

NEW ZEALAND'S CONSTITUTION - SUBMISSION OF THE NEW ZEALAND CATHOLIC BISHOPS CONFERENCE A PROPOSAL FOR A NEW ZEALAND CONSTITUTION

The Constitutional Advisory Panel's invitation to the public to participate in the discussion regarding a Constitution explains that "A Constitution can be seen as the rules about how we can live together as a country" (page 7). The proposal we are making in this submission is very much about what is necessary so that people can "live together as a country". We are presupposing the need for genuine pluralism, and looking to the deeper level of what unites us even as we respect diversity. The Panel also explains that "The rule of law ensures we are a free, safe and orderly society.... (and) also ensures the economy can function smoothly" (page 8). Our submission is that the rule of law is necessary but that law on its own cannot provide those assurances: If the institutions of democracy and capitalism are to work properly, they must co-exist with certain premodern cultural habits that ensure their proper functioning. Law, contract and economic rationality provide a necessary but not sufficient basis for both the stability and prosperity of post-industrial societies; they must as well be leavened with reciprocity, moral obligation, duty toward community, and trust, which are based in habit rather than rational calculation. (Francis Fukuyama, *Trust, the Social Virtues and the Creation of Prosperity* (New York: The Free Press, 1995), page 11.). Our submission is about the "cultural habits" to which Fukuyama refers, and which are embodied in a people's culture. Both democracy and a free market need to be underpinned by a nation's "culture". The focus of this submission is on the kind of national culture needed to underpin the institutions and laws that would be detailed in the proposed Constitution. We propose that the kind of culture needed to underpin our democracy and our economy be outlined in an Introduction that would follow (or form part of) a Preamble to the proposed Constitution.

PART I. THE RATIONALE FOR OUR PROPOSAL

Concerning a national culture

A nation's culture is what gives rise to the kind of laws it wants. It is about those things that matter most to people – the underlying reasons why they would even want a stable society and functioning economy. How a nation sees itself involves more than what the law itself articulates, including such things as a nation's history and heritage, treaties and ethnic composition, its literature, music, sports and religious beliefs; and the store it places on civility, dialogue etc. It is about things we take for granted while we have them, but would miss if we didn't.

The kind of society a nation wants to be, and the kind of economy it wants, are dependent on what its people consider makes their lives worthwhile; what they are prepared to work for, and sometimes even die for. In fact, as last century's European history shows, a nation's underlying culture can ensure its survival even when its political and economic independence have been lost.

A Constitution would hardly be worthwhile if it did not uphold the underlying values and virtues on which a free society and an open economy depend. They both need the foundations, the boundaries and the discipline that can come from a nation's underlying moral culture.

Freedom

Defending the culture that undergirds a free society and free economy requires above all defending the very notion of freedom itself. Freedom is too superficially perceived by some to be the liberty to pursue one's personal gratifications so long as no one else whom the State is prepared to defend gets hurt. On this understanding of things, democracy is only an ensemble of procedures, largely legal, by which we regulate the pursuit of our personal satisfactions. It has no substantial core; – only the Rules of the Game (cf G Weigel: *Soul of the World* (Ethics and Public Policy Centre, Washington DC, 1996) *passim*).

This is illustrated by an extreme example: according to a decision of the US Supreme Court “The heart of liberty is the right to defend one’s own concept of existence, of meaning, of the universe, and of the mystery of human life” (cited by Weigel, page 63).

Weigel’s own comment on this is incisive:

Here there is no civil society, no community of democratic discourse. Here, rather, is a congeries of monads, who can hardly be considered citizens since they are related and mutually engaged only by their capacity to contest one another’s “concept of existence” by lawsuit... (page 63).

The alternative to this extreme notion of liberty and personal autonomy, with its consequences, is the idea that human persons find their meaning and happiness through and with one another; quite literally being there for one another. This is fundamentally an ethical position, and so belongs to the realm of culture.

Freedom itself is not value-free. It degenerates into licence – and the un-doing of freedom – if it is not linked to an underlying desire to seek truth and accept its consequences. Even as we respect every citizen’s right to follow his/her own sincerely held beliefs, and accept the diversity resulting from this, what prevents this from tearing society apart is the ground we have in common - our common duty to seek truth, wherever it is to be found, whatever its consequences, and wherever it leads.

Truth is not reducible to opinions. Everyday life shows how concerned each of us is to discover – beyond mere opinions – how things really are. All learning and scientific progress depend on this need to know on how things actually are.

The desire and obligation to seek truth, being what we have in common, constitute the common ground we need for dialogue. Without that common ground we could not move beyond the mere fact of plurality (with its potential for disintegration) to genuine pluralism which is a cultural achievement:

...true pluralism means, not the avoidance of differences, or an indifference to differences, but the thoughtful engagement of differences within a community of civic friendship. Pluralism is the achievement of an orderly conversation, which is another way of saying a “civil society” (Weigel, page 58).

