage of these populations returning to their traditional territories if conditions and opportunities improve, the urban phenomenon will continue to be a key challenge in the domain of indigenous governance for some time to come. Looking at some specific cases, a 1993 Canadian survey of over 1,300 Aboriginal people living in six major urban centres, conducted by the Native Council of Canada, revealed that 92 per cent of the respondents favoured efforts to have Aboriginal people in urban centres run their own affairs (Native Council of Canada 1993). One important consideration in developing urban institutions is the identity variations of urban indigenous populations. For instance the 1991 census of Winnipeg shows that 6.97 per cent claim Aboriginal ancestry but this is comprised of just over 2 per cent who identify either as status Indian or Métis with the rest non-status or not specifying any particular group (Clatworthy *et al.* 1994:30). Given that there are in excess of fifty First Nations in Manitoba alone, this population is guaranteed to be extraordinarily diverse. This situation is mirrored in other Canadian cities and in Australia. In New Zealand urban Maori identify with a range of *iwi* while a large number claim ancestry but no specific *iwi* affiliation. So in the urban situation there is a question about use of a generic identity and the problems that this can create. However, in

many cities the overall indigenous population is small and thus further sub-division may scupper any attempts at self-government or even self-administration. In such cases, some degree of unity and cooperation among sub-groups will likely be an essential ingredient to success, at least during the early stages. The impact of the relative size of the sub-state national group is clearly an important factor here.

In Canada the perception is that the goals of Aboriginal involvement in urban areas are primarily related to cultural survival (Wherrett and Brown 1994: 85) and service delivery using Aboriginal approaches, staff and decision-makers (Clatworthy *et al.* 1994:37). Urban Aboriginal governance initiatives are also aimed at improving the range and quality of services for Aboriginal peoples (Clatworthy *et al.* 1994:23, 37). In this respect many of the existing examples in Canadian cities provide self-administration rather than self-government. The question then is if anything more than self-administration can be reasonably contemplated for urban dwellers who identify with a sub-state national group?

Service delivery, and other forms of implementation, are the most common existing arenas for sub-state national group involvement or control. Canadian discussion posits several different forms of urban Aboriginal control of implementation. Extensions of the jurisdiction of land-based government, such as for the Sechelt, is seen as particularly appropriate for issues of child welfare, divorce, housing, social services and economic development (Hogg and Turpel 1995: 199–200). Examples of this strategy already exist in the form of the nascent Nisga'a urban locals which serve as a means of liaison between the Nisga'a territorial government and citizens ordinarily resident in designated urban areas. Citizens of each urban local are entitled to elect an individual to serve as their representative to the Lisims government (Canada 1998:162; Nisga'a Nation 2000:14–15). Other examples in practice include the Touchwood File Hills Qu'Appelle Tribal Council, representing sixteen First Nations communities near the city of Regina, which provides numerous programmes and services to its members (Anaquod 1993). However when the people concerned are spread across the country rather than residing in cities nearest to the homeland then such an extension of jurisdiction may be impractical. The most common alternative form is autonomous service delivery based on a community of interest related to one or a group of services such as education or health (Clatworthy *et al.* 1994; Canada 1995: vol. 2, part 1, chap. 3, s. 3.1). Such organisations are frequently neighbourhood based and thus also provide for non-Aboriginals in the area rather than using a service criteria based on identity. The same happens in New Zealand where, for instance, the Waiperaira Trust supplies some welfare service to people in the western suburbs of Auckland. While the trust is seen as predominately for Maori the services are delivered to all in the area. These bodies are not really self-government as most are contracted by government agencies to provide services and have very few areas of autonomous choice.

A third approach is that of partnership (Eberts 1994), where government agencies and bodies make decisions in concert with Aboriginal groups or representatives. Again functional boards, such as the Yukon Fish and Wildlife Management Board, provide a useful example of control and the role of Ngai Tahu on the New Zealand Conservation Board serves as a model for local government policy delivery that includes a voice from the sub-state national group. Such examples could work when the sub-state national group is relatively small and in relation to specific policies of particular concern. When the substate national group is larger and there are a number of policy areas where they are to have input then a body akin to a region within ATSIC could be used. Members would be elected from across the city and they would then provide advice to the city government and also play a role in the implementation of certain policies for their constituents.

If an urban population from one or a number of sub-state national groups, either concentrated or spread, wishes to have a voice in city-wide decisions this would mean having a presence in existing structures of urban government. Using the philosophy of minority-majority districts in the USA, in places where the population is concentrated, then the careful drawing of boundaries may lead to a number of councillors being elected from areas where the sub-state national group is the majority of the population. However the majority population is likely to be of a wide indigenous character. Where the population is dispersed, then separate electorates, as in New Zealand, may be the answer, with a minimum number guaranteed regardless of population proportions. In 2000, the New Zealand government proposed this approach for health boards across the country, with two Maori members on each regardless of population proportions. This idea has been discussed with respect to council seats in the Auckland region, and in 2001 the Labour government began the second reading of a bill to guarantee Maori representation on the Bay of Plenty Regional Council (New Zealand Herald 2001: A5). Specifying a minimum number of seats means that the type of voice may be symbolic elected but where the population is larger it could be proportionate elected. In each case, as with the range of cases where there are MPs from the group in the national parliament, the councillors from the group will have a role in all aspects of council decisions. Where there is an executive then the group may need a guaranteed place if they are to have a role in agenda-setting but councils tend to be run on subject committees rather than a Westminster type executive. Involvement in such committees will allow input into the details of contracts to service provider groups. In policy areas of particular concern the group may be guaranteed a position or the right to nominate the chair or deputy chair of the policy committee.

Should a sub-state national group desire control over policy decisions then one possibility is a committee, like the Standing Committee for Wales, which has the sole responsibility for considering the specific details of policy that impacts primarily upon the group. If the sub-state national group wishes to have control over a wider range of issues then a form of parallel

consent could be used. Such rules could apply to specified policy areas or any issue nominated by a certain number of council members. Both of these examples assume that there are elected members from the sub-state national group on the council and thus is an addition to the ideas of a separate electoral roll or electoral boundaries drawn with ethnic composition in mind. For the committee structure to work there would have to be sufficient members to staff such a committee without this work taking all the time of all of the sub-state national group members. Thus it would not work if there were only two or three representatives. Rules of parallel consent are also likely to need a number of elected members from the sub-state national group in order to gain public acceptance.

A model proposed by the Métis in Canada contemplates control through a layering of institutional structures at the local, provincial and Canada-wide level. A series of Métis locals would be established as governing structures for different urban areas, which would in turn elect representatives to provincial and national Métis legislatures. Each local would be structured and oriented to the distinctive needs and circumstances of its membership, and would exercise powers delegated from Métis provincial and national governments. Specific programmes and services would be delivered by the local, but could be developed at either the local or some higher level of Métis authority (Canada 1995: vol. 2, part 1, chap. 3, s. 3.1). In this example, the local urban authority still exists at the level of implementation and delivery, the key difference being that its authority is delegated down from a Métis rather than a non-indigenous government at the agenda-setting level.

Conclusion

In discussing a range of possible structural changes we recognise that all political situations evolve and so changes to structures, changes in the type or extent of voice and the addition of new structures are essential features of successful institutional designs. Needless to say, upgrades of this nature should always be subject to the expressed will of the sub-state national group, since it may not always be the case that the group desires this level of authority. If sub-state national groups judge that they currently do not possess the capacity to assume such authority or if they feel that their interests are currently being met by another level of government, this choice should obviously be respected. Many of the institutional agreements we have examined, those for Yukon First Nations and the Inuit for example, make specific provisions for their own structural evolution to meet changing needs and circumstances. The Inuit themselves have long harboured the ambition that their territorial government would eventually acquire provincial status and powers (Ittinuar 1985:52). Such change is as often a sign of success, manifesting itself in effective capacity building and the achievement of concrete objectives, as it is of failure, manifesting itself in poor policy performance and decreasing legitimacy stemming from frustrated group expectations. Success or failure is almost always determined by a combination of structural and non-structural factors (Marinetto 2001), so our contribution is to provide a more rigorous means of identifying and distinguishing those structural options which might, all other factors being equal, have a chance of working. As we indicated in Chapter 5, this process constitutes a valuable step up on many existing discussions of institutional transferability, which tend to rely heavily on the intuitive appeal of different institutional options rather than a detailed analysis of their structural potential.

Implementation and delivery may be the best place for relatively new structures to begin their life. This option is of particular relevance if the group in question is lacking in resources, experience, organisational or other relevant skills and it desires a transitional capacity-building period during which elements essential to the assumption of full legislative responsibilities can be gradually developed. Large, well-resourced and organised ‘corporate’ *iwi*, for example Tainui or Ngai Tahu, could conceivably make a fairly rapid transition to independent policy development for their members in designated programme areas, whereas others might struggle at first, even at the level of implementation and delivery. Here a transitional framework like that which inspired rolling devolution in Northern Ireland or the Umbrella Final Agreement for Yukon First Nations, beginning at the level of implementation and delivery, might be useful, provided it incorporated the structural potential for upgrades in terms of extent of voice as the capacity of the *iwi* gradually built its capacity and chose to increase its presence in the policy-making process. Such a framework would also provide for individual *iwi* to opt in or out of the programme and/or particular jurisdictions or programmes at their own discretion.

The situation facing Torres Strait Islanders in Australia has elements of all three of these scenarios. Within the Torres Strait Island area just under a quarter of residents did not identify as Islanders or Aborigines in the 1996 census. However the proportions vary: 8 per cent in the Outer Islands, 23 per cent in the Cape Islander communities; and 33 per cent in the Inner Islands (Sanders 1999: 3). In addition the vast majority of Torres Strait Islanders live elsewhere, many in the cities (Arthur 1997). At present the Torres Strait area is treated like the other thirty-six regions within ATSIC, and Torres Strait Islanders in the rest of Australia join Aboriginals in voting for a representative in their residential area. So we have a situation where Islanders and Aborigines dominate in the Outer Islands and Cape communities and are the majority in the Inner Islands but there is a quarter of the population with other identities (geographically concentrated population). Plus there are all of the Torres Strait Islanders living across the rest of Australia, many in cities, so fitting the dispersed and urban scenario as well. This case is a prime example of the need for layering structures.

In 1991 the Island Co-ordinating Council published principles and objectives for Torres Strait self-government that were based upon a series of formal and informal meetings and discussions (Lui 1995). They sought policy and service provision that was accountable to the people and institutions that reflected local cultural traditions. Their nineteen goals also included recognition of permanent residents other than the Torres Strait Islanders, who also had rights and needed recognition and protection. Given this recognition of other people along with their numerical dominance a form of public government like Nunavut would be one possible structure. Another issue is whether Torres Strait Islanders not living in the Strait area should have any say in the policies for that area. It is not unheard of for countries to allow citizens to vote when they are not resident, for instance Finland, France and the UK allow non-resident citizens to vote. So Torres Strait Islanders who had moved since the last election could be allowed to vote in the next election. Such a rule recognises the role of retrospective voting. The Cook Islands has an MP elected exclusively by Cook Islanders living overseas. A Torres Strait regional government could have a number of members elected by those who have lived away from the Torres Strait area since the previous election, although the population per representative would be larger for these members so that the residents' views still dominated. Given the size of the region compared to the states and territories in Australia, arguments would probably be for a form of regional rather than state government. Regional governments do not have wide policy-making powers in the areas of concern and so some voice in the Queensland government would seem appropriate. Adding the number of Torres Strait Islanders living elsewhere in Queensland to those in the Strait area there would be arguments for a separate electoral roll of Torres Strait Islanders to elect a number of members to the Queensland legislature. Initially the number may need to be guaranteed rather than based on relative population size.

Given the number of Torres Strait Islanders in some of the cities then there may also be grounds for separate electorates and committees for them as well as Aboriginals in the city government. Then there is the question of a voice for Torres Strait Islanders in the Australian parliamentary system. Such issues need to be considered alongside a similar presence for Aboriginals while recognising that the two groups are different and so need distinct representatives. The published principles and objectives specify a number of policy areas where Torres Strait Islanders particularly desire a role. In some of these such as education services or marine strategy then a functional board is a possibility. Depending upon the policy area these could ensure control through the use of a veto or a voice by guaranteeing that at least one Torres Strait Islander is a member of the board.

