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## a new zealand bill of rights

If society is tolerant and rational, it does not need a Bill of Rights. If it is not, no Bill of Rights will preserve it.

Former Australian High Court  
Chief Justice, *Sir Harry Gibbs.*

The recently enacted New Zealand Bill of Rights Act provides a Bill of Rights which covers the right to life and to refuse to undergo medical treatment; freedom from torture and medical or scientific experimentation; electoral rights; freedom of thought, expression, manifesting religion, peaceful assembly and association; freedom from discrimination and rights of minorities; freedom from unreasonable search and seizure and of liberty of the person; rights on being arrested or being detained, rights of persons charged and minimum standards of criminal procedure; prohibition on retroactive penalties and double jeopardy and the right to justice. (*British Institute of International and Comparative Law Bulletin of Legal Developments, April 1990.*)

An Australian Bill of Rights was an election issue at the federal elections in 1984. Legislation for an Australian Bill of Rights was passed by the House of Representatives in 1985.

In one of the lengthiest debates ever in the Australian Senate, the Government argued that the International Covenant on Civil and Political Rights, which had been ratified by Australia's Fraser Government in 1980, specifically committed Australia to adopting legislative measures to give effect to the rights contained in it. However the government was finally forced to postpone further consideration of the Australian Bill of Rights Bill in the Senate in November 1986 after an Opposition Amendment to extend the application of

the Bill to 'acts or practices done by or on behalf of a trade union or a body corporate' was agreed to. The Australian Bill of Rights was discussed in the January 1986 and January 1987 issues of *Reform*.

Arguments against an Australian Bill of Rights have included the following:

- A Bill of Rights is neither necessary nor sufficient to guarantee the preservation of rights.
- It is an attempt by the present generation to limit the power of the next.
- A Bill of Rights would produce endless litigation.
- The common law provides sufficient protection for human rights.

*advantages of a bill of rights.* Supporters of an Australian Bill of Rights have argued:

- A Bill of Rights would inspire respect for rights by setting them out in a positive declaratory form.
- The common law does not offer clear or wide-ranging statements of rights.
- A Bill of Rights would enable judges to recognise rights which even the best judges have been unable to do at common law.
- It would protect minorities by establishing certain fundamental rights.
- A Bill of Rights would be a clear and definite move to fulfil Australia's international obligations under the International Covenant on Civil and Political Rights.

In 1987 the Legal and Constitutional Committee of the Victorian Parliament produced a report entitled *Report on the Desirability or Otherwise of Legislation Defining and Protecting Human Rights*. The Committee examined various systems around the world including the United States and Canadian Systems. It recommended the enactment of an unenforceable Declaration of Rights and Freedoms which would guide Parliament in considering legislation and

have a moral and educative effect in the community. It proposed the conferral upon the Legal and Constitutional Committee the functions of:

- automatically scrutinising the Bills and newly-made subordinate legislation for compliance with the Declaration and
- undertaking specific reference to consider compliance with the Declaration of existing Acts of Parliament, subordinate legislation, the common law and areas of executive action. (See July 1987 *Reform* No47, p137–139)

The Victorian report did not recommend the adoption of a Bill of Rights.

How New Zealanders use their new Bill of Rights will no doubt be closely observed by many Australians.

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## meech lake, multiculturalism and the rights of peoples

Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched.

Thomas Jefferson, 1816.

The sovereign state of Canada as it is currently constituted is under threat as a result of provincial disagreements over the 'Meech Lake' accord. This dispute highlights the difficulties that a nation faces in trying to accommodate the values and ethnic identities of its multicultural constituency. Where does the balance lie between the rights of an ethnic minority to maintain its cultural identity, and the need to maintain the identity and the integrity of the nation state? To what extent should collective minority rights have priority over individual rights? The emerging concept of the 'rights of peoples', as discussed in a recently released book of that name edited by Professor James Crawford may throw some light on the Canadian situation. This includes a discussion of whether

collective rights are necessarily incompatible with individual rights.

*what is 'Meech Lake?'* The uneasy relationship between the mainly french speaking province of Quebec and the rest of Canada is not new. The current crisis has arisen as a result of the Trudeau government's decision in 1982 to repatriate Canada's constitution from its traditional custodian, the British House of Commons. As a means of trying to get a better deal for its constituents, the Quebec government refused to ratify the new constitution. The Meech Lake accord, named after the country resort where all ten provincial governments agreed to it, was Prime Minister Mulroney's deal to buy Quebec's compliance. This was done by the provinces agreeing to define Quebec as a 'distinct society' with sweeping rights to impose francophone culture in the province. It could be said that the Canadian government has recognized the population of Quebec as a 'people' for the purpose of applying the principle of self-determination. The core of this principle according to Ian Brownlie in a chapter of *The Rights of Peoples* is

... the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives.

*the controversy.* This support was won only by granting the rights sought by Quebec under the new constitution to the other provinces as well. These included extensive rights to veto federal law, to opt out of federal programmes and to nominate Supreme Court judges. Apart from defence and foreign policy, this would leave very little for the national government.

Several of the provinces are now refusing to ratify the agreement which can only survive if all provinces ratify it by June this year. The entry of ex-Prime Minister Trudeau into the debate has intensified the controversy. His comments reflect some of the reasons, discussed by Gillian Triggs in another chapter in *The Rights of Peoples*, why there remain significant barriers to the implementa-