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From Community Autonomy in Hungary to Indigenous Self-Determination in the Outback of Australia: Can Non-Territorial Autonomy Find Traction Down Under?

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Abstract

Hungary has, during the past three decades, developed what could arguably be described as one of the most advanced institutional systems of non-territorial autonomy in the world. Being so advanced does not of course mean the system is perfect or beyond criticism. But it does provide potentially useful insights into how non-territorial autonomy can or cannot work in practice. This article reflects on the institutional design of Hungary and asks whether principles can be identified that may be employed by indigenous groups in Australia and beyond in their search for a form of self-government. The theory and practice of non-territorial autonomy has so far been the focus of experts predominately from Central and Eastern Europe and the Russian Federation. This article considers whether any insight can be gained to apply the principles of non-territorial autonomy to other jurisdictions. The institutional design in place in Hungary may offer useful insight into how indigenous communities, particular some Aboriginal communities in Australia, may be bestowed with legal powers as a community to make decisions of a cultural and linguistic nature and to cooperate via the legal entity with local and state authorities. The United Nations Declaration on the Rights of Indigenous Peoples refers to self-determination and autonomy without placing those terms into a specific set of institutional arrangements. Whereas non-territorial autonomy may not be suitable for all communities, this article contends that non-territorial arrangements may offer an opportunity for self-government to indigenous

(and other) communities that share a strong sense of identity; that do not have a geographical base where they constitute the majority; and where a communal desire for a form of self-government in public law exists.

Keywords: non-territorial autonomy; Bauer and Renner; rights of indigenous people; self-determination; Aboriginal people; United Nations Declaration on the Rights of Indigenous Peoples; community autonomy in Hungary; rights of minorities; collective rights;

Introduction

The protection of the rights of cultural minorities and indigenous peoples on a non-territorial basis has, in the past three decades, been the subject of extensive discourse in literature but so far it has found limited practical application.

In literature, the majority works on the topic of non-territorial autonomy have arisen from European scholars following the early 20th century thesis of the Austrian philosopher–politicians Bauer and Renner on the potential to grant to legal entities representing ethnic minorities some public law powers to self-govern.[1] In practice the principal countries where experimenting with non-territorial forms of autonomy in public law have occurred are in central and eastern parts of Europe, as well as the Russian Federation.[2] The democratisation wave that swept the ex-Communist states since the early 1990s gave rise to efforts in several countries of Central and Eastern Europe to enact statutory measures to facilitate different forms of self-government for ethnic minorities on a non-territorial basis.[3]

Curiously, the same awareness displayed by scholars and practitioners in Central and Eastern Europe of the needs of dispersed minorities was not replicated in other international constitution drafting processes that took place in multi-ethnic societies during the 1990s. Thus far, neither the theory nor practice of community autonomy without a territorial component has gained notable traction in other parts of the world.[4] South Africa is somewhat of an exception. In South Africa, where the new Constitution was drafted between 1993 and 1996—in the midst of the European rediscovery of the relevance of the works of Bauer and Renner—some provision is made in sections 185 and 235 of the Constitution for the establishment of cultural councils and self-determination of cultural communities without a requirement for territorial control. These sections were included in the Constitution to broaden the appeal of the Constitution to minority communities, in particular the Afrikaans speaking community. (De Villiers 2020) However, as of yet, no legal or practical effect has been given to those sections (De Villiers, 2014, 2018b).

The theory and practice of non-territorial forms of autonomy have essentially been limited to the European sphere, with few examples of non-territoriality visible outside Europe (Malloy 2020). However, even within Europe there has not been consistency in the use or application of terms such as self-determination, autonomy, minority, and self-government (Smith, 2013, p. 117).

The common ground between proponents who seek to develop the theory and scope of

application of non-territorial autonomy seems to be that, in order for non-territorial autonomy arrangements to be regarded as of more substance than a mere club that self-organises, the legal arrangements and institutions arising from non-territorial autonomy should be recognised in *public law* and perform functions associated with a public law *organ of government*.[5] The self-governing arrangements should therefore have the character of a 'government' rather than those of an ordinary club, association, or other non-governmental organisation. Smith and Cordell (2007, p. 342) describe such non-territorial autonomy as:

> promising an alternative that…offers minorities the option of substantive cultural self-determination *without* [emphasis added] linking it to territorial autonomy, with all the centrifugal tendencies the latter may awaken.

Furthermore, the importance of the public law element of non-territorial autonomy has caused Osipov (2013, p. 8) to propose that:

> [T]he terms non-territorial autonomy and similar notions encompass a broad range of institutional setups which envisage self-organisation and self-administration of ethnic groups for the fulfilment of *public functions* in ways other than territorial dominance and administration of a certain territory.

The aim of this article is to reflect on some of the recent developments in Hungary with regard to non-territorial autonomy and to identify principles of institutional design that may be applicable to Australia, where Aboriginal people are engaged in ongoing discussions about ways to secure a form of self-determination over their customs, laws, and culture (De Villiers, 2020a). Aboriginal people already self-manage in many respects at a private level by way of family corporations and other informal arrangements, but the element of a *public* authority that makes and implements policies and gives advice to Aboriginal people regarding their laws, culture, and customs remains elusive.

In this article an attempt is made to distil from the Hungarian institutional design potential principles that may be adapted for application to other settings, notably for purposes of self-determination of Aboriginal people in Australia. Aboriginal people are, due to their displacement, urbanisation, and dispersed living patterns, unlikely to benefit from different forms of territorial autonomy. Many Aboriginal communities are, with a few exceptions, a minority wherever their live—even at a local level within their traditional country. Consequently, the ability of Aboriginal communities to self-manage in the public sphere or to impact public policies through the formation of voting blocks in elections is limited due to their

small numbers and lack of concentration in a first past the post electoral system. It is therefore not surprising that after 120 years under its Constitution, Australia is still searching for a sustainable response to the desire of Aboriginal people for self-determination and self-government.[6]

It is proposed in this article that essential principles can be drawn from the Hungarian experience for purposes of institutional design that may be of relevance to indigenous people in general and Aboriginal people in particular.[7] Those principles are: (i) an indigenous community may, pursuant to an enabling statute, register a legal persona; (ii) the leaders of the legal persona are elected by way of regular elections or nominated by members of the community in a manner consistent with the community's laws and customs; (iii) the jurisdiction of the legal persona is defined not by territory but by the services that are provided to the members of the community in areas such as education, media, museums, and cultural activities; (iv) the funding of the legal persona is derived in part from government, member contributions, and other sources; (v) the legal persona operates in the domain of public and private law and is essentially *sui generis* in nature; and (vi) the legal persona exists alongside, not as a substitute to, other levels of government.

In the following parts of this article, consideration is given to the origin of the concept of non-territorial autonomy as espoused by the works of Bauer and Renner; the standard of protection set in the United Nations Declaration on the Rights of Indigenous Peoples; and the references therein to the right to self-determination of indigenous people and how those rights may be informed by the thoughts or Bauer and Renner and the experiences of Hungary. The article continues by presenting the institutional arrangements for the nationalities of Hungary to facilitate self-government. Finally, it considers, against this backdrop, the possible principles that can be developed for application to Aboriginal people in Australia and possibly in other settings internationally.

