

# New Zealand High Court overturns conviction for flag burning

By John Braddock  
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Late last month, the New Zealand High Court upheld an appeal lodged by 38-year-old teacher Paul Hopkinson against his conviction for setting fire to the national flag.

Hopkinson was convicted and fined \$600 in the Wellington District Court under a reactionary 1981 law, previously unused, forbidding any action that would “dishonour” the New Zealand flag. The judge ruled that the provisions in the country’s Bill of Rights Act (1990), which guarantee freedom of expression, were over-riden in this case by Hopkinson’s political intentions, which, he said, were clearly designed to encourage disrespect for the flag. In centring the justification for the conviction on a presumption of the defendant’s intentions, the court established a dangerous precedent for criminal sanctions against political opponents of the government.

The incident took place in the grounds of parliament house in March 2003, during a 300-strong protest against a state visit by Australian Prime Minister John Howard. At the time, there was widespread public concern that the purpose of Howard’s visit was to bring pressure to bear on the New Zealand government to join the “coalition of the willing” in invading Iraq. Prime Minister Helen Clark had already used the occasion to emphasise her agreement with the aims of Australia and the US, declaring that her differences were simply over the “means” of disarming Iraq. The demonstrations against Howard were held just weeks after tens of thousands of people throughout the country had joined the global protest movement against the war.

Reviewing the lower court’s verdict, the High Court found that burning the flag in the circumstances of a political demonstration did not justify limiting Hopkinson’s rights. As a protester, he had a legal right

to burn the flag as a form of freedom of expression. The judge drew attention to a finding of the US Supreme Court, where a majority of judges had ruled that the criminal law should not be used to protect the flag, even though it was a dominant political symbol. New Zealand had also reached a “level of maturity”, he said, in which “staunch criticism is now regarded as acceptable”.

The decision was, however, deliberately guarded and limited in scope. The judge contended that in the context of the right of freedom of expression, the term “dishonour” had to be given the meaning of “vilify”. While a symbolic burning of the flag was not sufficient for this, he declined to comment on what might be—thus leaving the door ajar for the state to return to the matter. Hopkinson’s case established an important legal precedent in the fight for democratic rights, but it was a decidedly conditional one.

Just days after the High Court announced its decision to overturn the original ruling, Hopkinson and three fellow members of radical activist groups known as Peace Action Wellington (PAW) and the Anti-Capitalist Alliance (ACA) were arrested on charges involving a fresh episode of flag burning. Hopkinson, along with student Nick Kelly (21), engineer Anthony West (23) and Stephen Hay (23), unemployed, appeared in the Wellington District Court on August 4, charged with disorderly behaviour. They were remanded for trial on September 7.

The arrests occurred following a protest organised by the ACA that was designed to draw attention to the High Court ruling. The press and television were alerted in advance, and so were the police. A couple of dozen protesters, all members or supporters of the ACA and PAW, turned up. They were outnumbered by media contingents and the police, led by high-ranking

officers. The police warned the protesters beforehand that if they went ahead with the flag burning and did not leave parliament grounds they would be arrested, which is what subsequently transpired.

On the day after the protest, in the midst of an outburst of outrage stirred up by talkback radio hosts, the chairperson of Hopkinson's employing board told the media that the board would look at the avenues that might be available to discipline or dismiss him.

Under powers given to the recently-established Teachers Council by Clark's Labour government, but yet to be fully tested, any individual is able to lay a complaint against a teacher whom they consider in breach of a vaguely-worded code of ethics. Hopkinson—and by extension anyone who engages in protest activity—could be deemed to be not “fit and proper” to work as a teacher, thus permitting political witch-hunts. This is occurring against a background of recent government moves, highlighted by the forced resignation of a high-ranking Labour Department official for her public involvement in launching the new Maori Party, to forbid political activities by public servants.

From the outset, the *World Socialist Web Site* warned that the arrest and trial of Hopkinson underscored the sharp rightward shift of the Labour government, which, like its counterparts internationally, was making inroads into basic democratic rights. Referring to the original conviction, the WSWS noted that the ruling would be used as “a precedent for repressive operations against ordinary working people and youth who are engaged in struggles against the criminal US-led war against Iraq, as well as the government's escalating attacks on jobs and living standards at home”.

These issues were in no way addressed by the latest protest stunt organised by the ACA. In media interviews, ACA members claimed that the purpose of their flag-burning protest was to “provoke” discussion about the continued involvement of the New Zealand government in the US-led occupation of Iraq. Behind the protest is the conception that direct confrontations with the police radicalise the participants and lead to bigger protests. In fact, the demonstration has simply provided the police, the state and the Labour government with another avenue to attack democratic rights and silence political dissent.

Far from clarifying the complex political questions

surrounding the eruption of US militarism and the invasion of Iraq, the protest has simply muddied the waters. It has focused public discussion on the pros and cons of flag burning rather than the criminal actions of the Bush administration and its allies in Iraq. The resort to such means underscores the dead end of protest politics. Rather than futile stunts what is needed is a careful review of the reasons why the unprecedented global protests in 2003 failed to stop the US invasion and occupation of Iraq.

The underlying causes of imperialist war lie in the profit system itself. Its overturn requires a conscious political movement of the working class, armed with a scientific socialist perspective and firmly rooted in an assimilation of the strategic experiences of the twentieth century. The International Committee of the Fourth International and the *World Socialist Web Site* are convening a public meeting in Wellington on August 29 to discuss this socialist and internationalist perspective and to lay the foundations of such an independent movement. We invite all those who are seriously concerned about these issues to attend.

To contact the WSWS and the  
Socialist Equality Party visit:

<http://www.wsws.org>