That is the context in which it becomes possible to have ongoing public discussion (politics) about how we ought to live together as a nation. It enables us to bridge racial, ethnic and religious differences for the sake of achieving the common good.

The Common Good

Pursuing the common good means creating the conditions that enable citizens, as individuals and as groups, to reach their fulfilment more fully and more easily. It is about enabling their participation: they have the right to be agents of their own destiny as far as possible, and to contribute to society.

This right to “participate” underlies the two-directional principle of subsidiarity; also known as the principle of subsidiary assistance. This principle requires that individuals, and associations of individuals, be allowed to make the decisions that are within their ability to make and carry out.

What they can do for themselves should not be taken over and done for them by higher entities.

Equally, they should receive subsidiary assistance for what they cannot manage on their own to enable their participation.

Those least able to influence their own destinies and least able to contribute to society have a greater claim on the assistance of others. The common good is about individuals, but in and through relationship with one another. It is the opposite of living egotistically.

A sense of “ought”

A consequence of the essential connection between freedom and truth is that the upbringing and education of future generations of New Zealanders need to include the development of unselfishness, and a sense of responsibility. They have a right to learn why anyone would say that

“freedom consists not in doing whatever we please, but in having the right to do as we ought” (Lord Acton).

To promote a sense of “ought” is simply part of the State’s role of promoting the common good, i.e. creating the space within which citizens (as individuals and as groups) can reach their own fulfilment and make their own contributions to society. This is a non-partisan role; it neither professes faith nor denies faith. In this sense, the State is rightly “secular”. But that is different from taking sides with ideological secularism over against religious faith. In a plural society, non-faith ideology is legitimate, but only as one option among others, which is why it is not appropriate for the State, through legislation, to support its agenda. A non-partisan role by governments separates the State from positions that profess faith and from positions that deny faith. In this way the State increases freedom, whereas professed secularism on the part of the State diminishes religious freedom.

PART II. SUGGESTED TEXT FOR A PREAMBLE AND INTRODUCTION

We, the people of Aotearoa-New Zealand, in order to live together in freedom and work together for the common good, respecting the rights of all, and respecting the planet, and in order to play a responsible role within the community of nations, hereby establish this

Constitution for Aotearoa-New Zealand; and in the following Introduction, we identify the values that bind us together as a society that seeks to live under a single Constitution and that give the institutions and laws set out in the Constitution their intended purpose and meaning.

By respecting the Treaty of Waitangi, we recognise the rights of the Maori people as the first people of this land, and now their right to the protection of the Crown; as well as the rights of all who now form one nation with them.

We remember with gratitude the men and women who have given their lives defending our nation, and other nations against false ideologies, injustice and aggression. Their sacrifices involved rising above their own interests for the sake of others. They remind us that our ability to live together as a country depends on our being people who can transcend self-interest for the sake of others. We do this through our own commitment to justice and peace, truth and reconciliation.

The rule of law ensures a free, safe and orderly society and well-functioning economy. But in order to know what kind of society, what kind of economy and industrial relations, and what kind of laws we want, we look to the deeper level of what grounds our desire for an orderly society and prosperous economy in the first place; the things we are prepared to live for, work for, and sometimes even die for. These deeper convictions, values and virtues form our national culture, and provide the foundation, the boundaries and the discipline needed for democracy and a free economy to work. They can also give rise to moral obligations where there is no obligation arising from law or contract or convention.

We eschew interpretations of “freedom” and of personal “rights” and of “laws of the market-place” that focus too exclusively on self-interest and individualism, and that disempower others. We uphold the right and duty of successive governments to create the social and economic conditions that best enable all citizens to be the agents of their own destinies and to contribute to society. This includes providing practical support for those least able to do so.

We respect one another’s right to follow sincerely held beliefs and the diversity that results from this. Across all our diversity is openness to truth wherever it is to be found, and willingness to seek truth wherever it leads. This underlying regard for truth is the common ground that makes dialogue possible, and respect for those with whom we disagree. There is always a place for honest questioning; on the other hand, there are no circumstances that justify hatred because of another’s sincerely held views, or because our own views are honestly questioned.

In order to nurture a healthy and vibrant national culture, on which so much else depends, we recognise the need to develop self-restraint and self-giving; the responsible exercise of freedom; the role of reason; the experience of solidarity; commitment to the common good; a sense of fair play and of acting in good faith; trustworthiness; the creation of equitable opportunities; the practices of

giving and forgiving and of compassion within social relationships and economic life; respect for the planet; and opportunities to experience beauty, wonder, silence, stillness, thanksgiving..., which are all ways of experiencing self-transcendence.

Above all, we commit ourselves to nurturing a healthy national culture through respecting the innate dignity of every person, and respect for life. No matter what another may have done, or how different his/her background or beliefs, such others are always, and above all, persons. *He aha te mea nui o te ao? He tangata, he tangata, he tangata.*

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