1. Relevance of Hungary

Hungary is, arguably, one of the countries that has undertaken the most ambitious statutory and policy program to accommodate its population diversity by way of non-territorial arrangements within the public domain.

On the one hand, the community self-governments that have been established for 13 nationalities in Hungary are in their infancy, but on the other hand, substantial experience has been gained by these self-governments since the 1990s. The number of self-governments

established by their respective communities at local level has increased substantially as the communities recognise the benefits that may arise from the self-government. Time will ultimately be the judge of the success of the self-governments, but for now the institutional arrangements provide a valuable opportunity for analysis.

From an Australian perspective, it is the statutory basis and institutional design of community self-governments in Hungary that are potentially relevant for giving practical effect to the vision of self-determination of Aboriginal people.

The practicality of comparative constitutional law is by its nature severely restricted by the history, politics, and socio-economic circumstances of each country. However, constitution drafters have, since the earliest times, made references to the institutional design and experiences of other countries in order to draw on it, while at the same time acknowledging the limitations of comparative law.[8] In fact, Bauer and Renner specifically referred to the constitutional design of federations such as Switzerland and the USA to conclude that territorial organisation of powers and functions for the Austro-Hungarian Empire would not be a practical or effective way to protect the rights and interests of its dispersed nationalities since they lived so intermingled.[9]

During the past three decades, Hungary has made repeated attempts to give practical effect to the theory of non-territorial autonomy for its ethnic minorities. Although some other nations have also endeavoured to accommodate minorities by way of non-territorial forms of autonomy (for example Estonia, the Russian Federation, Croatia, and Serbia) the scope of institutional design in Hungary is arguably the most detailed, elaborate, "comprehensive" (Smith, 2013, p. 32), and advanced example of non-territorial autonomy in Europe.

2. Bauer and Renner: Non-Territorial Autonomy in the Public Sphere

To place the Hungarian non-territorial autonomy arrangements into perspective, it is useful to reflect briefly on the thoughts of the two fathers of non-territorial autonomy: Otto Bauer and Karl Renner. Otto Bauer (1879–1950) and Karl Renner (1881–1939) developed their propositions on national cultural autonomy, also referred to as non-territorial autonomy, at the end of the 19th and beginning of the 20th century. This was the time when the Central European world was adjusting to the aftermath of the Habsburg Empire, the formation and ultimately the disintegration of the multi-ethnic Austro-Hungarian Empire, and rising nationalistic claims (1868–1918) (Nimni, 1999, p. 294).

The empire was confronted with the challenge of creating democratic institutions

against the background of a deeply divided society comprised of various nationalities, which was and experiencing rapid urbanisation, and in which large numbers of people had moved away from their traditional areas of residence. The Empire was a multinational melting pot but it lacked the democratic institutional arrangements to reflect or accommodate this diversity. It had a population of about 53 million people and at least 15 different ethnic nationalities, including Germans, Hungarians, Croats, Poles, Czechs, and Ukrainians. Members of those nationalities generally lived intermingled, particularly in urban areas, which meant that territorial arrangements for self-government on a local or regional level, such as in the cantonal example of Switzerland, had little practical value (Osipov, 2013, p. 35). Furthermore, simple majoritarian arrangements were not acceptable to the respective nationalities since it was felt that majoritarianism could or would give rise to dominance and subjugation.

Bauer and Renner shared the opinion that the question of accommodation of the respective nationalities could be addressed by way of non-territorial cultural autonomy. The essence of their propositions was that a legal persona could be established for each nationality and that the respective legal personae could then make decisions for the members of the nationality about their cultural concerns *and* cooperate with the legal personae of other nationalities about common matters in areas such as defence and foreign affairs (De Villiers, 2016). The proposed legal personae of the respective nationalities would by law be equal to one another regardless of the size of the community they represented.[10]

Although Bauer and Renner accepted that territoriality would remain relevant for some communities who live concentrated in certain areas, they anticipated that the modern state would give rise to countries, regions, and local authorities that are predominantly multinational and that many nationalities may end up without an 'own' location. Bauer and Renner contended that the belief that the challenges of competing nationalities can be managed effectively through territorial arrangements was "doomed to failure regardless of how territorial boundaries were drawn" (Smith, 2013, p. 91). Renner, for example, observed that the "central issue was how to convert the Austro–Hungarian Empire from a decaying conglomerate of squabbling national communities into a democratic confederation of nations" (Renner as cited in Nimni, 2008, p. 34).

What Bauer and Renner proposed for the Empire was therefore relatively simple: nationalities, as they were known at the time, would be recognised in public law; a legal persona would be established for each nationality; and within each legal persona there would be elections for representatives to govern the nationality. [11]

It must, however, be noted that the proposals of Bauer and Renner were never implemented in the Empire, albeit that Estonia (1920–1939) was one of the first countries that successfully enacted elements of the proposals into practical reality (Alenius, 2007; Clark, 1921). Those arrangements came to a premature end with the outbreak of the Second World War.

Within the scope of this article, the importance of Bauer and Renner's contribution to scientific development is the notion that *territory* ought not to be a prerequisite for self-governance. This is the single most relevant aspect to indigenous communities such as Aboriginal people who live in dispersed patterns as a minority. Although Aboriginal people, generally speaking, are sociologically, historically and ethnographically linked to an area called their 'country', they often do not reside in that area and even if they do, it is rare for them to constitute a majority in the area. Renner accurately described the limitations of territorial organisation of governmental power in words that continue to resonate today for Aboriginal people:

> The territorial principle can never produce compromise and equal rights; it can only produce struggle and oppression, because in essence it is domination. (Renner as cited in Nimni, 2005, p. 28)

Bauer and Renner did not of course rule out territorial self-determination as an option for self-government for nationalities who reside concentrated in areas, but they did not see territorial-based autonomy as the sole requirement for self-determination. They proposed that it was practically feasible for nationalities to make and administer decisions in public law on matters that are essential to the identity of the nationality without having control or dominance of a territory. Although they appreciated the existence of civic clubs and associations that serviced members of such a club, those were not akin to organs of government. Hence, Bauer and Renner's proposal was to establish legal persons for nationalities with the powers and functions of *government* in the sphere of public law. Bauer and Renner did, however, acknowledge that even within the context of cultural autonomy, some form of local concentration of members of a community would facilitate the provision of services to a community. Crucially, any such concentration was to be for reasons of pragmatism when services are delivered, rather than a condition for self-government.[12]

The potential relevance of these propositions to Aboriginal people and other indigenous peoples is that there are two ways for self-government to be achieved—the first is by way of

territorial control in regional and local governments, whereas the second is by way of the personality principle whereby the jurisdiction of the legal person is defined by the services on offer.

3. The United Nations Declaration on the Rights of Indigenous Peoples: Rich in Promise but Poor in Detail

There is no legal instrument in international law that recognises or guarantees a legally enforceable right to self-determination for ethnic minorities or indigenous people.