In closing, it is worth mentioning that some nationalists will not feel secure unless they have complete independence, but such cases are not relevant to this study. In many cases, non-structural remedies responding to a lack of trust are also options which are both necessary and desirable, for example symbolic treaties of peace and reconciliation proposed in the case of indigenous peoples in Canada and Australia. Indeed it is important to recognise the limitations of structural solutions in the absence of other factors such as skilled and visionary political leadership, and political will. For example, one of Quebec's traditional demands is for a limitation of the federal government's spending power in areas of exclusive provincial jurisdiction. In the absence of a major, and fundamentally unlikely, constitutional change to effect such a limitation, this problem is best addressed through formal inter-governmental agreements or informal protocols. Institutional design, as we emphasised in Chapter 2, is one component in a larger strategy of successful multinational political accommodation.

8
Concluding words

In the introduction we identified the dual theoretical and practical political challenge of this study. The creation and design of political structures intended to give a voice to sub-state national groups is extremely important to the political leaders involved and to the people for whom they are created. For academics and researchers they also pose theoretical challenges. Part II describes a wide range of structures and thus illustrates the choice available and the extraordinary imagination and ingenuity of those involved in structural design. The previous chapter considered the ways in which the matrix can be used in a practical sense by those wanting to provide a political voice for sub-state national groups and thus fulfilled one of the aims set out in the introduction. Here we satisfy the other stated goal as we first revisit the issue of theory and practice and then indicate the broader relevance of our research for continuing study of both the politics of group representation and structural design.

The theory and practice of sub-state nationalism

In an era which is increasingly defined by the discourse, if not always the substance, of rapid and pervasive globalisation, it might seem anachronistic, perhaps even perverse, to concern ourselves with the subject of institutionalising sub-state nationalism. Nation states and national identities, according to this view, are rapidly losing their salience as transnational institutions and postnational identities rise to take their place (Waldron 1995; Linklater 1998; Held 1999). A more useful and relevant exercise, from this point of view, would be to examine models of citizenship and democratic governance which are capable of meeting the challenges of globalisation and the demise of nation states (Soysal 1994; Tambini 2001). At best, this observation is highly premature, and at worst it is simply false. Granted, once we recognise the contingency and historicity of nations and national identities (Held 1995; Linklater 1998a), it would be equally misguided to project their survival indefinitely into the future, but there is no doubting that nations and national identities will continue to be with us in the near and foreseeable future. This view is confirmed both by some of the more astute students of nationalism (Smith 1995; Kymlicka 1999; Miller 2000), and by the seemingly unrelenting vigour of nationalist movements such as those in Quebec, the United Kingdom, Catalonia, the Basque country, Corsica, the Balkans, Kashmir, Israel-Palestine, Indonesia, Eastern Europe and the former Soviet Union. Nationalism, and particularly sub-state nationalism, is not a spent force in the modern world. Therefore, although it may be prudent to begin thinking about the theoretical and institutional implications of a postnational era, in the meantime we clearly need solutions for the contemporary world, which remains a world of nations and states.

As we indicated in the introduction to this volume, sub-state nationalism presents political leaders and political theorists with a dual normative and practical political challenge. In normative terms, sub-state nationalists advance their claims under the rubric of democracy and self-determination. They claim the right to define and shape their political context and to influence their individual and collective futures as distinct peoples: the same right enjoyed by nations which presently control states. Political theorists in the 1990s engaged in a spirited and relatively successful campaign to place the question of sub-state nationalism firmly on the normative agenda in western democracies. Although the justifiability and the viability of sub-state national self-determination remains a hotly contested topic, it is now at least a subject that is debated rather than simply dismissed. In practice, the challenge for multinational states is how to negotiate an institutional response to sub-state nationalism which satisfies the requirements of justice, stability and effective governance. This book has endeavoured to engage with some of the institutional issues which the political theory of sub-state nationalism has, for the most part, left to one side. In so doing, we have sought a closer partnership between normative theory and the institutional practices of existing multinational states. Bridging the theory-practice divide in the domain of sub-state nationalism is an important task as increasing numbers of states begin to take steps to address this phenomenon in institutional terms, and these efforts progressively outstrip the existing theoretical literature. With this in mind, we set out three principal questions in the introductory chapter. First, what sorts of institutions have been created to meet the challenge of sub-state nationalism? Second, how do these institutional designs measure up, in terms of both the normative principles articulated in the theoretical literature and the stated demands of representatives of sub-state national groups? In the remainder of this section, we summarise some

of our key findings related to the first two questions. In the final section we consider the third, namely, what are the lessons to be drawn for future work on the theory and practice of sub-state national self-determination?

In institutional terms, one of our key findings is that the array of structures created to provide sub-state national groups with a political voice is much wider than is anticipated in the theoretical literature. As we indicated in Chapter 7, there tends to be an automatic association between sub-state nationalism and the need for full-blown legislative assemblies with broad and exclusive legislative jurisdiction over a particular territorially concentrated population, but this assumption captures only part of the reality. Institutions like these have indeed been employed for many of the sub-state national groups, particularly in Canada and the United Kingdom, but the broader picture reveals a variety of other institutions, such as functional boards, representation in central legislatures, local government and urban initiatives, as well as ministerial and legislative committees. In fact, our research indicates that a layering of institutional structures is often the preferred option, even for groups whose members are highly territorially concentrated. For example, successfully accommodating Quebec nationalism in the context of Canadian federalism entails both territorial self-rule in the province of Quebec, and shared rule at the centre through representation of Quebec MPs in the federal parliament. Similarly, in Australia a revamped ATSIC, combined with a variety of functional boards and improved forms of local community government, could go a long way towards satisfying the demands of Australia's indigenous peoples. In conjunction with this insight, we believe the case studies vindicate our decision to include indigenous peoples in a study of sub-state nationalism, rather than categorising them separately as ethnic or cultural minorities or as a unique group unto their own. Indigenous peoples exhibit similarities to more familiar examples of sub-state nationalism, not only in terms of the collective identities they express and their assertion of a right to collective self-determination, but also in terms of the types of institutional solutions that can be employed to address their demands. These institutions appear in all four quadrants of the matrix, and in almost every cell, including the top left quadrant where some might expect only examples from the larger and more widely acknowledged nationalist movements.

In tandem with these insights regarding institutional variety, the book sheds new light on the question of transferability of structural solutions across different cases and contexts. As we learned from the case summaries in Chapters 3 and 4, there already exist many examples of structurally similar institutions that have been applied to different types of groups in a variety of socio-political, geographical and demographic circumstances. For example, territorial assemblies controlled by a sub-state national group exist in all of the countries except for Australia and New Zealand, functional boards exist in all of the countries except for the United Kingdom, and quasi-federal institutional relationships have been established in Canada, the United Kingdom and the United States. Granted, as our discussion in Chapters 5 to 7 indicates, some of these structures have functioned poorly or proven unacceptable to sub-state national groups in particular cases, but many others have served their intended purposes across time and acquired a certain legitimacy. To be sure, context and group-specific variations are by no means irrelevant to a process of successful institutional design. Indeed, the ultimate success of a particular institutional solution will depend, in large part, on its adaptability to local needs, values, traditions and circumstances and whether or not the particular sub-state national group and the central government in question accept it. For example, Aboriginal electoral districts are a potentially valuable institutional option in the Canadian context, but they are not likely to succeed if they are not adapted to reflect the internal diversity of First Nations or if they are seen as an alternative, rather than as a complement to, forms of autonomous government at the local level. In summary then, institutional structures can work in different cases and contexts, but this is very different from saying that a rigid and invariant set of rules and structures will work in every case. As our discussion in Chapter 7 shows, the matrix has proven its worth as a means of providing a more focused and analytically rigorous way of ascertaining which institutional options might be suitable for different groups and a variety of circumstances.

This last point leads directly to our second question, which is how well do the institutions in question measure up to the standards established in normative discussions of group voice and national self-determination and the demands of different sub-state national groups? The first conclusion to be drawn here is that one first needs to look more closely at the demands of substate national groups, because these will vary in different cases. Earlier in the book we used the example of Wales, where demands for an independent and autonomous legislative body have been much more muted than in either Scotland or Quebec. The upshot clearly is that different sub-state national groups may be satisfied with very different sorts of institutions, a point which is not always sufficiently elaborated in the normative literature on national self-determination. Another element of this question of institutional suitability, which tends to elude the frame of normative theory, is a close analysis of precisely what it is that particular institutions are structurally capable of doing, and what type and degree of influence the representatives of sub-state national groups gain from these institutions. The matrix has enabled us to gain more precise insights into such institutional issues which have been dealt with, perhaps inevitably so, at a more abstract and general level by political theorists. In many cases, we discovered that there is sometimes more or less to an institution than first meets the eye. These questions were covered in detail in Part III. To cite a few examples, functional management boards are certainly not without their shortcomings in particular cases, but they can be structured in such a manner that they provide a significant degree of influence to sub-state national groups in some of their core areas of interest, such as language, health and natural resources. This potential is particularly likely when they are incorporated into a strategic layering of institutional structures which might also comprise local self-government and larger territorial assemblies, as in the Nisga'a case. On the other side of the coin,

larger territorial assemblies may not yield much influence if their decisions are subject to a high degree of regulation or veto by central governments, if they have no independent capacity to generate their own revenues, or if the sub-state national group currently lacks the capacity and expertise to take advantage of their potential. To summarise, although many sub-state national groups will continue to demand institutions in the controlling and agenda-setting cell of the matrix, this is by no means the only area of the matrix where potentially satisfactory and desirable options can be found. As our analysis in Part III clearly demonstrated, the matrix should not be viewed as a rigidly hierarchical means of categorising and ranking institutional designs, but as a tool for revealing the greater variety of structures that could be employed to meet the challenge of sub-state nationalism.

Future research directions

As with all investigations we finish with a new range of questions, framed as ideas about future research directions. In keeping with other aspects of this book, further areas of research suggest themselves with a focus on the practical, the academic and the relationship between the two. A study such as ours helps lay some of the groundwork for these additional layers of analysis, by suggesting a wider range of institutional possibilities to consider and by providing an analytical framework in terms of which their specific merits and shortcomings can be assessed.

As a start, additional theoretical work is required to dislodge the assumption of the exclusive sovereignty of existing states and the corresponding doctrine of mononational citizenship which continues to dominate international legal and political norms and state practice (Preece 1997; Mayall 1999). States, and particularly multinational states, have always struggled to justify the double standard with which they have regarded the claims of their sub-state nations, but emerging norms of shared and coordinate sovereignty and corresponding concepts of parallel but complementary forms of citizenship, particularly in the context of the European Union, are making this increasingly difficult, not to mention unnecessary (MacCormick 1996; Mayall 1999). Granted, many of the countries covered in this study have embraced the rhetoric of sub-state national self-determination, and have taken significant steps towards its institutionalisation, but frequently these institutional measures require the political subordination of the sub-state national group in question. ATSIC, for example, is often held up by the Australian government as an institution of Aboriginal self-determination, when there is abundant evidence to suggest that, in its current form, it is as much an instrument of government as of Aboriginal autonomy (Fletcher 1996; Sullivan 1996a; Galligan 1997). Granted, states cite legitimate worries regarding stability, national integration and the potential for violent conflict, but the weight of history suggests that stability and national integration are rarely achieved when a sub-state nation fails to achieve the recognition it claims as its due (Seton-Watson 1975:3–25; Kymlicka 1995: chap. 9; Connor 1999; Freeman 1999). There is room, then, for a great deal of valuable theoretically informed institutional research to mine the rich middle ground between the extremes of subordinate participation and absolute sovereignty or independence. These efforts might, in turn, spur the development of more imaginative and functional institutional designs which could conceivably form the basis of future negotiations between states and their sub-state nations in search of mutually acceptable forms of governance. Research of this nature can also help increase our understanding of the complex developing relationship between sub-state national self-determination and processes of globalisation and transnational interdependence. This sort of research is already underway with respect to the states and regions of the European Union, but it could profitably be expanded to cover the vast array of multinational states in other parts of the globe (MacCormick 1996:566; Mayall 1999:502; Requejo 1999: 278).

Turning to questions of empirical study raises a range of research possibili ties. In addition to further work with the cases covered here, the matrix could be used to classify and compare other cases across the rest of the world. Such studies could focus on one sub-state national group or country. Alternatively, additional studies could apply the matrix to a number of related countries, such as those in Scandinavia, or to groups of similar sub-state national groups such as indigenous peoples or European national groups, most of which are united by a language. Another interesting means of organisation would be to consider political structures created for a range of sub-state national groups fitting one of the scenarios used in Chapter 7, for instance where there is no trust or where the group is geographically dispersed. The application of the matrix to other cases has dual benefits. For the actual study of new cases the matrix provides a useful organising structure that enables comparison across a large number of cases. Each additional use of the matrix also assists with its growth as an analytical tool. Many of the cases in this study are relatively new and thus there are a number of questions to consider as these institutions are used. Clearly these questions also apply comparatively to other cases and as always a key element to these inquiries is the extent to which there are patterns across the matrix. Relating back to earlier discussions, three aspects are of particular interest: do they deliver; do they evolve; and do they hurt their host?

