



Institute
of
policy
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NEW ZEALAND CENTRE FOR
PUBLIC LAW
TE WĀNANGA O NGĀ KAUPAPA TURE Ā IWI O AOTEAROA



The Institute of Policy Studies and the
New Zealand Centre for Public Law
present a conference

Reconstituting the Constitution

Thursday 2 &
Friday 3 September 2010

Legislative Council Chamber,
Parliament

Keynote Speakers:
PROFESSOR ROBERT HAZELL,
University College London

PROFESSOR HEINZ KLUG,
University of Wisconsin

FATHER FRANK BRENNAN,
Australian Catholic University

We are pleased to acknowledge support
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About the conference

It has been nearly a decade since academics, officials, business leaders and representatives of civil society gathered at Parliament in mid 2000 for a major conference on 'Building the Constitution'. The aim of this event was to bring together a representative cross-section of New Zealand society, including people with a range of relevant expertise, to explore the foundations of the constitution, debate how it might be developed, and consider some of the critical issues that would need to be resolved if there were to be a new constitutional 'settlement'. At the time of the conference New Zealand was undergoing a significant transition in terms of its identity and its sense of independence, and various long-standing political norms were being challenged. Debates about the role of the Treaty of Waitangi, our relationship with the international community and our identity within that community had led many to call for a written constitution of New Zealand. The 2000 conference did not produce a roadmap for future constitutional development and many who took part regretted that. However, it did identify issues that would need to be addressed if major constitutional change were to be attempted.

The purpose of the 2010 conference is to build on the 2000 conference and discuss relevant issues that have arisen over the past decade. Domestic developments, such as the creation of the Supreme Court, the passage of the Foreshore and Seabed Act 2004, New Zealand's involvement in the international debate over climate change, the controversy over the regulation of electoral finance, and the continuing debate over the design of the electoral system (including the merits or otherwise of proportional representation and separate Māori representation), have all had an impact on New Zealand's legal and political culture. Various recent events, too, highlight that constitutional issues are far from settled. These include the discussion of the appropriateness of the Chief Justice's comments in regard to offending and prison reform, comments by the Prime Minister favouring a fixed four-year parliamentary term, the government's decision to hold a further series of referenda on the electoral system, and the reform of Auckland's governance.

Equally important, the National and Māori Parties have agreed to establish a group to review various constitutional matters. All the indications are that this group will begin its deliberations before our planned conference in early September 2010. Accordingly, it should be possible for the conference to contribute in various ways to this group's work programme.

Quite apart from this, calls for a conversation on the constitution have come from beyond New Zealand in the form of international treaties on indigenous rights and important environmental issues such as climate change. The UN Committee for the Elimination of Racial Discrimination (CERD), for example, noted in 2007 that New Zealand lacks a constitution to protect indigenous and other human rights, and stressed the need for an ongoing 'constitutional conversation' aimed at addressing the status of the Treaty of Waitangi in New Zealand law.

Given the significant developments since 2000, together with the range of constitutional issues currently being debated (and/or soon to be debated) in the public domain, there is a strong case for a serious public discussion on the future of New Zealand's constitution. The conference we are planning will provide such an opportunity. Moreover, the focus of the event will not only be on the issues which will shape New Zealand's future but also on how New Zealanders should be engaged in a constitutional reform process. Several of the invited keynote speakers, Professor Klug and Father Brennan, have first hand experience in the engagement of civil society in the making of a constitution and/or in the process of constitutional reform. Likewise, another keynote speaker, Professor Hazell, has extensive experience in advising governments on a variety of constitutional issues and in evaluating the impacts of particular changes.

In preparing for the 2010 constitution conference we have sought, and received, the support of the Minister of Justice, Hon Simon Power. We have also had indications of strong support from relevant officials in the Ministry of Justice and other relevant agencies and organisations. Like the previous conference, the proposed 2010 conference proceedings will be published as a book. This book, like its predecessor, will serve as an important resource for those in the wider community who are working on (or are interested in) constitutional issues, and will document the various perspectives of those present on the constitutional foundations of this country.

Keynote Speakers

Father Frank Brennan: Father Frank Brennan is a committed advocate for human rights, having worked tirelessly for others for over 30 years and has won a number of human rights awards. Father Frank is a Jesuit priest, a Professor of Law at the Australian Catholic University and Visiting Professorial Fellow at the University of New South Wales. He was the founding Director of the Uniya Jesuit Social Justice Centre in Sydney. He has also written extensively on aboriginal land rights and, in 1995, he was awarded an Order of Australia for his services to Indigenous Australians. In 1998, he was named a Living National Treasure, during his involvement in the *Wik Debate*.