The closest to a universal standard is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and to a regional standard the European Framework Convention for the Protection of National Minorities (European Framework Convention).[13] Neither of these instruments sets a universal and justiciable standard for self-determination. The UNDRIP is not legally enforceable by indigenous peoples and the rights contained therein are of an aspirational rather than justiciable nature. The European Framework Convention applies only to signatory states within the European domain, and it also does not contain concrete measures about how to give effect to autonomy, self-determination, or self-government of ethnic minorities.[14] Furthermore, signatory states of the European Framework Convention are at liberty to adopt discretionary practical measures to give effect to the principles contained in the Framework (Hofmann et al., 2018, p. 11).

The UNDRIP recognises the right of indigenous peoples to self-government; to maintain and promote their customs, laws, and traditions; to maintain and develop their traditional institutions; and to promote their traditional customs and laws in accordance with international human rights standards. None of those principles are actionable in court since nations are sovereign to determine the manner in which internal policies recognise and give effect to self-determination (Anaya, 2004).

The term self-determination is notoriously vague. There is often no agreement between or within indigenous groups as to the meaning or the practical application of self-determination (Tomaselli, 2019). For example, in the Australian context the claim for self-determination:

> is almost exclusively synonymous with the claims of Aboriginal and Torres Strait Islander people, and it is generally expressed as calls for self-government, democratic participation, land rights, cultural protection and political representation (Casten, 2015, p. 6).[15]

Although there is no justiciable right for self-government or autonomy in international law for indigenous peoples, important objectives have nevertheless crystallised to guide states in the development of their domestic policies (Hartley et al., 2010). Regardless of the progress that has been made in the municipal law of states wherein indigenous peoples reside, much remains to be done to reach a universal normative standard for defining indigenous peoples and giving practical content to their rights to self-determination.

Whilst the UNDRIP uses terms such as self-determination, autonomy, and self-government (Art. 4, UNDRIP), those terms have not found their way into universal norms for institutions of governance (Barrie, 2013). The same can be said of the absence of universal measures to give effect to the right of indigenous peoples to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, and practices (Art. 34, UNDRIP).

The propositions about non-territorial autonomy developed by Bauer and Renner may be able to assist in the endeavour to give practical content to aspects of the UNDRIP, particularly in instances where indigenous peoples live intermingled with other communities in a manner that renders territorial forms of autonomy impractical. Although contemporary constitutional law theory tends to view territorial control as a *sine qua non* for self-government and therefore leave many indigenous communities without remedy, Bauer and Renner pleaded for greater nuance in the autonomy debate and advocated for non-territorial forms of autonomy to maintain and promote the culture, laws, and traditions of communities. The scope of powers and function under self-government may, however, be lessened in such arrangements, as only matters that relate to the identity and culture of the community can be the subject of non-territorial self-government.[16]

As stated at the outset, the question which is the centre of this article is whether the institutional developments that have been taking place in Hungary in regard to non-territorial self-government may offer insights, to indigenous peoples in general and Aboriginal people in particular, about non-territorial self-governance; maintenance of customs, laws and traditions; and development of community institutions reflective of community needs.

So far non-territorial forms of autonomy have not received strong international endorsement outside of the European sphere. This is for various reasons: for example, constitutional law theorists are predominantly influenced by traditional thinking which upholds a preference for territorial forms of autonomy; the notion of classifying individuals into groups

raises concerns of historical atrocities and forced classifications being repeated; there are few case studies where non-territorial autonomy has been pursued; and even where it has been implemented, the success of non-territorial autonomy has been variable.

It must also be noted that, even though non-territorial autonomy may not have general application to all indigenous peoples or to all ethnic minorities, it may be a useful tool to address the situation of a specific minority or indigenous community (Kymlicka, 2007, p. 384).[17] Non-territorial arrangements may also be pursued for a transitional period or for the longer term.

There is no agreement in Australia, although the country is a signatory to UNDRIP, about ways to move from the lofty ideals of the UNDRIP to the practicality of self-determination in the outback, where many Aboriginal communities reside. If ever there was a gap between the theory of international law and its practice in domestic law, it is in the field of indigenous self-determination—UNDRIP is indeed rich in promise but poor in detail.

4. Hungary—An Overview of Community Autonomy

4.1 ***Brief Overview***

Hungary is a multicultural state with a population of 10 million, of which an estimated 5% self-declare as belonging to a minority nationality and around 1.3% speak a home language other than Hungarian. In a similar vein to Aboriginal people, who speak predominantly English, the majority of members of minority communities in Hungary speak as home language Hungarian, while they practice their own culture and traditions to a varying degree.[18] Whilst ordinarily in heterogeneous societies, language can be a mobilising factor used to rally ethnic communities, in Hungary and Australia the *lingua franca* of minorities is generally the same as the dominant language of the wider community.

During the first two decades following the introduction of self-government legislation in Hungary in 1993, reference was made to the communities as ‘minorities’, but since the 2011 amendments the term ‘nationalities’ (in Hungary the term ‘nationality’ is use to describe ethnocultural minorities) is used to emphasise the equal status of the communities regardless of their numerical size.[19] In Australia the term ‘minority’ is not used when reference is made to the Aboriginal people.[20]

The smallest nationality in Hungary is that of the Armenians, which has around 3,300 members, whereas the largest nationality is the Roma with around 315,000 members (Census

2011).[21] The members of the respective nationalities live scattered across Hungary in more than 2,000 settlements and even where they live in local concentrations, they are generally outnumbered by ethnic Hungarians (Ministry of Foreign Affairs, 2000).[22] This is not dissimilar to the situation of Aboriginal people, who live scattered across the country but are generally a numerical minority, even at local level, and are assimilated with non-indigenous Australians by way of the English language, sports, religion, and politics, although they nevertheless continue to constitute unique cultural communities.

The Constitution of Hungary recognises 13 nationalities for purposes of national cultural autonomy (a1 Act on Rights of Nationalities).[23] The 13 nationalities are those that have been resident in Hungary for at least a century or more, which means that the more recent migrant communities do not automatically qualify for autonomy.[24] Recently arrived communities may however through a legally defined process also seek recognition (a148(3) Act on the Rights of Nationalities).[25] The same can be said of Australia where Aboriginal people often seek a form of self-determination as the traditional owners of the land, whilst other immigrant communities do not have any statutory rights to a form of collective self-determination and are expected to assimilate with the general community.[26]

The 13 recognised nationalities are authorised by law to establish institutions of self-government (a2(2) Act on Rights of Nationalities). The nationality institutions exist alongside the other levels of government and not in substitution to any other level of government. In practice individuals can opt into the services on offer by a nationality. Any person may attend the services provided by a nationality; however, in the field of education first priority is given to members of the specific nationalities to attend an educational institution and, if capacity is available, other individuals may also attend educational facilities of a specific nationality (a28 Act on Rights of Nationalities).

