A CASE FOR CONSTITUTIONAL REFORM

Over the past twelve months we have been bombarded with television, radio and print "information" on Electoral Reform, its possible shapes, and why it is good (or bad) for us. The vote in the 19th September referendum made it clear that many New Zealanders want a change to the present system. Now we are on the threshold of all-out electioneering and heading for **another** referendum at this year's General Election. This time politicians hope to sidetrack the electorate with the offer of a Senate. This body would be able to delay but not veto legislation, and it could **suggest** amendments, which the "Lower House" of Parliament could then override. Cosmetic change, and another **30** full-time politicians - this time to be known as Senators.

As we contemplate this potential Americanising of the political structure it may help us to remember that the Westminster system of Government which we follow in this country has no natural claim to a place here either. Indeed, many former British colonies which imported the same system have since abolished it. Canada and Australia are two examples with which we are familiar.

In this country, the establishment of Westminster-style Government in the 1850s unjustly and progressively deprived Maori of the right to control their own destiny, and the direction and development of their own land. The English Parliament, sitting in London, imposed the 1852 Constitution Act, in the name of the Crown. By this means, they transferred what they saw as **their** right of absolute political power to settler interests in this country. That 1993 is the International Year of Indigenous Peoples makes this reminder even more pertinent. It is salutary also to observe that 'our' system of representative democracy doesn't even deliver to us. The launching of a petition calling for 50:50 female:male political representation is a recent example of women, at least, beginning to recognise this inadequacy.

It is therefore increasingly clear that mere Electoral Reform is not enough. What is needed is Constitutional Reform which will take as its starting point te Tino Rangatiratanga o te Iwi Maori. It is Tino Rangatiratanga which is the central fact affirmed in the 1835 Declaration of Independence, and upheld in Te Tiriti o Waitangi in 1840. Neither the Declaration nor the Treaty are in any doubt that Maori exercise absolute authority over their own land and destiny.

In 1990, after more than a decade of discussion, research and careful monitoring of Government action, Te Runanga Whakawhanaunga i nga Haahi o Aotearoa (the Maori Ecumenical Body) called on Maori and all people of goodwill to boycott the elections. As an alternative, Te Runanga suggested that people sign a Tino Rangatiratanga Register. This call was located solidly within a 150-year understanding that the Treaty, far from ceding sovereignty to the British Crown, in fact reasserted the Tino Rangatiratanga of Maori.

Te Renanga's call also reflected the clear awareness that the impostion of Settler Government in the 1850's by a Pakeha **minority** was in direct contravention of the Treaty. Given that our political system is poisoned at its source, the Runanga's forbearance in proposing a Constitutional Conference to the two main Parties in 1990 is even more remarkable. This proposal received scant attention in the media, who were busy dismissing the boycott call, claiming it was the result of manipulation by ‘radicals’. And it was rejected out of hand by both the then Prime Minister Mike Moore, and the Leader of the Opposition Jim Bolger. Their letters of response to the proposal were completely devoid of respect for the Runanga, or of any sense that they had anything to learn from the opportunity being offered them.

By contrast, the Executive of CCANZ and the then leaders of some of its member Churches were very supportive of Te Runanga’s stand. They also called on their church constituencies to give serious consideration to the boycott call, and the reasons for it. Earlier in 1990, ten Church leaders had issued a joint statement on the sesquicentenary celebrations, which acknowledged the need for Constitutional reform as part of the quest for a just future, based on the Treaty and on Maori status as Tangata Whenua. This imperative to do what is right is therefore not new. Nor will it go away. The Royal Commission on the Electoral System, reporting in1986, noted that the present system of Government effectively deprives Maori of a political voice. It recommended a process of consultation and dialogue between Maori, parliament and Government, to seek a solution to this. Te Runanga's 1990 proposal for just such a dialogue has, like the Commission's recommendations, been steadfastly ignored by both Governmen and opposition.

The Maori Congress has, since then, suggested more than one option for delivering a real political voice to Maori. The Methodist/Presbyterian Joint Public Questions Committee has pursued the question of Electoral-vs-Constitutional reform, paying careful attention to te Tino Rangatiratanga in its analysis. Groups in both Church and Society have increasingly seen and acted on the need for structural change based on the Treaty. Early examples of this were the Methodist and Anglican Churches, the N.Z.E.I. and theY.W.C.A.

And the discussion of the need for Constitutional Reform is ongoing in Denominational and Ecumenical circles. In the wider public, Tauiwi (non-Maori) remain largely unaware of these developments. Our centre stage is occupied by conflicting arguments on how to tinker with electing MPs. The more fundamental questions of how we are governed, by whom, for whom and why, are not on our agenda.

It is time they were. It is time to respond to the Biblical injunction to ...’do justice, and walk humbly with.. (our) God.’

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A TIRITI ANALYSIS OF THE PRESENT SYSTEM OF REPRESENTATION AND PROPORTIONAL REPRESENTATION

Te Tiriti O Waitangi is the primary constitutional document of Aotearoa. The Maori version of Te Tiriti confirmed te tino rangatiratanga over all things Maori. It granted to the Crown kawanatanga, or limited power, for the exercise of control over new settlers. However, on the basis of the English text of Te Tiriti (or their own unilateral proclamation of sovereignty), successive governments have maintained that Maori ceded their sovereignty to the Crown. This has been the basis on which they claim their legitimacy. It is however incorrect, for Maori never relinquished their tino rangatiratanga. Rather it was taken from them. Governments throughout our history have denied Maori their tino rangatiratanga.

The acid test of any constitutional reform in Aotearoa is whether it is Tiriti based, and in particular whether it recognises and confirms tino rangatiratanga. Clearly the present parliamentary system does not. What about proportional representation? The short answer is that it too does not. While the advocates of proportional representation argue that Maori will be better off under proportional representation because they will have more seats in parliament, this begs the question of Te Tiriti and tino rangatiratanga. Under proportional representation the principle of ensuring that there is always a Tauiwi (all non-Maori people living in Aotearoa) majority in control will not be altered. For Maori, proportional representation only means more of the same.

Given the expressions of commitment to the Treaty of Waitangi made by our Churches, we are called to judge the adequacy of proportional representation in terms of Te Tiriti. When this is done proportional representation is found to be wanting, because it is not Tiriti based and does nothing towards restoring tino rangatiratanga.

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