Do the structures deliver in terms of what was expected and in terms of policy outcomes? There are great expectations surrounding these structures as means of improving the life condition for members of the sub-state national group and as tools for preserving and promoting their collective national identities and traditional ways of life. One aspect of such a study would include a more detailed account both of the specific needs, values, and demands of different sub-state national groups and,

correspondingly, of how particular institutional designs do or do not deliver on each of these dimensions. Such a task would entail a much smaller number of cases than we have considered here, to permit both a thorough theoretical analysis, but also a much more sustained and detailed comparative empirical analysis of the chosen case studies (Carens 2000). This would also allow for a more thoroughgoing consideration of the impact and significance of different non-structural factors affecting sub-state national self-determination, to which we have alluded throughout the book but have not had the space or time to consider. Another dimension is to consider the expected policy outcomes such as lower unemployment rates. This question is very hard to research but will be of political importance and interest to those involved in these structures. One problem is that we do not know what would have happened if the structure had not been created. Nevertheless studies could consider social statistics before and after the creation of these institutions.

Are the structures rugged and able to deal with problems and has there been a process of planned evolution? In line with the discussion in Chapter 7, institutional design will commonly be a process as different structures are tried, trust is built and experience acquired. So an interesting strand to watch, as these structures mature, is the extent to which they evolve. The contrasting tendency would be that, once created, the structures take on a permanency and status that requires a groundswell of discontent before they are changed. Like the ideas in rolling devolution, it may be that a structure needs to evolve in terms of jurisdiction and practices. However accepting the evolutionary structure does not mean that all problems are met with a change of structure. Rather it is important to remember that any governing body will err sometimes. Often the agreed structure was the result of a compromise or seen as a useful first step. For instance, First Nations' leaders in British Columbia felt that they were better to go ahead with something that was less than perfect rather than to keep waiting for a perfect deal and so they began working with the government (Long 1990:752). Similarly while there are many perceived problems with the Maori seats they have 'affirmed the legitimacy of bi-culturalism' and thus have a symbolic importance which provides a basis for further discussion (McLeay 1991:61). Related to this idea of evolution is the question of continued interest in structural design. In many cases, most notably Nunavut and Scotland, there was a long period when those involved considered in great detail institutional designs so as to ensure that their new structures were suited to their needs and the modern context. For instance each considered means of ensuring gender equity. The new structures in Britain use the proportional representation electoral system and strong committee structures. It will be of interest to consider after each decade of operation the extent to which those involved in these institutions continue to have an interest in the impact of structural design and a desire to use it to meet current ideas about democracy and representation.

Shifting focus, an important consideration for the continuation of these types of structures is the impact that they have on the host nation state. More broadly is the question of stability for the nation and region. Questions of unity and separation are central to the ongoing political divide in Northern Ireland as the defining policies of the Unionists and Nationalists relate to their desire or not to be part of the United Kingdom. Predictably this was an issue covered by many MPs during the debate on the bill to create the Northern Ireland Assembly. Ian Paisley, an outspoken Unionist, lamented that 'The Bill seeks to take apart the structures of the Union; it will put Northern Ireland under increasing influence from the south and will exert increasing pressures to destroy the Union' (House of Commons (UK) 1998: Paisley 843). While a Scottish MP welcomed the change saying 'the United Kingdom will never be the same—and thank heavens for that' (House of Commons (UK) 1998: Godman 873). For governments embarking upon discussion to create a structure to provide a voice for the substate national group, one important consideration is that the structure does not cause a deterioration in the existing situation by destabilising the existing nation state.

Another set of questions focuses more fundamentally on the matrix. Continuing the theme of bridging the gap between theory and practice, consideration of these four areas in relation to cases within the matrix provides a useful means of assessing the fit between theory and practice. We highlight five aspects relating to identity and self-determination, group representation, jurisdiction, democratic practice and the preconditions for this type of political change. Each is based on a particular literature that makes assumptions about the ways in which institutions will work and thus the matrix can be used to assess the extent to which practice meets these theoretical assumptions.

Theoretical discussions of sub-state nationalism provide normative justifications of sub-state national self-determination. The cases within the matrix could be used to assess the extent to which these are contained within the institutionalisation of such claims in particular cases or groups of similar cases. For instance, the extent to which claims based upon recognition of a distinct society with different policy views are met with institutions that allow the sub-state national group to implement differentiated policy. Likewise the correspondence between claims based on stewardship of a particular territory and structures that give the sub-state national group primary decision-making powers over key policies related to the land and its use.

The type of voice was created in relation to the literature that discusses ideas of group representation and suggests how this can be attained. A common theme in that discussion is the difference between having a presence and having control with a presence further differentiated into the symbolic and the proportional. While the theoretical arguments are cogent and fit within wider ideas about democratic decision-making it is not at all clear from the case studies that these distinctions and their implications are shared by the sub-state national groups or the national governments involved. An interesting piece of

research would talk to those involved in structures in the symbolic and proportionate columns of the matrix and ask them about how they perceive their representative role and the extent to which their experience matches the ideas espoused by academics. In the discussion in Chapter 1 we noted that having a symbolic voice implied that the body discussed issues and took into consideration the views of all participants before making a decision. So another approach to this area of interest would be to consider the extent to which symbolic, and proportionate presence is in a decision-making structure that has an emphasis upon debate and decisions made for the good of all.

The difference in jurisdiction across cases within the same cell has been discussed but there are other important related questions. On a theoretical and an empirical level there are interesting questions relating to the impact of different jurisdictional agreements. For instance an agreement that gives few powers or limited jurisdiction may turn those within the sub-state national group who were willing to negotiate into antagonists spurned at the last hurdle. Likewise there are issues about the extent to which sub-state national groups want a common basket of policy areas within their jurisdiction and how this relates to the basis and acceptability of their demands for a political voice. For instance when identity and the desire for a voice are based on preservation of a distinct language and culture then these areas would be expected to be within the group's jurisdiction and likewise with claims based on land use.

There are also a number of wider questions relating to democracy and structural design. For instance which components of democracy as practised by national governments are deemed crucial to the new structures and where is deviation allowed. The literature on measuring democracy provides a useful point of comparison here, as it tends to specify those institutions that need to be in place within a democracy. In Chapter 6 one clear pattern was that even where the sub-state national group uses traditional methods for part of the process the holding of elections is the norm and in the traditional western manner. Having elections conducted in a 'free and fair' manner is a common component of the checklists created to determine the presence of democracy (Flannigan and Fogelman 1971; Bollen 1979; Arat 1991; Beetham 1994a). The importance of elections for a legitimate structure goes further than assuming their existence. So in Canada a concern that the elections be seen as fair led to a call for elections on reserves having assistance from Elections Canada to counter accusations of rigging and intimidation (House of Commons (Canada) 1999: Manning 14). Even when the structure is not ideal the importance of elected representatives is recognised: Callaghan warned that it is a big step to deprive the people of Northern Ireland of an elected parliament even if a third of the people do not accept it (House of Commons (UK) 1972: Callaghan 246). The creation of new structures has also provided an opportunity to consider the electoral system. None of the nations in the study use a proportional representation electoral system to elect their legislature but a number of the sub-state national groups considered using, or are using, proportional representation systems, for instance the assemblies in Scotland, Wales and Northern Ireland.

One question that we have not considered is the necessary preconditions for such structures to work. Like the wider discussion on whether there are the preconditions for the workings of democracy (Catt 1999a: chap. 7) then also there are situations when even the most carefully chosen structure will not operate effectively. The discussion of situations where there is an extreme lack of trust alludes to some of these problems. If the sub-state national group and the government do not recognise the legitimacy of the other or do not trust their motives then a structure with shared jurisdiction will not work. Without a stable political context the most legitimate structure will face problems.

Appendix

Details of institutions and reports mentioned in Part II

Institution or report	*Foundation document and reference*	*Date*	*Initiator*
Aboriginal Electoral Constituencies	Canadian Royal Commission on Electoral Reform and Party Financing. (Canada 1991)	1991	Government of Canada
Alsek Renewable Resource Councils	Umbrella Final Agreement between The Government of Canada, The Council For Yukon Indians, and The Government of the Yukon(Canada 1993)	1993	Champagne and Aishihik First Nations (CAFN)
Assembly of Wales	Government of Wales Act (United Kingdom 1998b)	1998	Labour government
ATSIC (Aboriginal and Torres Strait Islander Commission)	Aboriginal and Torres Strait Islander Act (Australia 1989; Sullivan 1996)	1989	Labour government
Australian Aboriginal Land Council	The Aboriginal Land Rights and Northern Territory Act (Australia 1976)	1976	Government of Australia
Champagne and Aishihik First Nations (CAFN)	Umbrella Final Agreement Champagne and Aishihik First Nations (CAFN) Self-Government	1993 2000	Champagne and Aishihik First Nations (CAFN)
General Assembly and First Nations Council	Agreement (Canada 1993a; Canada 1993e)		
Cobourg Peninsula Sanctuary Board	Cobourg Peninsula Aboriginal Lands and Sanctuary Act (NT) (Foster 1997)	1981	Northern Land Council
Cree Band Corporations	The James Bay and Northern Quebec Agreement Cree-Naskapi (of Quebec) Act (Quebec 1976; Canada 1984)	1975 1984	Grand Council of the Crees
Cree Regional Authority	The James Bay and Northern Quebec Agreement An Act Respecting the Cree Regional Authority (Quebec 1976; Quebec 1978a)	1975 1978	Grand Council of the Crees

cont

First Nations House	Report of the Canadian Royal Commission on Aboriginal Peoples. (Canada 1995; James 2000)	1995	Government of Canada
Indian Act Band Councils	Indian Act (Canada 1985)	1876	Government of Canada
Indian Gaming Commission	Indian Gaming Regulatory Act (United States 1988)	1988	United States Government
James Bay Hunting, Fishing and Trapping Coordinating Committee	The James Bay and Northern Quebec Agreement An Act Respecting	1975 1978	Grand Council of the Crees

	Hunting and Fishing Rights in the James Bay and New Québec Territories (Quebec 1976; Quebec 1978b)		
Nisga'a Joint Fisheries Management Committee	Nisga'a Final Agreement (Canada 1998)	1998	Nisga'a Nation
Lower Canada Legislative Assembly	Constitutional Act (Larocque 1973)	1791	British Imperial Government
Maori Affairs Select Committee	Standing Orders of the New Zealand House of Representatives	1871	Government
Maori Council	Maori Social and Economic Advancement Act Maori Welfare Act (Metge 1976)	1945 1962	Government
Maori seats	Maori Representation Act (New Zealand 1867; New Zealand 1986) Electoral Act (New Zealand 1993)	1867 1993	Maori Chiefs
Minority-majority districts (USA)	Voting Rights Act (and subsequent amendments) (Phillips 1995; Williams 1998)	1965 1975 1982	United States Government
MP allocation in Scotland and Wales	Parliamentary Constituency Act (McLean and Butler 1996)	1944	Government
National Council on Indian Opportunity (NCIO	Executive order (Fleras and Elliot 1992; Ryser 1994)	1968 – 1974	Lyndon Johnson
New Zealand Conservation Authority	Conservation Act (New Zealand 1987)	1987	New Zealand Government
Nisga'a Lisims and Village Government	Nisga'a Final Agreement Nisga'a Final Agreement Act (Canada 1998; Canada 2000)	1998 1999	Nisga'a Nation
Northern Ireland Assembly	Good Friday Agreement (Belfast Agreement) (House of Commons (UK) 1998; Northern Ireland 1998a)]	1998	Constitutional Conference (elected)
Northern Ireland Standing Committee	Standing Orders of House of Commons	1975	Government

cont

Northern Territory Community Government	Northern Territory Local Government Act (Australia 1979)	1979	Northern Territory government (Australia)
Nunavut Legislature	The Nunavut Agreement The Nunavut Political Accord Nunavut Act (Canada 1992; Canada 1993b; Canada 1993c; Canada 1998a; Canada 1999)	1993 1992 1993	Tungavik Federation of Nunavut
Nunavut Wildlife Management Board	The Nunavut Agreement Nunavut Land Claims Agreement Act (Canada 1993c; Canada 1993d)	1993 1993	Inuit of Nunavut
Parliament of United Canada	Act of Union (Larocque 1973; Thomson 1973)	1840	British Imperial Government
Quebec Legislative Council	Quebec Act (Larocque 1973)	1774	British Imperial Government
Quebec National Assembly	British North America Act (Canada 1986)	1867	Confederating Provinces of Canada
'Rolling devolution' Northern Ireland Assembly	Northern Ireland Act (House of Commons (UK) 1982; United	1982– 1986	Conservative Government, Jim Prior