The motivation for the elaborate system of minority rights protection in Hungary has principally been twofold: firstly, Hungary is deeply aware that the democratic stability of the nation depends on the manner in which it manages to peacefully accommodate its ethnic diversity (Bardi et al., 2011), and secondly, Hungary wanted to set an example in its domestic treatment of nationalities and thereby encourage neighbouring countries to extend similar protections to expatriate Hungarians who reside in those countries (Schöpflin, 2000, pp. 347–355; Pap, 2006, p. 243).[27]

The specific statutory measures enacted by Hungary to grant self-government to the

respective nationalities are not precisely as proposed by Bauer and Renner, but the philosophy of non-territorial autonomy as developed by the two scholars continues to have a marked impact on the constitutional theory and practice that underlies the legal framework in Hungary.[28]

In discussing Hungary's arrangements for self-government, the Venice Commission has described the legal arrangements in place in Hungary as follows:

> Indeed, the Nationalities Act can be considered as an important piece of legislation that guarantees internationally recognised rights of persons belonging to national minorities, enabling them to freely express, preserve and develop their ethnic, cultural and linguistic identity. (Venice Commission, 2012, p. 6)

4.2 An Outline of Hungarian Self-Governing Arrangements

The first attempt to establish post-Communist non-territorial autonomy arrangements in Hungary was made in 1993 with the enactment of the Minority Rights Act, whereafter the original legislation was amended and improved in 2005 and again in 2011. This illustrates the dynamic nature of the Hungarian arrangements whereby a strong element of pragmatism directed the process, albeit "firmly anchored in the collectivist concepts of minority rights" (Vizi, 2015, p. 32).

A principal objective of the 1993 Act and the subsequent legislation was to provide the respective nationalities with suitable institutional structures within public law whereby they could influence, make, and administer policies about matters that affected their unique identities—particularly in regard to their language, culture, and customs (Dobos, 2007).

One notable result of the so-called pro-minority approach adopted by Hungary is that it has contributed to a remarkable increase in the number of persons who publicly declare themselves to belong to a minority nationality (Morauszki & Papp, 2015, p. 156).[29] For example, whereas in 2001 around 136,000 persons identified as speaking a minority language, the number that self-identify as forming part of a nationality had increased to 555,000 by 2011 (Vizi, 2015, p. 35).[30]

In light of the focus of this article the question arises what are the essential elements of the self-governing arrangements of the Hungarian nationalities that may bear relevance to indigenous self-governance in general and Aboriginal self-governance in particular? The following are for these purposes the main elements:

The *legal status* of the nationalities and their rights to collective associations are found in the Constitution of 2011,[31] the Minority Rights Act of 1993 (repealed), and the 2011 Act on the Rights of Nationalities.[32] These three legal instruments 'anchor' the minority rights scheme in Hungary (Vizi, 2015, p. 32). The Minority Rights Act recognised the rights of the respective minorities to establish local and national self-government (a5(1)) with the basic function "to protect and represent the interests of minorities by performing their duties and exercising their statutory authority" (a5(2)). The Act on the Rights of Nationalities continues along the same theme, albeit with some important amendments.[33] The (original and now repealed) Minority Rights Act and the Act on the Rights of Nationalities aimed to institutionalise self-government for the respective nationalities within the realm of public law.[34] The establishment of these institutions was in addition to the rights of nationalities to establish "civil organisations" such as clubs (a17 Minority Rights Act).[35] The Act on the Rights of Nationalities emphasises the importance of cultural autonomy, with self-government being an example of how the autonomy is operationalised (Vizi, 2015, p. 46).

The nationality governments are elected at local, regional, and national levels, but no nationality is obligated to opt for a community self-government and no local community is obligated to elect a self-government for the nationality at the local level. If a nationality does not have the adequate and statutory stipulated numbers at a local level to justify a self-government, they may opt for a national association to perform cultural functions on their behalf. There may only be one national self-government for each of the nationalities. The governing authority for a nationality is the nationality council. Each nationality council comprises 3–5 elected members; at regional level 7 members; regional 7 and at national level 15–47 members (a51 Act on the Rights of Nationalities). The status of the self-governments as entities in public law is highlighted by the "mandatory public duties" that are bestowed onto them (a115 Act on the Rights of Nationalities). These include, for example, the maintenance of institutions, taking responsibility for functions delegated by other governments, cooperation with other levels of government, and reinforcing of cultural autonomy. The essence of the self-governments is "to establish cultural autonomy of nationalities based on the principle of personality…" and as such it reflects the "progressive trend" of European minority protection (Patyi & Rixer, 2014, p. 352). Whilst in 1994/5, 817 minority self-governments had registered, the number increased to 2,188 in 2019. In addition, the number of municipal self-governments increased from 57 in 2007 to 62 in 2019.

Transformation of nationality to local governments may occur if more than half of the

number of persons on the electoral roll of a local government belong to a specific nationality and more than half of the elected representatives belong to that nationality (a71 Act on the Rights of Nationalities). This is a unique provision since it combines the non-territorial aspect of nationality associations with the possibility of territoriality if adequate numbers of a nationality are concentrated and elected in a specific area.[36] Whereas this option had been criticised for encouraging nationalities to congregate together rather than to assimilate, it does create the opportunity for locally concentrated nationalities to achieve limited territorial self-government in their daily lives. The close interaction between the nationality self-governments and local authorities has been described as a "strategic partnership" due to the right of consultation and self-management of the nationality associations (Venice Commission, 2012, p. 10). The self-governments are, for all practical purposes, integrated in the conduct of intergovernmental relations at a local level in a manner that does not ordinarily apply to civic organisations and clubs.[37]

The *membership* and *election* of nationalities and their councils for purposes of voting for self-government associations have gone through a number of iterations. During the initial years under the Minority Rights Act (a70) any individual, regardless of nationality, could cast a vote in elections for the self-governments. This of course meant that persons who were not a member of a specific nationality could vote in elections for that nationality. The 1993 arrangements gave rise to what was cynically called 'ethno-business' since interest groups could participate in an election for a nationality, but non-members were capable of dominating the outcome of the election (Annual Report, 1998, s2(1)(3)).[38] The recognition of an unrestricted and personal choice in regard to nationality elections was, in light of the Nazi atrocities, well intended, but it gave rise to abuses and allegations of vote stacking by non-nationality members (Eiler & Kovacs, 2003 p. 171). The net effect was that non-nationality persons could influence the outcome of nationality elections for their own benefit. The 2005 amendments introduced a new requirement: namely that a person must register to participate in a nationality election, albeit that the registration of the person cannot be challenged.[39] The Act on the Rights of Nationalities (a1(2)) requires that a person (specifically, a citizen)[40] must declare their membership of a specific nationality in order to be registered on the roll of that community. This is however a subjective choice and cannot be challenged or judicially reviewed. The Act on the Rights of Nationalities (a11(1)) confirms that individuals have the inalienable right to declare or not to declare their ethnic identity and that, if the identity is declared, it is accepted as fact. However, a person may not register on the list of more than one

nationality (a53(2) Act on the Rights of Nationalities). The Act on the Rights of Nationalities thereby seeks to mitigate the risk of abuse of nationality registration by attempting to secure closer correlation with the outcome of self-declaration in the most recent census.[41] This arrangement is not without controversy. Currently a candidate at a local nationality election must sign a declaration stating that they would represent the interests of the nationality, has not been a candidate for another nationality within the past ten years, and speaks the language of the nationality (a54 Act on the Rights of Nationalities).[42] Provision is also made that 'nationality organisations' may nominate candidates for election of a self-government (a58). The absence of some form of judicial review to test a person's claim of membership of a nationality remains open to abuse, but on the other hand the complexity of dealing with disputes about purported membership may erode the freedom of choice that is so central to the protection arrangements.

