

Do Justice

"Do justice, love kindness and walk humbly with your God." Micah 6:8

A Newsletter on Social Justice Issues

Welcome to the November edition of Do Justice for 2019 as we discuss issues of social justice from a Christian perspective.

Is it time for constitutional reform?

Last month we commented on the ongoing battle in the UK over Brexit and the implication for Westminster-style parliamentary democracy. Nothing in recent days has lessened concerns about how a democracy can respond to such situations. The ongoing saga in the United States is also a source of concern. By the time you read this, Brexit may or may not have happened, Boris Johnson may or may not still be Prime Minister of the UK, a general election may be called, Boris Johnson could be in prison for contempt of Parliament and the Speaker of the House of Commons could be an interim Prime Minister.

In the United States a series of equally possible events may happen. Trump could face impeachment by the House of Representatives, not for bribing foreign governments and leaders to get supposed "dirt" on his election rivals, but for obstruction of justice in preventing government officials from testifying before various House of Representatives committees, for continuing to refuse to provide his income tax returns, and so on.

But what has this got to do with us in New Zealand? Our Prime Minister has not defied the House of Representatives and, as far as we know, is not thinking of ignoring the law of the land, and there is no prospect of a general election before next year. However, the antics of Johnson and Trump do raise questions about how well our constitution protects against such anti-democratic behaviour.

Although we, and the UK, do not have written constitutions, our basic system of government relies on many hundreds of years of precedence going back to the Magna Carta in 1215. There have been several attempts to introduce a written constitution, and currently there are two groups who have done considerable work on this issue.

Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation convened by Professor Margaret Mutu and Moana Jackson started their work in 2010. In 2016 the group published *He Whakaaro Here Whakaumau Mō Aotearoa*, a report which included governance proposals based primarily on values drawing on the 1835 He Wakaputanga o te Rangatiratanga o Nui Tirenī and Te Tiriti o Waitangi. It is the links between the two that are so important, including Māori wording and understanding of the hapū, iwi, and the chiefs who signed one or both agreements. The emphasis by the report's authors on values is a reflection of a desire to have a more "open" constitution based on "a more conciliatory and consensual democracy rather than an adversarial and majoritarian one."

Former Prime Minister Sir Geoffrey Palmer and academic lawyer Dr Andrew Butler published *A Constitution for Aotearoa New Zealand* in 2016 and after further consultations a second book *Towards Democratic Renewal* in 2018 which included a proposed written constitution for Aotearoa New Zealand. Palmer and Butler have developed a written constitution based on the existing governance arrangement with some additions. It is a Westminster-style approach but also draws on the principles of separation of powers in the Constitution of the United States of America.

The basic approach of the two groups is fundamentally different. The Mutu/Jackson approach is attractive in many ways, not least because of the more collaborative values undergirding their proposals. However, it is still very much a work in progress as they have identified six possible governance models that do not ignore the existing parliamentary situation but try to modify the parliamentary culture to better reflect the partnership nature of Te Tiriti o Waitangi.

The Palmer/Butler proposal is a fully developed constitution with 115 clauses. The authors have already gone through two iterations of the proposals,

following extensive dialogue with interested parties and are still consulting. Palmer and Butler do not reject the Matike Mai Aotearoa approach out of hand but rather see it as evidence that the status quo is unsustainable.

In the Matike Mai Aotearoa report the group has a number of recommendations to progress the issue of a constitution for Aotearoa including:

That in 2021 Iwi, Hapū, and lead Māori organisations initiate dialogue with the Crown to organise a Tiriti Convention to further discussions about the need for and possibilities of constitutional transformation.¹

Although the USA Constitution does not appear, so far, to have protected it from political abuse, neither has the unwritten constitution of the UK. Both approaches have features that could be useful in a New Zealand context within the basic Matiki Mai Aotearoa proposal.

However, it is worth looking at some of the fundamental issues that have led to the current political instability in both the USA and UK.

Back in the 1980s, both the USA and the UK became leaders in the drive towards free markets and small government now generally called neoliberalism. Privatisation of government operations, tax reductions for the rich and a hardening of benefit policy all contributed to a rapid increase in inequality.

In addition, the drive towards free markets led to globalisation with the lowering of tariffs on most manufactured goods. This led to severe unemployment in the so called “rust belts” of both nations. It was in these rust belts that the presidential election of 2016 and the Brexit referendum were won.

Disillusionment with the neoliberal policies of Republicans and Democrats in the USA and Conservatives and New Labour in the UK was the main reason for the rise of Trump and Johnson. In addition, the funding of election campaigns by the super-rich has also contributed very significantly to the rise of socialism for the rich and capitalism for the poor. Similarly, there are reports that a small number of super-rich individuals bankrolled the Brexit campaign in 2016.

In New Zealand we have also experienced the impact of neoliberal policies from the 1980s. Inequality in income and wealth has grown steadily since 1984 but

because we have had strict controls on election expenses we have not seen the influence of a small number of extremely wealthy individuals on government policy as has been the case in the US. There are some gaps in our law that have enabled some wealthy foreigners to make significant donations to our political parties, and the impact of super-rich Peter Jackson in influencing the Wellington mayoral election should make us think again.

The potential impact of gross inequality and extensive poverty is still an issue in New Zealand. Both are integrated with climate change. Residual neoliberal thinking in the National Party and parts of the Labour Party is a potential barrier to energetic addressing of these issues. The question must be asked: is our governance structure actually a major roadblock to action, particularly on climate change? There appears to be almost overwhelming public support for urgent action on climate change and its related issues, which may only be fully addressed following major reform of our governance structures.

One of the major issues with relying on our existing governance structures is that a change of government with a majority of one can reverse any and all urgent action taken by the previous government to address the climate change/poverty crisis. One of the attractions of the Palmer/Butler proposals for a constitution is that safeguards against such situations have been built into the proposal, making it much more difficult for sudden U-turns in policy. Makite Mai Aotearoa also has safeguards but they are not so obvious. A written constitution has many advantages for the long-term health of a nation and the Palmer/Butler and Makite Mai Aotearoa proposals are excellent starting points for a constitution-making process. In New Zealand we can also learn from the UK and USA experience.

Now seems to be a good time to start the process. Is there anyone in a leadership role in our political system who is prepared to make this an issue for the 2020 general election? Or, better still, is there bipartisan support to begin the constitution-making process now?

Even if there is support for a constitutional process, however, this must not slow down or limit action to address climate change and poverty. If we fail to address these issues, we may not have a nation for the constitution.

¹ <https://nwo.org.nz/wp-content/uploads/2018/06/MatikeMaiAotearoa25Jan16.pdf>
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