	Kingdom 1982; O'Leary, Elliot et al. 1988)		
Scottish and Welsh Parliaments	Scotland Act and Wales Act (House of Commons (UK) 1977; House of Commons (UK) 1977a; United Kingdom 1978; United Kingdom 1978a)	1978	Labour Government
Scottish Grand committee	Standing Order of House of Commons (House of Commons (UK) 1907)	1907	Government
Scottish Parliament	Scotland Act (Scottish Constitutional Convention 1995; United Kingdom 1998)	1998	Scottish Constitutional Convention
Scottish Secretary	Executive Order	1885	Government
Scottish Standing Committee	Standing Order of House of Commons	1957	Government
Sechelt Advisory Council	Sechelt Indian Government District Enabling Act (British Columbia 1987)	1987	Sechelt Nation
Sechelt District Council	Sechelt Indian Band Self-Government Act Sechelt Indian Government District Enabling Act (Canada 1986a; British Columbia 1987)	1986 1987	Sechelt Nation
Sechelt Indian Band Council	Sechelt Indian Band Self-Government Act (Canada 1986a)	1986	Sechelt Nation
Select Committee on Scottish Affairs, Select Committee on Welsh Affairs	Standing Order of House of Commons (House of Commons (UK) 1979; Johnson 1988)	1979	Select Committee on Procedure

cont

Senate of Canada	British North America Act (Canada 1986)	1867	Confederating Provinces
Stormont	Government of Ireland Act (House of Commons (UK) 1920; United Kingdom 1920; Wallace 1971)	1920– 1972	Liberal Government
Te Runanga o Ngai Tahu	Te Runanga o Ngai Tahu Act (New Zealand 1996)	1996	Ngai Tahu
Torres Strait Regional Authority (TSRA)	ATSIC Act (Australia 1989)	1994	ATSIC Review
US Tribal governments; Tribal Self-Governance Program	Indian Self-Determination and Education Assistance Act Tribal Self-Governance Demonstration Project Tribal Self-Governance Act (Fleras and Elliot 1992; Ryser 1994; Ryser 1995; United States 1998)	1975 1988 1994	United States Tribal Nations
Welsh Grand Committee	Standing Order of House of Commons	1960	Government
Welsh Standing Committee	Standing Order of House of Commons (House of Commons (UK) 1907)	1907	Government
Yukon First Nations Councils	Umbrella Final Agreement Yukon First Nations Self Government Act (Canada 1993; Canada 1994)	1993 1994	Council for Yukon Indians

Yukon Fish and Wildlife Management Board	Umbrella Final Agreement between The Government of Canada, The Council For Yukon Indians, and The Government of the Yukon Yukon First Nations Land Claims Settlement Act (Canada 1993; Canada 1994b)	1993 1994	Council for Yukon Indians

Notes

Part II

1 Unless otherwise indicated in the text, statistics are drawn from the following sources: New Zealand 1996a; Australia 1997, 2000; Grand Council of the Crees (Eeyou Astchee) 2000; New Zealand 2000; Quebec 2000; United Kingdom 2000; United States 2000; CAFN 2000a; Canada 2000a; United States 2000a; Canada 2000b, 2000c.

4
Sub-legislative bodies and representatives

1 Indian is used here because it is the term employed in the historical and contemporary Indian Acts and related documents.
2 On 20 May 1999, Canada's Supreme Court ruled that this 'ordinarily resident' requirement violated the equality provisions in the Charter of Rights and Freedoms, but delayed the implementation of its ruling for a period of 18 months to allow the government to consult with on and off-reserve band members.

Bibliography

Abele, F. and M.O.Dickerson (1985). 'The 1982 Plebiscite on Division of the Northwest Territories: Regional Government and Federal Policy' . *Canadian Public Policy* 11:1–15.

Alfred, T. (1999). *Peace, Power, Righteousness: An Indigenous Manifesto.* Toronto, Oxford University Press.

Allen, G. (1988). 'Forms of Self-Government: Sechelt Indian Self-Government'. First Nations' Government Structures and Powers Conference, The University of British Columbia, Vancouver, British Columbia, unpublished manuscript on file with the authors.

ALSEK (2000). Personal communication.

Altman, J. and L.Allen (1992). 'Living Off the Land in National Parks: Issues for Aboriginal Australians'. *Aboriginal Involvement in Parks and Protected Areas.* J.Birckhead, T.D. Lacy and L.Smith. Canberra, Aboriginal Studies Press.

Altman, J.C., W.S.Arthur and W.Sanders (1996). *Towards Greater Autonomy for Torres Strait: Political and Economic Dimensions.* Canberra, Centre for Aboriginal Economic Policy Research.

Anaquod, D.C. (1993). *Urban Institutional Case Study—Regina.* Ottawa, RCAP.

Anderson, B. (1991). *Imagined Communities: Reflections on the Origins and Spread of Nationalism.* London, Verso.

Arat, Z.F. (1991). *Democracy and Human Rights in Developing Countries.* London, Lynn Reimmer Publishers.

Archibugi, D., D.Held and M.Kohler (eds) (1998). *Re-imagining Political Community: Studies in Cosmopolitan Democracy.* Stanford, Stanford University Press.

Arthur, P. (1980). *Government and Politics of Northern Ireland.* London, Longman.

Arthur, W.S. (1997). *Towards a Comprehensive Regional Agreement: Torres Strait.* Canberra, Centre for Aboriginal Economic Policy Research.

Aughey, A. (1989). *Under Siege.* London, Hurst and Co.

Australia (1976). The Aboriginal Land Rights and Northern Territory Act. Australia, http://www.austlii.edu.au.

—— (1979). Northern Territory Local Government Act, http://www.austlii.edu.au.

—— (1989). Aboriginal and Torres Strait Islander Act. Canberra, AGSO.

—— (1997). *Australia 1996.* Canberra, Australian Bureau of Statistics.

—— (1997a). *Torres Strait Islands: A New Deal. A Report on Greater Autonomy for Torres Strait Islanders.* Canberra, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.

—— (2000). *Australia Now: A Statistical Profile,* Australian Bureau of Statistics. 2000.

Australian Senate (1989). 'Aboriginal and Torres Strait Islander Commission: The Way Ahead'. *Hansard Debates* 11 April.

—— (1998). 'Aboriginal and Torres Strait Islander Commission Bill, Second Reading'. *Hansard Debates* 18 August

Bachrach, P. and M.S.Baratz (1969). 'Decisions and Non-decisions: An Analytical Framework'. *Political Power A Reader in Theory and Research.* R.Bell, D.V.Edwards and R.H.Wagner. New York, The Free Press.

Balsom, D. and M.Burch (1980). *A Political and Electoral Handbook for Wales.* Cardiff, Gower.

Barker, R. (1990). *Political Legitimacy and the State.* Oxford, Clarendon Press.

—— (1994). 'Legitimacy'. *Political Studies* 42:101–2.

Barnes, A, (1994). 'Recent Developments in the Collection of Indigenous Statistics'. *The National Aboriginal and Torres Strait Islander Survey: 1994 Findings and Future Prospects.* J.A. and J.Taylor: 13–27.

Barritt, D. and C.Carter (1972). *The Northern Ireland Problem.* London, Oxford University Press.

Barry, B. (1998). 'The Limits of Cultural Politics'. *Review of International Studies* 24:307–19.

Barsh, R.L. and J.Y.Henderson (1980). *The Road: Indian Tribes and Political Liberty.* Berkeley, University of California Press.

Beetham, D. (1991). *The Legitimation of Power.* New Jersey, Humanities Press International.

—— (1994). *Defining and Measuring Democracy.* London, Sage.

—— (1994a). 'Key Principles and Indices for a Democratic Audit'. *Defining and Measuring Democracy.* D.Beetham. London, Sage: 25–43.

Bellamy, R. and D.Castiglione (eds) (1996). *Constitutionalism in Transformation: European and Theoretical Perspectives.* Oxford, Basil Blackwell.

Benhabib, S. (1996). *Democracy and Difference.* Princeton, Princeton University Press.

Bennett, S. (1999). *White Politics and Black Australians.* St Leonards, Allen & Unwin.

Bickford, S. (1999). 'Reconfiguring Pluralism'. *American Journal of Political Science* 43: 86–108.

Blowes, R. and B.Chambers (1992). 'From *Terra Nullius* to Every Person's Land: A Perspective From Legal History'. *Aboriginal Involvement in Parks and Protected Areas.* J. Birckhead, T.D.Lacy and L.Smith. Canberra, Aboriginal Studies Press.

Bogdanor, V. (1986). 'Federalism and Devolution: Some Juridical and Political Problems'. *Regionalism in European Politics.* R.Morgan. London, Policy Studies Institute.

—— (1999). 'Devolution: Decentralisation or Disintegration?' *Political Quarterly* 70: 185–94.

Boldt, M. (1993). *Surviving as Indians. The Challenge of Self-Government.* Toronto, University of Toronto Press.

Boldt, M. and J.A.Long (eds) (1985). *The Quest for fustice: Aboriginal Peoples and Aboriginal Rights.* Toronto, University of Toronto Press.

—— (1985a). 'Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians'. *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights.* M.Boldt and J.A.Long: 333–346.

Bollen, K. (1979). 'Political Democracy and the Timing of Development'. *American Sociological Review* 44:572–87.

Bonenfant, J.-C. (1973). 'Quebec and Confederation: Then and Now'. *Quebec Society and Politics: Views From the Inside.* D.C.Thomson. Toronto, McClelland and Stewart: 62–7.

Booth, J. (1997). 'Foreigners: Insiders, Outsiders and the Ethics of Membership'. *Review of Politics* 59.

Borrows, J. (2000). '"Landed" Citizenship: Narratives of Aboriginal Political Participation'. *Citizenship in Diverse Societies.*W.Kymlicka and W.Norman. Oxford, Oxford University Press.

Boyle, K. and T.Hadden (1985). *Ireland: A Positive Proposal.* London, Penguin.

Brennan, F. (1993). 'Self-determination'. *University of New South Wales Law Journal* 16: 245–64.

British Columbia (1987). Sechelt Indian Government District Enabling Act. Victoria, Queen's Printer for British Columbia.

—— (1999). Nisga'a Final Agreement Act. http://www.legis.gov.bc.ca/procs/proc1999/ pr1999_n.htm, British Columbia Legislative Assembly Website.

Brock, K. (1995). 'The End of Executive Federalism?' *New Trends in Canadian Federalism.* F Rocher and M.Smith. Peterborough, Broadview Press.

Brown, A. (1999). 'The First Elections to the Scottish Parliament, May 1999'. *Representation* 36:198–211.

Brown, A., D.McCrone and L.Paterson (1998). *Politics and Society in Scotland.* London, Macmillan.

Brubaker, W.R., (ed.) (1989). *Immigration and the Politics of Citizenship in Europe and North America.* Lanham, University Press of America.

Brunet, M. (1973). 'The Historical Background to Quebec's Challenge to Canadian Unity'. *Quebec Society and Politics: Views From the Inside.* D.C.Thomson. Toronto, McClelland and Stewart: 39–51.

Burnheim, J. (1985). *Is Democracy Possible?* Cambridge, Polity Press.

CAFN (2000). 'Constitution of The Champagne and Aishihik First Nations', Document on file with the authors .

—— (2000a). 'Champagne-Aishihik First Nations Homepage'.

Cairns, A. (2000). *Citizens Plus: Aboriginal Peoples and the Canadian State.* Vancouver, University of British Columbia Press.

Cameron, K. and G.White (1995). *Northern Governments in Transition. Political and Constitutional Development in the Yukon, Nunavut and the Western Northwest Territories.* Montreal, Institute for Research on Public Policy.

Canada (1984). The Cree-Naskapi (of Quebec) Act Ottawa, Statutes of Canada. 32–33 Elizabeth II: Chapter 18.

—— (1985). Indian Act. Ottawa, Revised Statutes of Canada: c. I–5.

—— (1986). A Consolidation of The Constitution Acts 1867 to 1982. Ottawa, Minister of Supply and Services.

—— (1986a). An Act Relating to Self-Government for the Sechelt Indian Band. Ottawa, Statutes of Canada. 33–34–35 Elizabeth II: Chapter 27.