The *institutional arrangements* of the nationality self-governments are prescribed in detail by the Act on the Rights of Nationalities (for example aa 50; 113; 114). No nationality is obligated to pursue self-government, but if it chooses to do so at least 30 persons of the nationality must according to the census reside in a local area for a self-government to be elected (a56). Internal decisions in the board of the self-government are made by a qualified majority and each council can adopt rules for their day-to-day operations. Whereas the operational rules are made by a qualified majority, other decision-making about functional areas such as election of the chair, vice chair, lay judges, financial allocations, and cultural and traditional affairs are made by an ordinary majority. The self-government may arrange for committees to facilitate its functioning (a77).

The *power and functions* of the self-government are related to functional areas that impact on the identity of the nationality, for example, aspects of language, education, libraries, media, public holidays, museums, and place names.[43] The self-governments also have socio-economic functions such as social services and employment (aa10(4) and 116(2) Act on the Rights of Nationalities). The overriding duty of the self-governments is "to protect and represent the interests of nationalities by exercising the responsibilities and powers of nationality self-governments" (a10(1) Act on the Rights of Nationalities). In general, the powers and functions of the self-governments are threefold: namely, to manage the cultural affairs of the nationality; to give advice in regard to nationality interests;[44] and to participate in co-government decisions particularly at a local level (see for example aa10; 18; 19; 36; 38). The scope of powers resembles those of a government with legislative and executive functions,

hence the reference in a115 to the "mandatory public duties" of local nationality governments. a115 also anticipates cooperation between the nationality governments and other governments, inputs by nationality government in development planning, and the possible delegation of functions by local governments to the nationality self-governments—which is not usually associated with civil organisations. In addition to these mandatory duties, nationality self-governments may also take on "voluntary public duties" such as aspects of education, heritage, media, culture, and business operations (a116 Act on the Rights of Nationalities). The nationality self-governments may also contract with local governments to take over and perform some functions that would ordinarily be the responsibility of the local government.[45] The national self-governments have general coordinating and facilitation functions but do not stand in a hierarchical relationship with the local self-governments. Examples of such functions are the development of national curriculum, national holidays for the nationality, utilisation of public radio and television allocations, national media, and promoting the interests of the nationality (aa27; 33 and 117 Act on the Rights of Nationalities). In addition to their discretionary powers, the national and local self-governments also have advisory powers to give their members a voice in the formulation and administration of government policies at the respective levels. The actual scope of the powers of self-governments is often more directed to advisory aspects and limited practical cultural issues than substantial government services. The latter remains principally within the domain of local governments but includes scope for inputs and advice from minority self-governments.

The *funding* arrangements of the nationality self-governments is an important indicator of their status as governments as opposed to non-governmental organisations. The nationality self-governments in Hungary receive an annual government grant but they are also reliant on other forms of income to fund activities, for example, from members, own business ventures, or the government of their country of origin (see a116). During the initial phase, each council (regardless of its size or scope of activities) received an annual grant of 3,000 US Dollars.[46] The grants were made by the national government and administered by local governments. Although nationality councils exist alongside local governments, their dependence on support, both financially and for human resources, is high. The councils often do not have a sophisticated administration and are generally reliant on the local government bureaucracy to assist with activities and events.[47] Since 2011 the national government is required to determine financial aid on the basis of the functional responsibilities of the self-government and not by a set formula (a126).[48] Self-governments may also seek special government funding for

educational or cultural initiatives. The funding for activities of the self-government remains problematic since, on the one hand, it is not practical for the respective nationality to develop a parallel governmental administrative infrastructure, whereas on the other hand, the autonomy of the nationalities remains restricted if they are not capable of administering their own policies.[49] It is not surprising that the Venice Commission (2012, p. 14) commented on the "serious financial difficulties" experienced by the nationality self-governments. The respective nationalities continue to receive funding for their national head office from where activities are initiated and coordinated. The bulk of governmental services continue to be within the domain of the local governments, but with the self-governments being able to veto, make inputs, and suggest policies of relevance to their members.

The *number of councils* have been increasing steadily since 1993. Smith (2013, p. 33) comments that "if numerical density alone is taken as a guide, then the initial cultural autonomy law can be seen as hugely effective". Whilst most of the nationalities had some form of civil society associations prior to the enactment of the Minorities Right Act, it is, for purposes of this article, particularly relevant to note how the Roma community had benefitted from the recognition of self-governance. It has been observed that the self-governing arrangements have facilitate the emergence of Roma elite and leadership at national and local levels in a manner not experienced previously (Vizi, 2015, p. 40). Whilst the total number of nationality self-governments increased from 814 in 1994 to 2,188 in 2019, the number of Roma self-governments increased from 477 in 1994 to 1,208 in 2019. However, as Dobos (2016, p. 92) has pointed out, while the number of self-governing councils has increased, ironically, the level of participation by members of the respective communities in elections decreased between the 2006 election and the 2014 election.

Although the aim of this article is to focus on the institutional design of nationality institutions in Hungary, some observations are justified in regard to the *practical functioning* of those institutions. Since the rolling out of nationality protection arrangements is a dynamic process, no observations can be conclusive. The self-governing arrangements have "found acceptance", however, there remains room for further improvement. (Yupsanis, 2019b, p. 39). Any assessment is inevitably influenced by a benchmark of what is sought to be achieved (Salat, 2015). The nationality self-governments are not dissimilar to emerging democracies that often take many years and even generations to find a secure foothold.

The following observations may be made in light of the specific focus of this article concerning the lessons to be drawn by indigenous communities in general and Aboriginal

peoples in particular from the Hungarian nationality rights scheme: (a) the complexity of the institutional arrangements is not necessarily justified by the limited scope of powers and functions of the non-territorial self-governments;[50] (b) the scope of non-territorial powers is invariably limited to functional areas that relate to the language, traditions, and culture of the specific community, the administration of which is often shared with a local government;[51] (c) a major benefit of the arrangements is to give communities a voice in public law and an opportunity to develop leadership and build capacity at a local level;[52] (d) the arrangements are particularly suitable to communities who might otherwise be disenfranchised and not capable of promoting their interests by way of civic organisations and clubs;[53] (e) nationality self-governments are in a complex symbiosis with local governments since, on the one hand, the self-governments receive grants for their activities from local governments but, on the other hand, they have the power to veto initiatives of local governments and also require the cooperation from local government to administer some of their policies. Furthermore, exercising a veto may have the effect of impacting on the grants expected to be received from the local government; (f) although self-governments may become the recipients of delegated powers by other levels of government, the self-governments do not necessarily have adequate training, finances, or experience to provide those services; (g) the self-governments are generally integrated with intergovernmental relations at a local level in a manner not usually found among non-governmental organisations; and (h) some communities have been able to use the new powers and functions more effectively than other communities (Pap, 2017, p. 105).

The success of self-governments is inevitably dependent on their own training, capacity, resources, and objectives. While some nationalities are principally interested in promoting their cultural affairs others. such as the Roma, are more interested in the socio-economic improvement of their lives. Overall, the political support for the system of self-government remains strong.

