

New Zealand

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New Zealand was populated by Maori, migrating from the Pacific, beginning about 1000 years ago. It was discovered by Europeans in 1642 and again in 1769 by Captain Cook. In the late 18th and early 19th century it was increasingly visited by sealers and whalers. In 1840 the Treaty of Waitangi was signed by a representative of the British Crown with some but not all Maori tribes and thereafter England asserted sovereignty over New Zealand and English settlers began migrating in numbers. Institutions of government on the English model were established, with representative democracy since 1852 and responsible (Cabinet) government since around the late 19th century. Independence from the UK was gradually attained and certainly was fully in place by the 1930s, and substantially in place for quite some time before that.

New Zealand is a unitary state. It is a Westminster-style parliamentary democracy with a single House of Representatives, a mixed-member proportional representation system¹³⁶, and an independent judiciary.

Broadly speaking, its constitution mirrors that of the United Kingdom, the old colonial parent. The Queen of Great Britain and Northern Ireland is also the Queen of New Zealand, where she is represented by a Governor-General who exercises a formal role in parliamentary law making (by giving the “Royal assent” to bills passed in Parliament, and which, by convention may not be withheld). Like the United Kingdom’s, the New Zealand constitution is unwritten, contains no formal constitutional rights, and permits almost unquestioned Parliamentary supremacy. New Zealand courts have no power to review the validity of Parliament’s laws, nor declare them invalid for unreasonably abridging human rights.

New Zealand does, however, have a Bill of Rights which affirms a range of rights and freedoms derived from the International Covenant on Civil and Political Rights. Though the New Zealand Bill of Rights Act (passed in 1990 as ordinary legislation) confirms the supremacy of Parliament, the practice of regular elections, a wide franchise, and public scrutiny of political debate ensures a degree of rights protection that is comparable to other liberal democracies in the world today.

The provisions of the Bill of Rights Act are crafted to provide a political-democratic protection against unreasonable limitation of the rights and freedoms of citizens. The guaranteed rights limit the power of the executive branch and all public actors. As to the legislative branch, the Bill of Rights Act requires the Attorney-General to draw to members’ attention any potentially rights-infringing provision that is contained in legislation introduced to the House of Representatives. Coupled with a statutory expression of the principle that legislative abridgment of fundamental human rights must

¹³⁶ Parliament comprises 120 members, of whom 60 hold “electorate” seats, and 60 are “list MPs”. Citizens have two votes: one for their electorate candidate and the other for a party. The 60 list MPs are appointed to Parliament from lists registered in advance by political parties, in such numbers as to ensure that the make-up of Parliament reflects the proportion of votes received by each political party contesting the election. It follows that, of the two votes, it is really the party vote that determines the result.

be clear and express and that courts must read ambiguities in a rights-favouring way, the Bill of Rights Act ensures that Parliament will only be taken to have unreasonably limited the various rights and freedoms where that result is clearly intended and is supported by sufficiently clear statutory language. Further, moves to abridge rights are politically contentious, and New Zealand's small size means they will rarely escape considerable attention. As a result, New Zealand can boast few deliberate abridgments of fundamental rights since the Act was introduced 17 years ago.

Rights litigation is heavily influenced by international and comparative law, in the sense that the views of international tribunals and the judgments of foreign courts are often cited and considered in judgments. In particular, recourse is often had to jurisprudence emanating from Canada, the USA, the United Kingdom, the European Court of Human Rights, the Human Rights Committee under the International Covenant on Civil and Political Rights and, on occasion, the Constitutional Court of South Africa.

The Treaty of Waitangi, signed in 1840 by Maori chiefs and a representative of Queen Victoria, is New Zealand's founding constitutional document, though not itself a source of law. Under the Treaty the Maori tribes of New Zealand ceded their sovereignty – or at least a power to govern – to the English Crown, and in return Maori indigenous rights were affirmed. Because of its brevity, but also because of textual discrepancies between the respective Maori and English translations of the Treaty (the Maori text arguably reserves considerable power to Maori which the course of history has not respected) it is usual now to speak of the “principles” of the Treaty. These principles are generally taken to denote an ethos of partnership between executive government and Maori in matters concerning governance and economic development. In practice this entails a duty to consult and give effect, so far as politically possible, to Maori aspirations. In the educational sphere, particular emphasis is placed on the preservation of the Maori language and culture. State schools are required to facilitate this, and there is also provision for schools in which Maori language is the language of instruction.

Legal education in New Zealand is characterised by being outward looking and strongly influenced by international law and developments. As a small country at some distance from the rest of the world, but relatively prosperous, it has a considerable amount of interaction with other nations through international trade. Many New Zealanders travel widely and law graduates are commonly employed in major international cities such as London, New York, Paris, Singapore and Dubai, as well as serving in international tribunals and organisations.

New Zealand has a four tier court system: (1) District Courts hearing most criminal cases and civil cases up to \$200,000; (2) a High Court of New Zealand hearing serious criminal cases and with unlimited civil jurisdiction; (3) the New Zealand Court of Appeal to which appeals are mostly possible as of right save in cases beginning in the District Court where leave is often required; and (4) the Supreme Court of New Zealand to which appeals are possible only by leave.

Until 2004 the highest court in the structure had been the Judicial Committee of the Privy Council in London. The New Zealand Supreme Court was established and began sitting in 2004 in consequence of the abolition of the right to appeal to the Privy Council. The last Privy Council appeal (of a residual case in the system already) was heard in early 2007.