—— (1991). Royal Commission on Electoral Reform and Party Financing *Reforming Electoral Democracy.* Ottawa, Minister of Supply and Services.

—— (1991a). *The Path to Electoral Equality.* Ottawa, Committee for Aboriginal Electoral Reform.

—— (1992). 'Nunavut Political Accord'. *Northern Perspectives,* Canadian Arctic Resources Committee. 21:7–8.

—— (1993). *Umbrella Final Agreement between The Government of Canada, The Council For Yukon Indians, and The Government of the Yukon,* Ottawa, Minister of Supply and Services.

—— (1993a). *The Champagne and Aishihik First Nations Self-Government Agreement.* Ottawa, Minister of Supply and Services.

—— (1993b). Nunavut Act. Ottawa, Statutes of Canada. 40–41–42 Elizabeth II: Chapter 28.

—— (1993c). Nunavut Land Claims Agreement Act. Ottawa, Statutes of Canada. 40–41–42 Elizabeth II: Chapter 29.

—— (1993d). *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada.* Ottawa, Minister of Indian Affairs and Northern Development.

—— (1993e). *Champagne and Aishihik Self-Government Implementation Plan.* Ottawa, Minister of Supply and Services.

—— (1994). Yukon First Nations Self-Government Act. Ottawa, Statutes of Canada. 42–43 Elizabeth II: Chapter 35.

—— (1994b). Yukon First Nations Land Claims Settlement Act. Ottawa, Statutes of Canada . 42–43 Elizabeth II: Chapter 34.

—— (1995). *Royal Commission on Aboriginal Peoples: Final Report.* Ottawa, Minster of Supply and Services. II.

—— (1995a). *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government.* Ottawa, Public Works and Government Services.

—— (1998). *Nisga'a Final Agreement.*

—— (1998a). An Act to Amend the Nunavut Act and the Constitutiona Act, 1867. Ottawa, Statutes of Canada. 46–47 Elizabeth II: Chapter 15.

—— (1999). An Act to Amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence. Ottawa, Statutes of Canada. 46–47–48 Elizabeth II: Chapter 3.

—— (2000). Nisga'a Final Agreement Act. http://www.parl.gc.ca/36/2/parlbus/cham bus/house/bills/government/C-9/C-9_4/C-9_cover-E.html, Canadian Government Bills Website.

—— (2000a). Government of Canada Website, http://www.gc.ca.

—— (2000b). Indian and Northern Affairs Canada, www.inac.gc.ca.

—— (2000c). *Statistics Canada 2000,* www.statscan.ca.

Carens, J. (1995). 'Aliens and Citizens: The Case for Open Borders'. *The Rights of Minority Cultures.* W.Kymlicka. Oxford, Oxford University Press.

—— (1995a). *Citizenship and Aboriginal Self-Government.* Ottawa, Canadian Royal Commission on Aboriginal Peoples.

—— (2000). *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness.* Oxford, Oxford University Press.

Cartwright, D. (1969). 'Influence, Leadership, Control'. *Political Power: A Reader in Theory and Research.* R.Bell, D.V.Edwards and R.H.Wagner. New York, The Free Press.

Cassidy, F. (1990). 'Aboriginal Governments in Canada: An Emerging Field of Study'. *Canadian Journal of Political Science* 23:73–99.

Cassidy, F. and R.L.Bish (1989). *Indian Government.* Halifax, Institute for Research on Public Policy.

Catt, H. (1997). 'Women, Maori and Minorities: Microrepresentation and MMP'. *From Campaign to Coalition: The 1996 MMP Election.* J.Boston, S.Levine, E.McLeay and N. Roberts. Wellington, Dunmore Press.

—— (1999). 'Are Demands for a "Politics of Presence" Detected by the "Democratic Audit"?' *The Journal of Commonwealth and Comparative Politics* 37:56–70.

—— (1999a). *Democracy in Practice.* London, Routledge.

Chevrier, M. (1997). *Laws and Languages in Quebec: The Principles and Means of Quebec's Language Policy.* Quebec, Ministère des Relations Internationales.

Clatworthy, S., J.Hull and N.Loughren (1994). 'Urban Aboriginal Organisations'. *Aboriginal Self-Government in Urban Areas.* E.Peters, Institute of Intergovernmental Relations.

Clifford, J. (1988). *The Predicament of Culture.* Cambridge, Harvard University Press.

Connolly, M. (1990). *Politics and Policy Making in Northern Ireland.* London, Phillip Allen.

Connor, W. (1999). 'National Self-Determination and Tomorrow's Political Map'. *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives.* A.C.Cairns, J.C. Courtney, P.MacKinnon, H.J.Michelmann and D.E.Smith. Montreal and Kingston, McGill-Queen's University Press: 163–76.

Consultative Steering Group (1998). *Shaping Scotland's Parliament.* Edinburgh, The Scottish Office .

Coombs, H.C. (1984). *The Role of the National Aboriginal Conference.* Canberra, AGPS.

Coombs, H.C. and C.Robinson (1996). 'Remembering the Roots'. *Shooting the Banker.* P. Sullivan. Darwin, NARU.

Courchene, T.J. and L.M.Powell (1992). *A First Nations Province.* Kingston, Institute of Intergovernmental Relations.

Craig, D. (1992). 'Environmental Law and Aboriginal Rights: Legal Framework For Aboriginal Joint Management of Australian National Parks'. *Aboriginal Involvement in Parks and Protected Areas.* J.Birckhead, T.D.Lacy and L.Smith. Canberra, Aboriginal Studies Press.

Craig, D. and S.Freeland (2001). *Indigenous Governance by the Inuit of Greenland and the Sámi of Scandinavia*, Australasian Legal Information Institute, http://www.austlii.edu.au/ Reconciliation and Social Justice Library. 2001.

Curtice, J. (1999). 'Is Scotland a Nation and Wales not?' *Scotland and Wales. Nations Again?* B.Taylor and K.Thomson. Cardiff, University of Wales Press: 119–47.

Dacks, G. (1985). 'Native Claims in Northern Canada'. *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights.* M.Boldt and J.A.Long. Toronto, University of Toronto Press: 251–64.

Dahl, R. (1956). *A Preface to Democratic Theory.* Chicago, Chicago University Press.

—— (1989). *Democracy and its Critics.* New Haven, Yale University Press.

Dahl, R.A. (1969). 'The Concept of Power'. *Political Power: A Reader in Theory and Research.* R.Bell, D.V.Edwards and R.H.Wagner. New York, The Free Press.

Dahlerup, D. (1988). 'From a Small to a Large Minority: Women in Scandinavian Politics'. *Scandinavian Political Studies* 11:275–98.

Dawson, J. (1999). 'A Constitutional Property Settlement Between Ngai Tahu and the New Zealand Crown'. *Property and the Constitution.* J. Maclean. Portland, Hart: 207–23.

Diamond, L. and M.F.Plattner (eds) (1994). *Nationalism, Ethnic Conflict, and Democracy.* Baltimore and London, Johns Hopkins Press.

Dickason, O. (1997). *Canada's First Nations: A History of Founding Peoples from Earliest Times.* Toronto, Oxford University Press.

Dickerson, M.O. (1992). *Whose North? Political Change, Political Development, and Self-Government in the Northwest Territories.* Vancouver, UBC Press.

Dodson, M. (1996). 'Equity and Social Justice: A Dysfunctional Relationship Between Government and Indigenous Peoples'. *Equity and Development Across Nations.* C.Fletcher. St Leonards, Allen and Unwin.

Dowding, K. (1994). 'The Compatibility of Behaviouralism, Rational Choice and "New Institutionalism"'. *Journal of Theoretical Politics* 6 (1): 105–17.

Drewry, G. (ed.) (1985). *The New Select Committees.* London, Clarendon Press.

Duckwater Shoshone Tribe and United States (1992). *Compact of Self-Governance Between the Duckwater Shoshone Tribe and the United States of America.* Center for World Indigenous Studies. 2000.

Durie, M. (1998). *Te mana, te kawanatanga: The Politics of Maori Self-determination.* Auckland, Oxford University Press.

Duthu, N.B. (2000). 'Forestry Practices: To Serve and Protect Paper Presented to the Conference, Forest Environmental Law. Management, Pollution, Prevention and Control'. University of Petrozavodsk, Republic of Karelia.

—— (2000a). Email interview.

—— (2000b). Email interview.

Dyck, C. (ed.) (1983). *Indigenous People and the Nation State.* St Johns, Newfoundland, Institute of Social and Economic Research.

Eberts, T. (1994). 'Pathways to Success'. *Aboriginal Self-Government in Canada.* J.Hylton, Pukich Publishing.

Eckett, J.b. (1983). ‘Knowing How to Talk to White People’. *Indigenous People and the National State.* N.Dyck. St Johns, Newfoundland, Institute of Social and Economic Research.

Elazar, D.J. (1984). *American Federalism: A View from the States.* New York, Harper & Row.

Elections NWT (1999). ‘Nunavut Elections’. http://www.electionsnwt.com/nunindex.html.

Electoral Commission (1997). *The New Zealand Electoral Compendium.* Wellington, Electoral Commission.

Elmore, R. (1993). ‘Organizational Models of Social Program Implementation’. *The Policy Process: a reader.* M.Hill. London, Harvester Wheatsheaf.

Feit, H.A. (1989). ‘James Bay Cree Self-Governance and Land Management’. *We Are Here: Politics of Aboriginal Land Tenure* . E.N.Wilmsen. Berkeley, University of California Press.

Fierlbeck, K. (1996). ‘The Ambivalent Potential of Cultural Identity’. *Canadian Journal of Political Science* 29:3–22.

Flannigan, W. and E.Fogelman (1971). ‘Patterns of Political Development and Democratization’. *Macro-quantitative Analysis.* J.Gillespie and B.Nesvold. Beverly Hills, Sage.

Fleras, A. (1985). ‘From Social Control Towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand’. *Canadian Journal of Political Science* 18:551–76.

Fleras, A. and J.L.Elliot (1992). *The Nations Within: Aboriginal-State Relations in Canada, the United States, and New Zealand.* Toronto, Oxford University Press.

Fletcher, C. (1996). *Trapped in Civil Society: Aborigines and Federalism in Australia.* Darwin, North Australia Research Unit

Fletcher, M. (1998). *Dublin Times,* 29 June.

Foster, D. (1997). *Gurig National Park: The First Ten Years of Joint Management.* Canberra, Australian Institute of Aboriginal and Torres Strait Islander Studies.

Freeman, M. (1999). ‘The Right to Self-Determination in International Politics: Six Theories in Search of a Policy’ . *Review of International Studies* 25:355–70.

Fremont, J. (1993). ‘The Charlottetown Accord and the End of the Exclusiveness of Provincial Jurisdictions’. *The Charlottetown Accord, the Referendum, and the Future of Canada.* K.McRoberts and P.J.Monahan. Toronto, University of Toronto Press.

Frenkel, M. (1986). ‘The Distribution of Legal Powers in Pluricentral Systems’. *Regionalism in European Politics.* R.Morgan. London, Policy Studies Institute.

Gagnon, A. and J.Tully (eds) (2000). *Struggles for Recognition in Multinational Societies: the European Union, Spain, Belgium, United Kingdom and Canada in Comparative Perspective.* Cambridge, Cambridge University Press.

Galligan, J.C.a.B. (1997). *Citizens Without Rights: Aborigines and Australian Citizenship.* Cambridge, Cambridge University Press.

Galston, W. (1991). *Liberal Purposes: Goods, Virtues, and Duties in the Liberal State.* Cambridge, Cambridge University Press.

Geertz, C. (1973). *The Interpretation of Cultures.* New York, Basic Books.

Gellner, E. (1983). *Motions and Nationalism.* Ithaca, Cornell University Press.

Gerth, H. and C.W.Mills (eds) (1958). *From Max Weber.* New York, Oxford University Press.

Goodin, R. (ed.) (1996). *The Theory of Institutional Design.* Cambridge, Cambridge University Press.

Gordon, I., J.Lewis and K.Young (1993). ‘Perspectives on Policy Analysis’. *The Policy Process: A Reader.* M.Hill. London, Harvester Wheatsheaf: 5–9.

Graham, C. and J.McGarry (1990). ‘Co-determination’. *The Future of Northern Ireland.* J. McGarry and B.O’Leary. London, Clarendon Press.

Grand Council of the Crees (Eeyou Astchee) (1998). *Never Without Consent: James Bay Crees’ Stand Against Forcible Inclusion into an Independent Quebec.* Oakville, ECW Press.