5. Hungarian Principles of Relevance to Aboriginal Communities

The following principles can be distilled from the Hungarian arrangements that may be of relevance to developing self-governing institutions for Aboriginal people and other indigenous people on the basis of non-territorial arrangements and to give practical effect to UNDRIP:

Self-government entails empowerment of indigenous communities. This is particularly relevant at the local level where communities may derive most benefit from the delivery of services in their own language, and from setting spending and policy priorities consistent with

their culture and suitable to the context of their unique laws, customs, and interests. Even if the members of Aboriginal communities live scattered and intermingled with the rest of the population, there are often smaller pockets where members of a community do live in closer proximity to each other. Services can therefore be provided at locations that are readily accessible by members of the community. This is consistent with the observation of Bauer and Renner that some form of local concentration may facilitate and simplify the delivery of services, but does not position territorial concentration as a requirement for autonomy.[54]

The legal status of self-governing associations must ideally arise from an organic statute that puts non-territorial arrangements within the sphere of public law in order to distinguish it from ordinary civil law, private clubs, or associations. The self-governments must therefore be legal entities within public law. Aboriginal people can already register Aboriginal corporations for purposes of their economic, social, and cultural affairs.[55] These corporations have a civil character and are not dissimilar to many non-governmental organisations and clubs that exists in liberal democracies for cultural and linguistic communities. What makes the Hungarian example particularly noteworthy, however, is that self-governments have been established within the realm of public law akin to a government. The powers and functions of these self-governments may not be as expansive as ordinary territorially-defined governments, but the principle being acknowledged in Hungary is that powers of government can be discharged on a non-territorial basis through elected representatives by way of which services are delivered to the members of a community regardless of their dispersed residential patterns. Self-government on a non-territorial basis could therefore enable indigenous communities to take responsibility for the management of their own cultural (customary, land, and environmental management), heritage, and social affairs, as well as to become agents to administer policies affecting their community on behalf of government departments, and become involved in the conduct of intergovernmental relations (De Villiers, 2020c).[56]

The mechanism by which Aboriginal people ought to elect or nominate their representatives may vary depending on the cultural needs and customs of the particular community. For instance, some communities may find it appropriate to conduct elections, whilst other more traditionally inclined communities may have a system of community nomination whereby elders are nominated and accepted as decision-makers, whereas other communities may authorise the native title holders to represent them. Although all community self-governments in Hungary are popularly elected, allowance may be made for indigenous peoples to determine by which mechanism they want to elect or nominate their representatives.

The experience of Hungary highlights the complexity of determining who is qualified to belong to or register to a minority group. If, on the one hand, any person can register on an indigenous roll, it could lead to abuse and what was called in Hungary 'ethnic business'. If, on the other hand, restrictions are placed to limit the right to free association, such restrictions may give rise to disputes about the ethnic 'purity' of a person's identity. Language proficiency is a poor indicator of community identity since the degree of linguistic assimilation in Australia and Hungary is high. Some legal precedent has been established in Australia whereby claims of membership of an Aboriginal community are determined on the basis of descent, community acceptance, and self-identification (*Gibbs v Capewell*).

The list of powers and functions that could potentially fall within the jurisdiction of non-territorial arrangements ought to be determined by; (a) the needs of a particular community; (b) the capacity of the community to self-manage and administer; (c) the financial and other resources available to a community; and (d) allowance for an expansion or contraction of the scope of items as time progresses.[57] The organic nature of non-territorial self-government is highlighted by the Hungarian experience where, over a period of 30 years, the self-governing arrangements have gone through various adjustments by way of preverbal trial and error. The typical functions that could form part of self-management for indigenous communities are aspects of education, welfare, social services, environmental protection, housing, primary health care, infrastructural projects, place names and signage, heritage protection, land management, and cultural and recreational activities.

One of the most relevant aspects of the Hungarian self-government arrangements is that communities can decide at the local level whether and when they wish to register a self-government. There is no obligation on any of the 13 nationalities to register a self-government in every location where they are present. Although in the initial years there was some scepticism towards non-territorial arrangements, the number of local self-governments have increased drastically.[58] This is indicative of the increasing credibility of the system, the belief that real benefits for the community can be obtained, and the general acceptance that these self-governments now form part of the governmental structure of Hungary. These lessons can be usefully considered by Aboriginal people in Australia. The principles of relevance to them are; (a) it should be the decision of a community whether they want to register a self-government; (b) if they register, the practical arrangements of the respective self-governments could differ to suit the needs of the respective communities—some localised asymmetry can therefore be tolerated; and (c) the specific arrangements implemented must reflect the traditional laws and

customs of the particular community.

The funding of self-governing bodies is an essential indicator for whether a self-governing body is a *government* or merely as non-governmental club or an association. Government activities are funded from the public purse, whilst private associations fund their own activities, albeit sometimes with the assistance of government grants. It would be rare for a non-territorial autonomy arrangement to have a tax base of its own. In light of the dire socio-economic situation in which many indigenous peoples, including Aboriginal people, find themselves, any non-territorial self-government would require funding from the general tax receipts. Whereas member contributions can be used to top up services, the baseline funding would have to be derived from public funds.

Conclusion

The Hungarian non-territorial self-governing arrangement is a unique practical contribution to the theoretical propositions that autonomy and self-government can be exercised on a personal and community basis. The arrangements are still evolving and the experience between and within nationalities differ. There is practical asymmetry in the manner in which the respective communities at a local level organise and utilise their powers and functions. In many respects self-governments are laboratories for the theory and practice of the ideas espoused by Bauer and Renner. To some nationalities the objective of cultural self-government is materialising, whereas to other communities the objective of socio-economic empowerment is a work in progress. Critics are sceptical about the lack of hard policy, political powers, and financial autonomy of the self-governments, whereas proponents point to the increase in the number of self-governments and the low baseline from where communities have come. The "magnitude" of self-governance ultimately depends on the practical circumstances of nationalities and may vary "along a continuum" (Marko & Constantin, 2019, p. 386).

The institutional design of self-government in Hungary offers useful insight to indigenous communities in general and Aboriginal people in particular. Hungary highlights the benefits of ongoing institutional experimenting in the practical application of non-territorial autonomy. In light of the development of self-government in Hungary since 1996 and the need for practicable governance and institutions of self-government for indigenous communities and, specifically, in the Australian context, the following principles have been identified in this article as particularly relevant:

(i) an indigenous community may, pursuant to an enabling statute, register a legal

persona;

(ii) the leaders of the legal persona could be elected by way of regular elections or nominated by members of the community in a manner consistent with the community's laws and customs;

(iii) the jurisdiction of the legal persona is defined not by territory but by the services that are provided to the members of the community in areas such as education, media, museums, and cultural activities;

(iv) the funding of the legal persona is derived in part from government; member contributions; and other sources;

(v) the legal persona operates in the domain of public and private law and is essentially *sui generis* in nature;

(vi) the legal persona exists alongside, not as a substitute, to other levels of government; and

(vii) the design of non-territorial self-governing institutions may not address all of the needs of indigenous people, for example, more effective participation in public policy and control and management of their traditional lands. But it may give those communities that opt for self-government a voice for purposes of cultural self-government and a platform from where to advocate for other interests.