Professor Heinz Klug: University of Wisconsin Law School; Honorary Senior Research Associate in the School of Law at the University of the Witwatersrand, Johannesburg, South Africa grew up in Durban, South Africa. He participated in the anti-apartheid struggle, spent 11 years in exile and returned to South Africa in 1990 as a member of the ANC Land Commission and researcher for Zola Skweyiya, chairperson of the ANC Constitutional Committee. He was also a team member on the World Bank mission to South Africa on Land Reform and Rural Restructuring. He has taught at Wisconsin since September 1996. His research interests include, inter alia, constitutional transitions, constitution-building, and human rights. Professor Klug's book on South Africa's democratic transition, *Constituting Democracy* was published by Cambridge University Press in 2000.

Professor Robert Hazell: Professor Robert Hazell is Director of the Constitution Unit at UCL. He founded the Unit in 1995 as an independent think-tank specialising in constitutional reform. Before that he was Director of the Nuffield Foundation for six years, and before that a senior civil servant in the Home Office (1975-89). He started his career as a barrister (1973-75). Robert's research interests cover the whole of the constitutional reform agenda. They include devolution in Scotland, Wales and the English regions, freedom of information, parliamentary reform, Lords reform, a British bill of rights, referendums, electoral reform, the Crown and royal prerogative, constitutional watchdogs, and the process of constitutional reform. He is a great believer in collaborative research and leads research teams rather than conducting his own research. He was director of the 1999-2005 Leverhulme funded research programme into the Dynamics of Devolution, which had 12 projects and 25 partners. He is currently director of an ESRC funded project evaluating the impact of freedom of information (2007-2009), and an ESRC and government funded project monitoring the latest developments in devolution (2006-2008). Robert welcomes applications from potential PhD students in any of his areas of interest. He was given a personal chair as Professor of Government and the Constitution at UCL in 1999, and in 2006 he was awarded the CBE for services to constitutional reform.

THURSDAY 2 SEPTEMBER

- 08.15 REGISTRATION
- 08.45 Mihi Whakatau: Tai Ahu
Welcome: Catherine Harwood & Greg Robins
Organiser's Welcome
- 09.30 **Session 1: Reforming Constitutions: lessons from Abroad**
Chair: Professor Tony Smith
- Keynote addresses: Professor Heinz Klug (University of Wisconsin) & Professor Robert Hazell (University College London)

11.00 Morning Tea

- 11.15 **Session 2: The Republican Question**
Chair: Rt Hon James Bolger ONZ
- Debate: Two views on NZ becoming a Republic: Dean Knight v Hon Dr Michael Cullen

12.30 Lunch

- 13.15 **Session 3: The Need for a Written Constitution?**
Strengthening the Bill of Rights Act and the Place of the Treaty of Waitangi
Chair: Justice John McGrath
- a) The Advantages and Disadvantages of a Supreme Constitution for New Zealand (Mai Chen)
 - b) Protecting Rights (Drs Andrew Butler & Petra Butler)
 - c) Treaty of Waitangi (Justice Joe Williams)

14.30 Afternoon Tea

- 15.00 **Session 3 continued**
- 16.00 **Session 4: The Future of Electoral Law (including Māori seats, MMP, fixed term, term of Parliament, and campaign finance)**
Chair: David McGee
- Panel of speakers: Hon Simon Power, Charles Chauvel MP, Professor Philip Joseph, Dr Caroline Morris,

- 18.30 Chapman Tripp Drinks Reception at Law School
19.30 Dinner – Trade Kitchen

FRIDAY 3 SEPTEMBER

- 08.45 **Session 5: Australia: Involving Civil Society in Constitutional Reform**
Chair: Ros Noonan
- Speaker: Father Frank Brennan, Chair, National Human Rights Consultation
- 9.30 **Session 6: Influence of International Treaties**
Chair: Sir Kenneth Keith
- Panel of speakers: Treasa Dunworth, Dr Kennedy Graham, Dr Ben Thirkell-White.

11.00 Morning Tea

- 11.30 **Session 7: The Trans-Tasman Relationship**
Chair: Sir Frank Holmes
- Panel of speakers: Colin James, Professor Philippa Mein-Smith, Paul O'Sullivan

13.15 Lunch

- 14.00 **Session 8: The Role and Governance of Sub-National Government**
Chair: Dame Catherine Tizard
- Panel of speakers: Jenny Rowan, Mike Reid, David Shand,

15.30 Afternoon tea

- 15.45 **Session 9: Protecting Future Generations**
Chair: Shenagh Gleisner
- Panel of Speakers: Justice Susan Glazebrook, Rayhan Langdana, Tama Potaka, Kate Stone
- 17.45 Summing Up – Professor Jonathan Boston
- 18.00 Refreshments