—— (2000). Official website, http://www.gcc.ca.

—— (2000a). Cree Regional Authority. 2000, www.gca.ca

Grand Traverse Band of Ottawa and Chippewa Indians (1988). *Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.* 2000.

Grand Traverse Band of Ottawa and Chippewa Indians and United States (1992). *Compact of Self-Governance Between the Grand Traverse Band of Ottawa and Chippewa Indians and the United States of America ,* Center for World Indigenous Studies. 2000.

Gray, K. (1994). ‘The Nunavut Land Claims Agreement and the Future of the Eastern Arctic’. *University of Toronto Faculty of Law Review* 52.

Greenfeld, L. (1992). *Nationalism: Five Roads to Modernity.* Cambridge, Harvard University Press.

Griffith, J.A.G. (1981). ‘Standing Committees in the House of Commons’. *The Commons Today.* S.Walkland and M.Ryle. London, Fontana.

Griffiths, D. (1996). *Thatcherism and Territorial Politics.* Aldershot, Avebury.

Grofman, B. and C.Davidson (eds) (1992). *Controversies in Minority Voting.* Washington DC, Brookings Institute.

Guinier, L. (1989). ‘Keeping the Faith: Black Voters in the Post-Reagan Era’. *Harvard Civil Rights-Civil Liberties Law Review* 24.

Gutmann, A, and D.Thompson (1996). *Democracy and Disagreement.* Harvard, Harvard University Press.

Habermas, J. (1982). ‘Citizenship and National Identity: Some Reflections on the Future of Europe’. *Praxis International* 12:1–19.

Hamley, W. (1995). ‘The Nunavut Settlement: A Critical Appraisal’. *International Journal of Canadian Studies* 12:221–34.

Harty, S. (1999). ‘The Nation as a Communal Good: A Nationalist Response to the Liberal Conception of Community’. *Canadian Journal of Political Science* 32:665–89.

Hawkes, D.C. and B.W.Morse (1991). ‘Alternative Methods for Aboriginal Participation in Processes of Constitutional Reform’. *Options For A New Canada.* R.L.Watts and D. M.Brown. Toronto, University of Toronto Press.

Held, D. (1995). *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance.* Cambridge, Polity Press.
—— (1999). 'The Transformation of Political Community: Rethinking Democracy in the Context of Globalisation'. *Democracy's Edges.* I.Shapiro and C.Hacker-Gordon. Cambridge, Cambridge University Press: 84–111.
Henderson, J.s.Y. (1994). 'Empowering Treaty Federalism'. *Saskatchewan Law Review* 58: 241–329.
Hennessey, T. (1997). *A History of Northern Ireland.* Basingstoke, Macmillan.
Herperger, D. (1991). *Distribution of Powers and Functions in Federal Systems.* Ottawa, Minister of Supply and Services.
Herzog, D. (1989). *Happy Slaves.* Chicago, Chicago University Press.
Hill, M. (1993). *The Polity Process: A Reader.* London, Harvester Wheatsheaf.
Hjern, B. and D.Porter (1993). 'Implementation Structures'. *The Policy Process: A Reader.* M.Hill. London, Harvester Wheatsheaf.
Hobsbawm, E.J. (1994). *Nations and Nationalism since 1780: Programme, Myth, Reality.* Cambridge, Canto.
Hoekema, A. (1994). 'Do Joint Decision-Making Boards Enhance Chances for a New Partnership between the State and Indigenous Peoples?' *Indigneous Peoples' Experiences With Self-Government.* W.J.Assies and A.J.Hoekema. Copenhagen, IWGIA and University of Amsterdam.
Hogg, P. and M.E.Turpel (1995). 'Implementing Aboriginal Self-Government. Constitutional and Jurisdictional Issues'. *The Canadian Bar Review* 74:187–224.
Horowitz, D. (1985). *Ethnic Groups in Conflict.* Berkeley, University of California Press.
House of Commons (Canada) (1993). 'Nunavut Act, Third Reading'. *Hansard Debates* 4 June.
—— (1998). 'Nunavut Act, Second Reading'. *Hansard Debates* 28 May.
—— (1999). 'Nisga'a Final Agreement Act'. *Hansard Debates* 26 October.
House of Commons (UK) (1907). 'Business of the House (Procedure)'. *Hansard Debates* 171.
—— (1920). 'Government of Ireland Bill, Second Reading'. *Hansard Debates* 127.
—— (1972). 'Northern Ireland (Temporary Provisions)'. *Hansard Debates* 834.
—— (1977). 'Scotland Bill, Second Reading'. *Hansard Debates* 939.
—— (1977a). 'Wales Bill, Second Reading'. *Hansard Debates* 939.
—— (1978). 'Scotland Bill'. *Hansard Debates* 944.
—— (1979). 'Select Committees'. *Hansard Debates* 969.
—— (1979). 'Vote of No Confidence in the Government'. *Hansard Debates* 965.
—— (1982). 'Northern Ireland (Devolution)'. *Hansard Debates* 22.
—— (1988). 'Committee of Selection (Special Report)'. *Hansard Debates* 125.
—— (1994). 'Local Government (Wales) Bill'. *Hansard Debates* 239.
—— (1998). 'Northern Ireland Bill, Second Reading'. *Hansard Debates* www 980720.
House of Representatives (Australia) (1989a). 'Aboriginal and Torres Strait Islander Commission Bill, Second Reading'. *Hansard Debates* 4 May.
—— (1989b). 'Aboriginal And Torres Strait Islander Commission Bill'. *Hansard Debates* 23 May.
Hrbek, R. (1986). 'The Political Dynamics of Regionalism: FRG, Austria, Switzerland'. *Regionalism in European Politics.* R.Morgan. London, Policy Studies Institute.
Hylton, J. (1994). 'Future Prospects for Aboriginal Self-Government in Canada'. *Aboriginal Self-Government in Canada.* J.Hylton, Pukich Publishing.
Ignatieff, M. (1994). *Blood and Belonging: Journeys Into the New Nationalism.* New York, Farrar and Strauss.
IPU (1995). *Women in Parliament 1945–1995: A World Statistical Survey.* Geneva, InterParliamentary Union.
Ittinuar, P. (1985). 'The Inuit Perspective on Aboriginal Rights'. *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights.* M.Boldt and J.A.Long. Toronto, University of Toronto Press: 47–53.
Ivanitz, M. (2000). 'The Demise of ATSIC? Accountability and the Coalition Government'. *Australian Journal of Public Administration* 59: 3–12.
James, C. (ed.) (2000). *Building the Constitution.* Wellington, Institute of Policy Studies.
Jamestown S'Klallam Tribe of Indians (1989). *Constitution of the Jamestown S'Klallam Tribe of Indians.* 2000.
Jenkins, B. (1993). 'Policy Analysis'. *The Polity Process: A Reader.* M.Hill. London, Harvester Wheatsheaf.
John, P. (1998). *Analysing Public Policy.* London, Pinter.
Johnson, N. (1988). 'Departmental Select Committees'. *The Commons Under Scrutiny.* M. Ryle and P.Richards. London, Routledge.
Jones, B. (1998). 'The Committees'. *The National Assembly Agenda.* J.Osmond. Cardiff, Institute of Welsh Affairs.
Jones, J. and R.Wilford (1986). *Parliament and Territoriality.* Cardiff, University of Wales Press.
Jones, J.B. (1999). 'The First Welsh National Assembly Election'. *Government and Opposition* 34.
Jones, P. (1999a). 'Group Rights and Group Oppression'. *The Journal of Political Philosophy* 7:353–77.
Keating, M. (1988). 'Does Regional Government Work? The Experience of Italy, France and Spain'. *Governance: An International Journal of Policy Administration* 1:184–204.
—— (1996). *Nations Against the State: The New Politics of Nationalism in Quebec, Catalonia, and Scotland.* New York, St Martins Press.
—— (1998). *The New Regionalism in Western Europe: Territorial Restructuring and Political Change.* Cheltenham, Edward Elgar.
—— (1999). 'Britain: The United Kingdom?' *The Politics of Multinational States.* D. MacIver. Toronto, MacMillan.
Knight, R. and N.Larkin (1999). 'New Zealand: All Leaders Equal So All Miss Out'. *New Zealand Herald.* Auckland.
Krasner, S. (1984). 'Approaches to the State'. *Comparative Politics.* 223–46.
Kukathas, C. (1992). 'Are There Any Cultural Rights?' *Political Theory* 20:105–39.

Kymlicka, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights.* Oxford, Clarendon Press.
—— (1999). 'Citizenship in an Era of Globalization: Commentary on Held'. *Democracy's Edges.* I.Shapiro and C.Hacker-Cordon. Cambridge, Cambridge University Press: 210–21.
Kymlicka, W. and W.Norman (eds) (2000). *Citizenship in Diverse Societies.* Oxford, Oxford University Press.
Laffin, M., A.Thomas and A.Webb (2000). 'Intergovernmental Relations After Devolution: The National Assembly for Wales'. *The Political Quarterly* 71:223–33.
Laforest, G. (1995). *Trudeau and the End of a Canadian Dream.* Montreal, McGill-Queens University Press.
Larocque, A. (1973). 'Political Institutions and Quebec Society'. *Quebec Society and Politics: Views From the Inside.* D.Thomson.
Lasswell, H.D. and A.Kaplan (1950). *Power and Society.* New Haven, Yale University Press.
Légaré, A. (1997). 'The Government of Nunavut (1999): A Prospective Analysis'. *First Nations in Canada: Perspectives on Opportunity., Empowerment, and Self-Determination.* J.R. Ponting. Toronto, McGraw-Hill Ryerson: 404–31.
Levy, J.T. (1997). Classifying Cultural Rights, *Ethnicity and Group Rights. Nomos XXXIX*. I. Shapiro and W.Kymlicka. New York and London, New York University Press,
Liberal Party of Canada (2001). Homepage of the Liberal Party of Canada. 2001.
Lijphart, A. (1984). *Democracies.* New Haven, Yale University Press.
—— (1997). 'The Framework document on Northern Ireland and the Theory of PowerSharing'. *Government and Opposition:* 267–74.
Linklater, A. (1998). 'Cosmopolitan Citizenship'. *Citizenship Studies* 2:23–41.
—— (1998a). *The Transformation of Political Community: Ethical Foundations of the PostWestphalian Era.* Cambridge, Polity Press.
Lipset, S.M. (1981). *Political Man.* Baltimore, John Hopkins University Press.
Local Government New Zealand (1998). *Elected Members' Handbook.* Wellington, Local Government New Zealand.
Lochead, K. (1998). *Indigenous Self-Determination in Canada and Australia.* Canadian Political Science Association, Ottawa, Canada.
Long, J.A. (1990). 'Political Revitalization in Canadian Native Indian Societies'. *Canadian Journal of Political Science* 23:751–73.
Loughlin, J. (1998). *The Ulster Question Since 1945.* London, Macmillan.
Lui, G. (1995). 'Torres Strait Self-Government and the Australian State'. *Becoming Visible.* T.Brantenberg, J.Hansen and H.Minde. Tromso, Centre for Sámi Studies, University of Tromso.
Lusztig, M. (1999). 'Canada's Long Road to Nowhere: Why the Circle of Command Liberalism Cannot be Squared' . *Canadian Journal of Political Science* 32:451–70.
Lynch, P. (1996). 'The Scottish Constitutional Convention 1992–5'. *Scottish Affairs* 15.
MacCormick, N. (1996). 'Liberalism, Nationalism and the Post-sovereign State'. *Political Studies* 44:553–67.
MacIver, D. (ed.) (1999). *The Politics of Multinational States.* Toronto, Macmillan.
Macklem, P. (1995). 'Normative Dimensions of the Right of Aboriginal Self-Government'. *Royal Commission on Aboriginal Peoples. Aboriginal Self-Government: Legal and Constitutional Issues.* Canada. Ottawa, Minister of Supply and Services.
Madgwick, P.J. and M.Jones (1979). *Government By Consultation: Wales.* Glasgow, Centre for Study of Public Policy, University of Strathclyde.
March, J.G. (1969). 'An Introduction to the Theory and Measurement of Influence'. *Political Power: A Reader in Theory and Research.* R.Bell, D.V.Edwards and R.H.Wagner. New York, The Free Press.
Marinetto, M. (2001). 'The Settlement and Process of Devolution: Territorial Politics and Governance Under the Welsh Assembly'. *Political Studies* 49:306–22.
Marule, M.S. (1984). 'Traditional Indian Government'. *Pathways to Self-Determination: Canadian Indians and the Canadian State.* L.L.Bear, M.Boldt and J.A.Long. Toronto, University of Toronto Press.
Mayall, J. (1999). 'Sovereignty, Nationalism, and Self-Determination'. *Political Studies:* 474–502.
McAllister, L. (1998). 'The Perils of Community as a Construct for the Political Ideology of Welsh Nationalism'. *Government and Opposition* 33:497–515.
McConnell, A. and R.Pyper (1994). 'A Committee Again'. *Scottish Affairs.*
McGany, J. and B.O'Leary (1995). *Explaining Northern Ireland: Broken Images.* Oxford, Blackwell.
McKee, C. (1996). *Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future.* Vancouver, UBC Press.
McKinlay, P. (1998). *Local Government Reform.* Wellington, Local Government New Zealand.
McLean, D. (1994). 'Aboriginal Local Government Power in Western Australia'. *Aboriginal Self-Determination in Australia.* C.Fletcher. Canberra, Aboriginal Studies Press: 139–46.
McLean, I. and D.Butler (1996). *Fixing the Boundaries: Defining and Redefining Single-Member Electoral Districts.* Aldershot, Dartmouth Publishing Company.
McLeay, E.M. (1991). 'Two Steps Forward, Two Steps Back: Maori Devolution, Maori Advisory Committees and Maori Representation'. *Political Science* 43:30–46.
Meehan, E. (1999). 'The Belfast Agreement—Its Distinctiveness and Points of CrossFertilization in the UK's Devolution Programme'. *Parliamentary Affairs:* 19–31.
Meekison, J.P. (1991). 'Distribution of Functions and Jurisdiction: A Political Scientist's Analysis'. *Options for a New Canada.* R.L.Watts and D.M.Brown. Toronto, University of Toronto Press.
Merelman, R. (1998). 'On Legitimalaise in the United States'. *The Sociological Quarterly* 39: 351–68.
Metge,J. (1976). *The Maoris of New Zealand Rautahi.* London, Routledge and Kegan Paul.
Miller, D. (1988). 'The Ethical Significance of Nationality'. *Ethics* 98:647–62.
—— (1995). 'Citizenship and Pluralism'. *Political Studies* 43:432–450.

