

# New Zealand antiwar protester found guilty on flag-burning charge

**John Braddock**  
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Paul Hopkinson, a 37-year-old school teacher and father of two was found guilty in the Wellington District Court in November of burning the New Zealand flag, with the intention of “dishonouring” it, during a protest against the war in Iraq. Hopkinson has yet to be sentenced, but faces a fine of up to \$5,000 for breach of the Flags, Emblems and Names Protection Act.

The court’s ruling, which received scant coverage, is an egregious case of political victimisation. It underscores the sharp rightward movement of the New Zealand Labour government, which, while posturing as a reluctant participant in US President Bush’s “war on terror”, is winding back fundamental democratic rights in its name.

The Flags and Emblems Act—which panders to the extreme right—was originally rushed through parliament in 1981 by the Muldoon National government, in response to fierce public opposition to the tour of the South African rugby team. It speaks volumes about the character of the current government that Hopkinson’s prosecution is the first in the 22 years since the law was enacted.

The charges followed Hopkinson’s arrest, along with two other protesters, at a 1,000-strong demonstration outside parliament during the state visit of Australian Prime Minister John Howard on March 10, 2003.

The arrests took place less than a month after the largest demonstrations in New Zealand in decades brought tens of thousands of workers, youth and families onto the streets in an expression of mass opposition to any invasion of Iraq. Prime Minister Clark, who had initially distanced herself from the Bush administration, took the opportunity of Howard’s visit to emphasise that while there was a “difference of opinion” between herself and Howard over the “timetable and the means” of the operations against Iraq, there was “not daylight” between the leaders on the basic objective—to see Iraq “effectively disarmed and contained”.

Clark’s government appears to have been intimately involved in pushing Hopkinson’s case to trial. In order for it to proceed, the signature of Attorney General Margaret Wilson was required, indicating the police were almost certainly acting under high-level instructions. Moreover, Hopkinson was not originally arrested on the flag-burning charge. It was established in court that the incident, which was extremely brief, had occurred in the parliament grounds at 1.13 p.m., during the main part of the demonstration. Police took no action at the time. Hopkinson was

not arrested until more than an hour later, during a melee as Howard’s car departed the grounds at 2.40 p.m.

During Hopkinson’s first court appearance, the charges listed were two lesser counts of disorderly behaviour and obstructing police. During the trial, the judge was even forced to acknowledge that police had never formally interviewed Hopkinson in relation to burning the flag, and that there was “no evidence as to why he was not”.

None of the lesser charges stood up to scrutiny. The obstruction counts against Hopkinson and a second protester failed when crucial police testimony concerning their whereabouts and actions during the course of the melee was contradicted by video footage. The judge declared that the police were “mistaken in their belief” that the two men had been involved in any acts of obstruction.

Hopkinson was also charged with criminal nuisance in relation to the flag incident. But this was dismissed as well, with the judge accepting that suitable safety precautions had been taken and there was no substantial risk of public endangerment. The second protester was found guilty of disorderly behaviour, while an intentional obstruction charge against the third was dismissed.

Hopkinson told the *World Socialist Web Site* that the melee which surrounded Howard’s departure had provided the opportunity for the police to move in and arrest those they had identified earlier as the main “troublemakers”. The arrests occurred after the demonstration had finished and while participants were dispersing—a police procedure that has become commonplace at demonstrations.

The flag-burning charge only surfaced after a formal complaint was lodged with police, several days after the demonstration, by right-wing talkback radio host Paul Henry. Henry had contacted Hopkinson the morning after the demonstration and involved him in a hostile radio interview. The broadcast was calculated to sufficiently inflame nationalist sentiment among a section of listeners to provoke a barrage of calls to Hopkinson’s school with demands for his dismissal. Henry subsequently told the *Listener* magazine that he had initiated the complaint because he was “incensed” at the actions of a teacher burning the flag.

A recording of the radio interview was subsequently played as prosecution evidence at trial. The judge was careful to say he attached “limited weight” to the recording and that the guilty verdict rested primarily on Hopkinson’s own evidence and demeanour in the witness box. While he found Hopkinson to be in general an “honest and reliable witness”, the judge declared

Hopkinson had burned the flag while aware that he legally “should not” do so. He criticised the accused for “arguing the contrary” when under cross examination as to his motives, and dismissed Hopkinson’s arguments on his own behalf as “attempting to rationalise” his clear intention to break the law.