To conclude, Aboriginal and other indigenous peoples can usefully consider these principles and develop local institutions that reflect the needs of the local community.

Notes

[1] Non-territorial autonomy in this article is used to describe different practices that may enable an ethnocultural community to engage in a form of self-government and self-administration on the basis of the personality rather than territorial principle.

[2] In this article the term 'autonomy' is used in the sense of self-government, meaning that a legal entity discharges powers and functions within the context of public law. It is acknowledged that the terms autonomy and self-determination are not terms of art—they do not have a set universal meaning and their content depends very much on the practical circumstances in which they are employed. Simply put, there is "no clear account of the concept autonomy available" (Wiberg, 1998, p. 43).

[3] The principal reason being that in many of these countries the population composition is multi-ethnic with communities living intermingled. This does not allow for Swiss-type territorial autonomy. Added thereto was the concern about separatism and territorial dissolution.

[4] The irony of the predominance of territorial autonomy as a *sine qua non* for self-government by ethnic minorities is that territorial dominance encourages majority rule at local or regional levels, which in deeply divided and heterogeneous societies can potentially mean permanent exclusion or marginalisation of minorities. Unless the importance of control over territory is removed as a requirement for minority group self-government, the violent competition for territorial control and dominance that is witnessed internationally and the instability that is caused as a result thereof will, for obvious reasons, continue.

[5] Whilst this article focuses on the decision-making powers of non-territorial entities, it should also be noted that within the various contributions in literature reference is also made to what is called 'functional' autonomy, which places the focus on administration and private self-management.

[6] The historical injustices perpetrated against Aboriginal people; deprivation of lands, displacement, and discrimination continue to impact on contemporary race relations in Australia. Aboriginal people are often at the lowest end of all socio-economic indicators. More recently proposals have been made to establish an advisory Voice for Aboriginal people, but after more than 4 years of discussions no substantial progress has been made.

[7] The article focuses on the *design* aspects of Hungarian self-government and not on the day-to-day *operational* success or failure of the institutional arrangements. It is accepted as a general proposition that institutions do not necessarily operate in practice according to their design, but this truism is not limited to Hungary.

[8] The author, who has been involved in the constitutional drafting process in South Africa, can attest that a smorgasbord of international designs and experiences gave rise to a uniquely crafted constitution for that country, with a bill of rights that drew on Canada; a second chamber that drew on the Bundesrat; a federal arrangement that took after the Basic Law of Germany; a cooperative system of intergovernmental relations that emulates cooperative federalism of many contemporary federal countries; provision for cultural councils on the basis of Belgium and central European developments; and traditional authorities that draw on various African arrangements (De Villiers, 1994).

[9] Renner explained at the time of their writing how individuals in the Empire in the modern era are less tied to the land as their ancestors, that economic interests span vast territories, and that people move around in ways that were unheard of previously. Those trends are even more apparent in contemporary society. The 'personality principle' is according to him less 'utopian' than simple territorial solutions because the personality principle acknowledges the reality of individuals from different cultural backgrounds living intermingled and often far from their traditional lands and communities (Renner in Nimni, 2005, p. 33).

[10] The equality of each of the legal persona of the respective nationalities as proposed by Bauer and Renner can be likened to states in a federal system such as the USA, where equal representation is granted to each state in the Senate regardless of the size of its population.

[12] This pragmatism is illustrated in Hungary, where the functioning of non-territorial self-governments, particularly in the delivery of services, is facilitated by some concentration of communities at local levels and also cooperation between nationality councils and local governments in service delivery.

[13] Note also the ILO-169 (Indigenous and Tribal Peoples Convention, 1989 (No. 169)) which is legally binding but has only been ratified by a handful (23) of nations.

[14] a15 of the Convention is used by the Advisory Committee to assess existing autonomy arrangements or to recommend consideration of autonomy arrangements.

[15] As can be seen from this quotation, even within the Aboriginal community of Australia there is no consistent approach as to the meaning, content, and practical effect of self-determination.

[16] Note in this regard the distinction that has been drawn in Brussels between territorial matters and personal matters, according to which a mixture of non-territorial and territorial autonomy applies in respect to the main language communities.

[17] See in this regard the opinion of the author that the so called Noongar Aboriginal Settlement in Australia is an example of non-territorial autonomy outside the European context (De Villiers, 2020c). This is a potentially ground-breaking case where a non-territorial option has been pursued for the Noongar Aboriginal community without suggesting that it ought to become a model for all Aboriginal communities.

[18] Aboriginal people predominantly speak English but see themselves as distinct from non-Aboriginal English speakers due to their unique traditions, laws, and customs.

[19] Some nationalities, such as the Croat and Ruthenian communities, objected to the term minority since it was to them demeaning.

[20] There is no agreement in Australia regarding which term to use to describe the indigenous people, but generally the term 'Aboriginal People' is used in legislation and popular vernacular, as well as First Nations and Indigenous People.

[21] There is no reliable source for Roma numbers and one can assume that the actual number is potentially substantially higher than those of the census. The Roma are often treated as a single community although, in fact, it comprises several sub-communities. The Act does not provide recognition to those sub-communities (Dobos, 2014, p. 292). Legislation does however acknowledge the Romani and Beash languages as being distinct.

[22] It is estimated that of the 3,200 municipalities in Hungary, around 2,500 have nationality inhabitants of which in only 50 the nationality form a majority (Dobos, 2016, p. 89).

[23] Appendix 1, Act on the Rights of Nationalities, 2011: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene, and Ukrainian.

[24] Hungary has therefore drawn a distinction, controversially, between older nationalities who qualify automatically for certain rights since they have been residing in Hungary for many decades, and more recent minorities who do not qualify for the same rights. This may be seen as too restrictive and potentially discriminatory, but at the same time it is reflective of Hungary's history as reflected in the Preamble where a commitment is made to preserve the "cultural features of nationalities that have lived together with the Hungarian people for centuries in this country…"

[25] Other cultural communities can qualify for self-government but only after a stringent process has been followed. For example, a community must gather 1,000 signatures and the President of the Hungarian Academy of Sciences must certify that they constitute a distinct nationality. Although some communities have attempted to qualify as a nationality, none have up to date of this research (December 2020), qualified for self-government.

[26] Immigrant communities in Australia generally assimilate with the predominant Australian language, society, and culture, or if they maintain their traditions and customs they do so by way of informal, private arrangements within clubs, associations, sport and recreation, religious institutions and educational facilities.

[27] See for example how Hungarians living in Vojvodina have supported cultural autonomy within the province. (Huszka, 2008). There are an estimated 2 million Hungarians living in neighbouring countries, with the largest Hungarian communities in Romania (700,000); 500,000 in Serbia and 350,000 in the Ukraine (Mandić & Simonović, 2017).

[28] The nationalities self-governments for example do not have taxing powers; do not hold a veto in regard to all government policies; do not co-govern in regard to non-cultural matters; and their legislative functions are in essence limited to cultural and linguistic affairs.

[29] The initial reluctance of persons to self-identify with a nationality can be attributed to various reasons, such as the novelty of the new arrangements, the experiences with Nazi atrocities, the treatment of Roma under Communism, and the expulsion of ethnic communities.