—— (1995a). *On Nationality.* Oxford, Clarendon Press.
—— (2000). *Citizenship and National Identity.* Oxford, Polity Press.
Milloy, J.S. (1991). 'The Early Indian Acts: Developmental Strategy and Constitutional Change'. *Sweet Promises: A Reader on Indian-White Relations in Canada.* J.R.Miller. Toronto, University of Toronto Press: 145–54.
Milne, D. (1991). 'Equality or Asymmetry: Why Choose?' *Options for a New Canada.* R.L. Watts and D.M.Brown. Toronto, University of Toronto Press.
Minogue, M. (1993). 'Theory and Practice in Public Policy and Administration. *The Policy Process: a reader.* M.Hill. London, Harvester Wheatsheaf.
Moore, M. (1999). 'Beyond the Cultural Argument for Liberal Nationalism'. *Critical Review of International Social and Poetical Philosophy*, 2:26–47
Morse, B. (1986). *Aboriginal Self-Government in Australia and Canada.* Kingston, Institute of Intergovernmental Relations.
Moss, W. (1985). 'The Implementation of the James Bay and Northern Quebec Agreement'. *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada.* B.Morse. Ottawa, Carleton University Press: 684–94.
—— (1990). 'Indigenous Self-Government in Canada and Sexual Equality Under the Indian Act: Resolving Conflicts Between Individual and Collective Rights'. *Queen's Law Journal* 15:279–305.
Mostov, J. (1993). 'Democracy and The Politics of National Identity'. *Studies in East European Thought* 46:9–31.
Murphy, M. (1996). 'After All, Violence is Not a Traditional Value: First Nations, SelfGovernment, Gender Equality, and the Charter'. *Ten Years Later. The Charter and Equality for Women.* M.J. and N.K.S.Banks. Vancouver, Simon Fraser University Press: 39–76.
—— (2001). 'Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?' *Canadian Journal of Political Science* 34:109–29.
—— (2001a). 'The Limits of Culture in the Politics of Self-Determination'. *Ethnicities.*
Nahanee, T. (1993). 'Dancing With a Gorilla: Aboriginal Women, Justice and the Charter'. *Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues.* Ottawa, Minster of Supply and Services.
Nakamura, R. and F.Smallwood (1980). *The Politics of Policy Implementation.* New York, St Martins Press.
Native Council of Canada (1993). *The first Peoples Urban Circle: Choices far Self-Determination. The National Perspective, Book 1.* Ottawa, Native Council of Canada.
New Zealand (1867). Maori Representation Act Wellington, New Zealand Government Printers.
—— (1986). *Report of the Royal Commission on the Electoral System: Towards a Better Democracy.* Wellington, New Zealand Government Press.
—— (1987). Conservation Act. Wellington, New Zealand Government Printer.
—— (1993). Electoral Act. Wellington, New Zealand Government Printer.
—— (1996). Te Runanga o Ngai Tahu Act 1996.
—— (1996a). *Census 1996.* Wellington, Statistics New Zealand.
—— (1998). Ngai Tahu Claims Settlement Act.
—— (2000). *Progress Towards Closing Social and Economic Gaps Between Maori and Non-Maori.* Wellington, Te Puni Kokiri.
New Zealand Herald (2001). *New Zealand Herald.* 11 May, Auckland: A5.
Ngai Tahu (1999). 'Charter of Te Runanga O Ngai Tahu'. Document on file with the authors.
Nice, D. (1987). *Federalism: The Politics of Intergovernmental Relations.* New York, St Martin's Press.
Nietzsche, F. (1990). *Beyond Good and Evil.* London, Penguin.
Nisga'a Nation (2000). 'The Constitution of the Nisga'a Nation'. Document on file with the authors.
Nodia, G. (1994). 'Nationalism and Democracy'. *Nationalism, Ethnic Conflict, and Democracy.* L.Diamond and M.F.Plattner. Baltimore and London, Johns Hopkins University Press: 3–22.
Norris, P. (1996). 'Women Politicians: Transforming Westminster?' *Parliamentary Affairs* 49: 89–102.
Northern Ireland (1998). *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland.* London, The Stationary Office.
Norton, P. (1981). *The Commons in Perspective.* London, Martin Robertson.
Nuhoglu, Y.S. (1994). *Limits of Citizenship: Migrants and PostNational Membership in Europe.* Chicago, University of Chicago Press.
Nunavut Constitution Forum (1983). *Building Nunavut,* Nunavut Constitution Forum.
—— (1995). *Footprints in New Snow.* Iqualuit.
—— (1996). *Footprints 2.* Iqualuit.
(NWAC), N.W. s. A. o. C. (1992). 'Native Women and Self-Government: A Discussion Paper'. Ottawa, unpublished paper.
O'Brien, S. (1989). *American Indian Tribal Governments.* Norman and London, University of Oklahoma Press.
O'Donoghue, L. (1985). *Proposal for an Aboriginal and Torres Strait Islander Consultative Organisation.* Canberra, Australian Government Press.
—— (1998). The Uses and Abuses of Accountability. *ATSIC News.* 7.
Offe, C. (1998). '"Homogeneity" and Constitutional Democracy'. *The Journal of Political Philosophy* 6:113–41.
O'Leary, B. (1999). 'The Nature of the British-Irish Agreement'. *New Left Review* 233: 66–96.
O'Leary, C., S.Elliot and R.Wilford (1988). *The Northern Ireland Assembly 1982–1986.* London, Hurst St Martin's.
O'Neil, M. (1998). *Peace Dropping Slowly.* Belfast, The Round Table.
Osmond, J. (1995). *Welsh Europeans.* Bridgend, Seren.
Parekh, B. (1991). 'British Citizenship and Cultural Difference'. *Citizenship.* G.Andrews. London, Lawrence and Wishart: 183–204.

—— (1995). ‘Liberalism and Colonialism: A Critique of Locke and Mill’. *The Decolonisation of Imagination: Culture, Knowledge and Power*. J.N.Pieterse and B.Parekh. London, Zed: 81–98.

Paterson, L. and R.W.Jones (1999). ‘Does Civil Society Drive Constitutional Change? The Case of Wales and Scotland. *Scotland and Wales, Nations Again?* B.Taylor and K. Thomson. Cardiff, University of Wales Press.

Peters, E.J. (1987). *Aboriginal Self-Government Arrangements in Canada: An Overview*. Kingston, Institute of Intergovernmental Relations.

Peters, G. (1999). *Institutional Theory in Political Science.* London, Pinter.

Peterson, P. (1995). *Classifying by Race.* Princeton, Princeton University Press.

Phillips, A. (1991). *Engendering Democracy.* Cambridge, Polity Press.

—— (1995). *The Politics of Presence.* Oxford, Clarendon Press.

Phillips, M. (1997). *Wales: Nation and Region.* Cardiff, Gomer Press.

Philpott, D. (1995). ‘In Defence of National Self-Determination’. *Ethics* 105.

Pierson, P. (1996). ‘The Path to European Integration’. *Comparative Political Studies* 29:123–63.

Pitkin, H. (1967). *The Concept of Representation.* Berkeley, University of California Press.

Pollitt, C., J.Birchall and K.Putnam (1998). *Decentralising Public Service Management.* London, Macmillan.

Ponting, J.R. (1997). ‘The Socio-Demographic Picture’. *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination.* J.R.Ponting. Toronto, McGraw-Hill Ryerson: 68–114.

Preece, J.J. (1997). ‘National Minority Rights vs. State Sovereignty in Europe: Changing Norms in International Relations?’ *Nations and Nationalism* 3:345–64.

Pyper, R. (1999). ‘The Civil Service: A Neglected Dimension of Devolution’. *Public Money and Management* 19:45–9.

Quebec (1976). *The James Bay and Northern Quebec Agreement.* Quebec, Editeur officiel du Quebec.

—— (1976a). An Act Approving the Agreement Concerning James Bay and Northern Quebec. Quebec, Editeur officiel du Quebec.

—— (1978). The Cree Villages Act. Quebec, Editeur officiel du Quebec.

—— (1978a). An Act Respecting the Cree Regional Authority. Quebec, Editeur officiel du Quebec.

—— (1978b). An Act Respecting Hunting and Fishing Rights in the James Bay and New Québec Territories. Québec, Éditeur officiel du Québec.

—— (2000). Official website of the Government of Quebec, http://www.gouv.qc.ca.

Rawls, J. (1971). *A Theory of Justice.* Oxford, Oxford University Press.

RCADC (1990). *Royal Commission of Aboriginal Deaths in Custody.* Canberra, Australian Government Press.

Rémillard, G. (1986). ‘Address by Mr Gil Rémillard, Quebec Minister for Canadian Intergovernmental Affairs’. *Rebuilding the Relationship: Quebec and its Confederation Partners.* P.Leslie. Kingston, Institute of Intergovernmental Relations: 39–48.

Renan, E. (1990). ‘What is a Nation?’ *Nation and Narration.* H.K.Bhabha. London, Routledge: 8–22.

Requejo, F. (1999). ‘Cultural Pluralism, Nationalism and Federalism: A Revision of Democratic Citizenship in Plurinational States’. *European Journal of Political Research* 35:255–86.

Reynolds, A. (2000). ‘A Constitutional Pied Piper: The Northern Irish Good Friday Agreement’. *Political Science Quarterly* 114:613–37.

Reynolds, H. (1996). *Aboriginal Sovereignty: Reflections on Race, State and Nation.* St Leonards, Allen and Unwin.

Romney, P. (1992). ‘The Nature and Scope of Provincial Autonomy: Oliver Mowat, the Quebec Resolutions and the Construction of the British North America Act’. *Canadian Journal of Political Science* 25:3–28.

Rorty, R. (1989). *Contingency, Irony, and Solidarity.* Cambridge, Cambridge University Press.

Ross, H. (1999). ‘New Ethos—New Solutions: Indigenous Negotiation of Co-operative Environmental Management Agreements in Washington State’ . *Australian Indigenous Law Reporter* 4:1–28.

Rowse, T. (1996). ‘The Political Identity of Regional Councillors’. *Shooting the Banker*. P. Sullivan. Darwin, NARU.

Ryle, M. and P.Richards (1988). *The Commons Under Scrutiny.* London, Routledge.

Rynard, P. (1999). ‘“Welcome In, But Check Your Rights at the Door”: The James Bay and Nisga’a Agreements in Canada’. *Canadian Journal of Political Science* 33:211–43.

Ryser, R.C. (1994). ‘State Craft, Nations and Sharing Governmental Power’. *Indigenous Peoples’ Experiences With Self-Government.* W.J.Assies and A.J.Hoekema. Copenhagen, IWGIA.