As a legal precedent, the judge’s ruling calls into question the basic democratic rights enshrined in the 1990 Bill of Rights Act (BORA). The introduction of a Bill of Rights was propounded as part of the election policy platform of the Labour government in 1984, principally in response to widespread popular anger over successive attacks by the Muldoon government on civil rights, the unions and the right to protest. The passage in 1990 of the BORA, which by then had been significantly watered down from its original drafts, was one of a number of last-ditch manoeuvres by the deeply unpopular Labour government to assuage rising popular anger after a decade of assaults on basic political, social and economic conditions. Because New Zealand has a British-based legal system, it has no constitutional Bill of Rights, so the BORA was passed as statute law.

The Bill of Rights was promoted as a measure to “affirm, protect, and promote human rights and fundamental freedoms” and to formally recognise the International Covenant on Civil and Political Rights. Its provisions include guarantees of democratic and civil rights, non-discrimination and minority rights, personal security, rights in relation to search, arrest and detention, and rights to civil justice. In addition, it requires the attorney general to report to parliament if any proposed law appears to be inconsistent with the Act. So far, there has been little case law to establish how it will be interpreted.

Hopkinson’s defence was that flag burning was lawful under the sections of the Act protecting the rights to freedom of expression and peaceful assembly. Its prescribed rights include the freedom of political debate, the right to protest and the right to assemble peacefully in public places. Burning the flag, his defence argued, constituted “symbolic political speech” and was thus guaranteed by the Act. Referring to a number of overseas cases, the defence contended that exceptions to the Bill of Rights should be interpreted very strictly, to ensure that individuals had “the full measure of the fundamental rights and freedoms referred to”.

The judge found, however, the defence appeal to the Bill of Rights to be “defeated” by his specific finding that Hopkinson had acted with a definite intention to “disrespect” the flag. The freedoms guaranteed in the Bill of Rights enabled the “multitude of other protesters to protest freely”, which they did, while “taking collective care not to cross the line into proscribed conduct”. The ruling—the first time one has been made in respect to this section of the Act—establishes that any laws or regulations that “proscribe conduct” cannot be over-ruled by the BORA. This, and the wide-ranging reasoning of the judge, now sets a precedent for any criminal charge to take precedence over the Bill of Rights.

At the heart of the judgement was not an objective assessment about what Hopkinson did, but what the judge called the “mental element”—that is, whatever the court could construe to be the defendant’s political intentions. The judge claimed that the task of the court was “to determine, by drawing an inference, what his intentions were at the material time”. He found that by

demonstrating “disrespect for the flag”, Hopkinson was seeking to add weight to the protest by deliberately creating an action which he knew would create attention.

The judge further declared that the 1981 law prohibiting flag burning with the intention of showing disrespect was “justifiable in a free and democratic society”. While the act of destroying the flag was not in itself an offence, the intention to show “disrespect” or to “dishonour” it made it so. He defended giving the 1981 law precedence over the Bill of Rights by saying that had the “legislature” deemed that dishonouring the national symbol to be defensible as symbolic political speech “it would have said so in plain terms”.

The court disregarded Hopkinson’s arguments that it was not he who had “dishonoured the flag”, but the Labour government. Hopkinson, a member of a radical activist group called the Anti-Capitalist Alliance told the court that his actions were meant to draw attention to the New Zealand government’s involvement in pre-war sanctions against Iraq and its welcoming of Howard, who supported the war.

The conviction will remain part of Hopkinson’s record and will be reported to the Teachers’ Council when his practising certificate comes up for renewal. The Teachers’ Council is a recent creation of the Labour government and education sector unions, set up as an enforcement agency to police the professional and private activities of teachers. Some, with a number of repeat traffic offences, have been astonished to find themselves required to front up to a disciplinary committee to prove they are “fit and proper” to continue teaching. In Hopkinson’s case, had the charge of criminal nuisance—which carries a possible 12-month jail sentence—been successful, his teacher registration could have been immediately jeopardised.

Sentencing originally scheduled for late November has been deferred, but Hopkinson’s lawyer has indicated that an appeal will be lodged. The case amounts to a flagrant attack on democratic rights and constitutes a sharp warning as to the trajectory of the Labour government, which is desperate to convince the US and other international powers, as well as potential investors, of its political reliability.



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