[30] This is not dissimilar to Australia where the number of persons self-declaring as Aboriginal has been on a steady increase in the last three decades. Increases in the counts of Aboriginal and/or Torres Strait Islander people have been observed over various periods since 1971. Particularly large increases occurred between the 1991 and 1996 Censuses (33.0%), the 2006 and 2011 Censuses (20.5%), and the 2011 and 2018 Censuses (18.4%). See Census of population and housing: Understanding the increase in Aboriginal and Torres Strait Islander Counts, 2016 available online at https://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/2077.0?OpenDocument, Last visited on December 20, 2020.

[31] The Preamble proclaims that the nationalities are "constituent parts of the State" and in article XXIX(2) the right of nationalities to establish "local and national self-governments" is enshrined. Note in this regard the ongoing efforts in Australia to amend the Constitution or enact legislation in order to recognise the status of Aboriginal People as the original owners of the land.

[32] *Act LXXVII of 1993 on the Rights of National and Ethnic Minorities*. Available online at https://www.refworld.org/docid/4c3476272.html, Last visited February 25, 2020. This Act was repealed by *Act CLXXIX of 2011 on the Rights of Nationalities*.

[33] The complexity to identify a nationality is highlighted by the request of the Jewish community (numbering around 120,000) that they be regarded as a religious community and not as a 'nationality'. Decision of the Constitutional Court 2/2006 (I.30.) ABH.

[34] 'National cultural autonomy' is defined as: "a collective nationality right that is embodied in the independence of the totality of the institutions and nationality self-organisations under this Act through the operation thereof by nationality communities by way of self-governance" (a2(3) Act on the Rights of Nationalities).

[35] A nationality self-government is defined as: "an organisation established on the basis of this Act by way of democratic elections that operates as a legal entity, in the form of a body, fulfils nationality public service duties as defined by law and is established for the enforcement of the rights of nationalities, the protection and representation of the interests of nationalities and the independent administration of the nationality public affairs falling into its scope of responsibilities and competence at a local, regional or national level" (a2(2) Act on the Rights of Nationalities).

[36] This is a form of 'regional autonomy' (Patyi & Rixer, 2014, p. 357).

[37] When a nationality accounts for 10% of the local populations, the self-government may request that all decrees and announcements of the local government also be made in the language of the said community (a6 Act on the Rights of Nationalities).

[38] One example of many occurred in one local community when non-ethnic Germans stood as candidates for the German self-government purportedly because that would have qualified them for sponsored visits to Germany (Deets & Stroschein, 2005, p. 299).

[39] For a discussion of the difficulties faced by countries with an indigenous population such as New Zealand, Australia, and Finland in resolving disputed claims of membership, see De Villiers, 2020b. In New Zealand there is limited judicial review of an individual's claim of being Maori, whilst in Australia the courts have had to determine several disputes in regard to the purported aboriginality of a person. Meanwhile, in Finland the Supreme

Administrative Court has final jurisdiction about disputes arising from registration as a Sami for the Sami Parliament.

[40] Opinion No.671/2012, CDL-AD (2012)011.8.

[41] Whereas this new approach is aimed at reducing abuses, it must also be noted that the declaration of a person during a census and the registration of the person as forming part of a nationality for purposes of cultural affairs may not necessarily be consistent. See in this regard the Venice Commission (2012, p. 10). During the 2011 census an estimated 1.5 million persons refused to declare their ethnic affiliation. Linking the result of the census to the eligibility of a nationality at local level to register, is therefore not as simple as it may seem at first glance.

[42] If there are 30 or more persons who in the most recent census identified as belonging to a particular nationality, that nationality qualifies for the right to elect a self-government at a local level.

[43] Self-governments may manage their own educational facilities. However, all state schools are managed by the state albeit that self-governments may make inputs into the curriculum. Even if a school is managed by the state, the teaching of mother tongue within the school is supported (a22(2) Act on the Rights of Nationalities).

[44] See in this regard the proposal in Australia to establish a "Voice" for Aboriginal People to give advice to the federal government and parliament (De Villiers, 2018).

[45] See in this regard similar arrangements in the Noongar Settlement whereby Aboriginal Corporations can become the agent of government to perform certain functions (De Villiers, 2020c).

[46] Although at face value 3,000 US Dollars was a small amount, it must also be noted that whilst in 1993 there had been 477 Roma councils, by 2006 this number had increased to 1,118 (1,208 in 2019). The total grant for the entire Roma community therefore amounted to an excess of 3,354,000 US Dollars. Criticism about the funding of the associations may have merit (e.g., National Democratic Institute, 2006, p. 6) but it also must take into account the total amount contributed to a community by government. The Democratic Institute (p.6) describes the associations as a type of half-way house between non-governmental organisations and a government due to their "underfunded mandate. Conversely Dobos (2007, p. 460) notes that "for low-income groups in particular, even the small amounts involved could appear quite significant". Funding arrangements have since been adjusted.

[47] This dependency is not necessarily only negative since it also encourages cooperation and consultation between the local communities and the local governments.

[48] The formula used to set the budget remains controversial, particularly since census numbers play such an important role (Patyi & Rixer, 2014, p. 361).

[49] The basic formula is that a third of the budget is based on the statutory, core functions undertaken by the self-government and two-thirds is based on other activities undertaken by individual self-governments in order to encourage them to be pro-active. Self-governments may also apply for special grants.

[50] The symbolism of cultural autonomy may, generally speaking, be of more substance than the actual powers of the self-governments (Yupsanis, 2019a, p. 105). However, such symbolism is not immaterial to a minority community who may feel threatened or neglected.

[51] This is consistent with the depiction of this matter by Eide, Greni, and Lundberg suggesting that cultural autonomy is the "right to self-rule, by a culturally defined group, in regard to matters that affect the maintenance and reproduction of its culture" (Eide et al., 1998, p. 252).

[52] Although the scope of non-territorial powers may be limited, it is an improvement on the Jacobin model of centralisation and a single voice for all (Karklins, 2000, p. 225).

[53] In this regard the situation of the Roma is particularly relevant. Whereas some would say the protection arrangements have given the Roma a voice, others say that the legal arrangements have allowed the national government to escape criticism for the lack of progress in substance to improve the socio-economic conditions of the Roma. See for example the criticism expressed in National Democratic Institute (2006).

[54] Vizi (2015, p. 38) describes the Hungarian minority regime as a "modern practical implementation of the ideas of Renner".

[55] The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* enables Aboriginal people to register corporations in civil law that can undertake activities and ventures on behalf of its members.

[56]Refer in this regard to the Noongar Settlement in the state of Western Australia where a statutory agreement has been concluded between the Noongar Aboriginal people and the state government for purposes of self-government and self-administration by the community on a non-territorial basis. This is, arguably, the most advanced agreement yet concluded in Australia to recognise the rights and interests of an Aboriginal community to self-govern (De Villiers, 2020c).

[57] See for example in this regard how the self-governing arrangements in Brussels for the Dutch and French speaking communities have evolved since the process of federalisation began in the 1970s.

[58] Note that if a community does not meet the statutory threshold of size of the community pursuant to the most recent census, it cannot elect to self-govern.

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