—— (1995). *Resuming Self-Government in Indian Country: From Imposed Government to Self-Rule*, Murdoch University E-Law Review. 2000.

Sabatier, P. (1993). ‘Top-Down and Bottom-Up Approaches to Implementation Research. *The Policy Process: A Reader*. M.Hill. London, Harvester Wheatsheaf.

Said, E. (1993). *Culture and Imperialism.* New York, Knopf.

Sanders, W. (1994). ‘Reconciling Public Accountability and Aboriginal Self-Determination/Self-Management: is ATSIC succeeding?’. *Australian Journal of Public Administration* 53:475–88.

—— (1996). ‘Local Governments and Indigenous Australians: Developments and Dilemmas in Contrasting Circumstances’. *Australian Journal of Political Science* 31: 153–74.

—— (1999). *Torres Strait Governance Structures and the Centenary of Australian Federation: A Missed Opportunity?* Canberra, Centre for Aboriginal Economic Policy Research.

Schouls, T. (1996). ‘Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation Versus Voter Equality’. *Canadian Journal of Political Science* 29:729–49.

Schwarz, B. (1991). ‘Individuals, Groups, and Canadian Statecraft’. *First Nations Issues.* R. Devlin. Toronto, Emond Montgomery Publications.

Scottish Constitutional Convention (1989). *Towards a Scottish Parliament.* Edinburgh.
—— (1995). *Scotland's Parliament, Scotland's Right.* Edinburgh, Scottish Constitutional Convention.
Sechelt Indian Band (1981). 'Submission to the Canadian Human Rights Commission', unpublished document on file with the authors.
—— (1989). 'Sechelt Indian Band Constitution', unpublished document on file with authors.
Sechelt Nation, British Columbia and Canada (1999). *Sechelt Agreement-In-Principle.* Ottawa, Minister of Public Works and Government Services.
See, K.O.S. (1980). 'The Social Origins of Ethnic-National Identities in Ireland and Canada'. *National and Ethnic Movements.* J.Dofny and A.Akiwowo. Beverly Hills, Sage Publications: 107–29.
Seton-Watson, H. (1975). *The Sick Heart of Modern Europe: The Problem of the Danubian Lands.* Seattle and London, The University of Washington Press.
Seymour, M. (2000). 'Quebec and Canada at the Crossroads: A Nation Within a Nation'. *Nations and Nationalism* 6:227–55.
Shapiro, I. (1999). 'Group Aspirations and Democratic Politics'. *Democracy's Edges.* I. Shapiro and C.Hacker-Cordon. Cambridge, Cambridge University Press: 210–21.
Sharp, A. (1997). *Justice and the Maori: The Philosophy and Practice of Maori Claims Since the 1970s.* Auckland, Oxford University Press.
—— (1999). 'What if Value and Rights lie Fundamentally in Groups? The Maori Case'. *Critical Review of International Social and Political Philosophy* 2:1–28.
Shepsle, K. (1989). 'Studying Institutions'. *Journal of Theoretical Politics* 1(2):131–47.
Silk, P. (1998). 'The Assembly as a Legislature'. *The National Assembly Agenda,* J.Osmond. Cardiff, Institute of Welsh Affairs.
Simon, H.A. (1969). 'Notes on the Observation and Measurement of Power'. *Political Power: A Reader in Theory and Research.* R.Bell, D.V.Dedwards and R.H.Wagner. New York, The Free Press.
Smiley, D.V. (1976). *Canada in Question: federalism in the Seventies.* Toronto, McGraw-Hill Ryerson.
Smith, A.D. (1986). *The Ethnic Origins of Nations.* Oxford, Basil Blackwell.
—— (1995). *Nations and Nationalism in a Global Era.* Cambridge, Polity Press.
Smith, B.C. (1985). *Decentralisation: The Territorial Dimension of the State.* London, Allen & Unwin.
Smith, D. (1991). 'Empire, Crown and Canadian Federalism'. *Canadian Journal of Political Science* 24:451–73.
—— (1996). 'From Cultural Diversity to Regionalism'. *Shooting the Banker: Essays on ATSIC and Self-Determination.* P.Sullivan. Darwin, North Australia Research Unit, The Australian National University.
Sorrenson, M.P.K. (1986). 'A History of Maori Representation in Parliament'. *Report of the Royal Commission on the Electoral System: Towards a Better Democracy.* Wellington, New Zealand Government Press: Appendix B.
Soysal, Y.N. (1994). *Limits of Citizenship—Migrants and Postnational Membership in Europe.* Chicago, University of Chicago Press.
Spinner, J. (1994). *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State.* Baltimore, Johns Hopkins.
—— (2000). 'Land, Culture and Justice: A Framework for Group Rights and Recognition'. *The Journal of Political Philosophy* 8:319–42.
Stark, A. (1997). 'What is a Balanced Committee? Democratic Theory, Public Law, and the Question of Fair Representation on Quasi-Legislative Bodies'. *Ethnicity and Group Rights, Nomos XXXIX.* I.Shapiro and W.Kymlicka. New York and London, New York University Press.
SteffenHagen, J. and P.Willcocks (2000). 'Treaty Process on Life Support, Chief Says'. *The Vancouver Sun.* Vancouver: A7.
Stevenson, M.G. (1997). *Inuit, Whalers, and Cultural Persistence.* Toronto, Oxford University Press.
Sullivan, P. (ed.) (1996). *Shooting the Banker: Essays on ATSIC and Self-Determination.* Darwin, North Australia Research Unit, The Australian National University.
—— (1996a). 'All Things to All People: ATSIC and Australia's International Obligation to Uphold Indigenous Self-Determination'. *Shooting the Banker: Essays on ATSIC and SelfDetermination.* P.Sullivan. Darwin, North Australia Research Unit, The Australian National University.
Tambini, D. (2001). 'Post-National Citizenship'. *Ethnic and Racial Studies* 24:195–217.
Tamir, Y. (1993). *Liberal Nationalism.* Princeton, Princeton University Press.
Taylor, B. and K.Thomson (eds) (1999). *Scotland and Wales: Nations Again?* Cardiff, University of Wales Press.
Taylor, C. (1989). *Sources of the Self: The Making of the Modern Identity.* Cambridge, Harvard University Press.
—— (1993). *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism.* Montreal, McGill-Queen's University Press.
—— (1993a). 'Shared and Divergent Values'. *A Passion far Identity: An Introduction to Canadian Studies.* D.Taras, B.Rasporich and E.Mandel. Scarborough, Nelson: 218–38.
—— (1994). 'The Politics of Recognition'. *Multiculturalism.* D.Goldber. Princeton, Princeton University Press.
—— (1998). 'The Dynamics of Democratic Exclusion'. *Journal of Democracy* 9:143–56.
Taylor, J.P. and G.Paget (1988). 'Federal/Provincial Responsibility and the Sechelt'. National Conference on Federal and Provincial Governments and Aboriginal Peoples, Carleton University, Ottawa, Ontario, unpublished manuscript on file with authors.
Te Puni Kokiri (1996). Reform of the Maori Trust Boards Act 1955.
Tempelman, S. (1999). 'Constructions of Cultural Identity: Multiculturalism and Exclusion'. *Political Studies* 47:17–31.
Thomson, D.C. (ed.) (1973). *Quebec Society and Politics: Views From the Inside.* Toronto, McClelland and Stewart.
Tobias, J.L. (1991). 'Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy'. *Sweet Promises: A Reader in Indian-Wrote Relations in Canada.* J.R. Miller. Toronto, University of Toronto Press: 127–44.
Trudeau, P.E. (1969). *Federal-Provincial Grants and the Spending Power of Parliament.* Ottawa, Queen's Printer.
Tully, J. (1995). *Strange Multiplicity: Constitutionalism in an Age of Diversity.* Cambridge, Cambridge University Press.

Turpel, M.E. (1993). 'The Charlottetown Discord and Aboriginal Peoples' Struggle for Fundamental Political Change'. *The Charlottetown Accord, the Referendum, and the Future of Canada,* K.McRoberts and P.J.Monahan. Toronto, University of Toronto Press: 117–51.

United Kingdom (1920). Government of Ireland Act

—— (1978). Scotland Act. London, HMSO.

—— (1978a). Wales Act. London, HMSO.

—— (1982). Northern Ireland Act. London, HMSO.

—— (1998). Scotland Act. London, The Stationery Office.

—— (1998a). Northern Ireland Act. London, The Stationery Office.

—— (1998b). Government of Wales Act. London, The Stationery Office.

—— (2000). *Britain 2001*. London, The Stationery Office.

United States (1988). Indian Gaming Regulatory Act, National Indian Gaming Commission. 2000.

—— (1997). *Census Facts For Native Month.* US Census Bureau. 2000.

—— (1998). *Tribal Self-Governance: Proposed Rule. United States.* Federal Register. 63: 7, 201–51.

—— (2000). *US Census Bureau,* www.census.gov.

—— (2000a). Bureau of Indian Affairs Homepage, www.doi.gov/bureau-indianaffairs.html.

Vanhanen, T. (1997). *Prospects of Democracy: A Study of 172 Countries.* London, Routledge.

Waldron, J. (1992). 'Superseding Historic Injustice (White Settlers' Treatment of Aboriginal Peoples)'. *Ethics* 103:4–28.

—— (1995). 'Minority Cultures and the Cosmopolitan Alternative'. *The Rights of Minority Cultures.* W.Kymlicka. Oxford, Oxford University Press: 93–119.

Walker, R.J. (1999). 'Maori Sovereignty, Colonial and Post-Colonial Discourses'. *Indigenous Peoples' Rights in Australia, Canada and New Zealand.* P.Havemann. Auckland, Oxford University Press: 108–22.

Wallace, M. (1971). *Northern Ireland: 50 years of Self-Government.* Newton Abbey, David & Charles.

Ward, A. and J.Hayward (1999). 'Tino Rangatiratanga: Maori in the Political and Administrative System'. *Indigenous Peoples' Rights in Australia, Canada and New Zealand.* P. Havemann. Auckland, Oxford University Press: 378–99.

Weaver, S. (1983). 'Political Representivity and Indigenous Minorities in Canada and Australia'. *Indigenous People and the Motion State.* N.Dyck. St Johns, Newfoundland, Institute of Social and Economic Research.

Weinstein, J. (1986). 'Aboriginal Self-Determination off a Land Base'. Kingston, Institute of Intergovernmental Relations.

Wheare, K.C. (1963). *Federal Government.* London, Oxford University Press.

Wherrett, J. and D.Brown (1994). 'Models for Aboriginal Government in Urban Areas'. *Aboriginal Self-Government in Urban Areas.* E.Peters, Institute of Intergovernmental Relations.

White, G. (1991). 'Westminster in the Arctic: The Adaptation of British Parliamentarianism in the Northwest Territories'. *Canadian Journal of Political Science* 24:499–523.

—— (1996). 'Comparing Provincial Legislatures'. *Provinces: Canadian Provincial Politics.* C. Dunn. Peterborough, Broadview Press.

Wilkinson, C. E (1987). *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy.* New Haven, Yale University Press.

Williams, M. (1996). 'Memory, History and Membership'. *Do We Need Minority Rights?* J. Raihka. The Hague, Montimus Nyhoff.

—— (1998). *Voice, Trust, and Memory: Marginalized Groups and the Failure of Liberal Representation.* New Jersey, Princeton University Press.

Wittgenstein, L. (1984). *Philosophical Investigations.* Oxford, Basil Blackwell.

Wolfe, J. (1993). *Regional Planning by ATSIC Councils: Purpose, Process, Product & Problems.* Canberra, Australian National University: North Australia Research Unit (YFWMB), Y.F. a. W.M.B. (2000). Personal communication.

Young, E. (1988). 'Theory and Practice in Australia'. *Self Determination in the Commonwealth.* A. Macartney. Aberdeen, Aberdeen University Press.

Young, I.M. (1990). *Justice and the Politics of Difference.* Princeton, Princeton University Press.

—— (1997). 'Deferring Group Representation'. *Ethnicity and Group Rights. Norms XXXIX.* I. Shapiro and W.Kymlicka. New York and London, New York University Press.

Yukon (1993). First Nations (Yukon) Self-Government Act Whitehorse, Statutes of the Yukon: c.5.

Zimran, S. and C.Fletcher (1996). 'Indigenous Peoples and Problems of Fiscal Reform in Australia: Not Getting Our Fair Share'. *Equity and Development Across Nations.* C. Fletcher. St Leonards, Allen and Unwin.

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