

INTERNATIONAL LAW AND DEMOCRATIC THEORY

PREFACE

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Giving the Presidential Address to the 9th Meeting of the American Society of International Law in 1915, in the midst of the Great War, Elihu Root concluded:¹

Some of us believe that the hope of the world's progress lies in the spread and perfection of democratic self-government. It may be that out of the rack and welter of the great conflict may arise a general consciousness that it is the people who are to be considered, their rights and liberties to govern and be governed for themselves rather than rulers' ambitions and policies of aggrandizement.

A century later, the question of the connection between international law and democracy seems every bit as urgent, prompted both by the deeper penetration of international law into domestic legal systems, and by the growing power and complexity of the international legal system itself. Is international law concerned with the promotion of democratic values within national polities? To what extent can the structures and systems of international law themselves be said to operate democratically? Do we need to develop different conceptions of democracy in designing multilateral methods of governance? To what extent can the voice of the peoples of the world be better heard?

These important issues go to the heart of the modern agenda for international law. It was, therefore, a singular honour that Victoria University of Wellington Law School was able in 2006 to host an important symposium devoted to "International Law and Democratic Theory". The papers presented in this issue are edited versions derived from the research presented at that symposium.

The symposium provided a forum for the first fruits of a new research collaboration between four national societies of international law around the Pacific Rim, representing five of the world's leading democracies. The four societies are: the Japanese Society of International Law, the Canadian Council of International Law, the American Society of International Law and the

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1 Elihu Root "The Outlook for International Law" (1916) 10 AJIL 1, 11.

Australian & New Zealand Society of International Law (ANZSIL). These four societies set about fostering a scholarly network under the direction of a Steering Committee, ably chaired by Charlotte Ku (then Executive Director of the American Society), and counting amongst its members Professors Naoya Okuwaki and Yuji Iwasawa of Japan, Donald Fleming and Donald McRae of Canada, Jose Alvarez and Susan Karamanian of the United States, Donald Rothwell of Australia and the author.

The call for papers invited in particular emerging scholars to formulate proposals for research on the project theme. Participants were then selected by the Steering Committee, on the basis of equal representation of the four societies, to prepare papers and to attend the Symposium itself, which took place in Wellington in June 2006 in the presence of the Steering Committee and other interested scholars. The discussions on the papers were wide-ranging and stimulating – demonstrating in themselves a constructive international engagement.

It is particularly satisfying that the topics chosen for the specific research papers, although covering a wide range of different areas, nevertheless find common cause amongst scholars from the different participating societies. In this volume, we have thus been able to group the papers into a series of four themes: democracy in the multilateral system; the democratic implications of the internationalising national legal system; human rights and refugee law; and the environment. The result is a uniquely valuable set of case-studies, which explore the general theme across these several specific areas. These in turn will provide a rich source of material for those concerned with the wider issues of theory and policy.

The scholars who participated in the symposium were responsible for finding funding for their own travel to New Zealand. But ANZSIL, as the host for this inaugural meeting, met the local costs. I would like to thank in particular the American Embassy and the Canadian High Commission in Wellington for their generous support of the initiative. The participating societies envisioned this symposium as the beginning of an ongoing research collaboration. I hope that you enjoy its first results.